A STATE PLAN
TO PROTECT AND ADVANCE
THE INTERESTS OF CHILDREN

Robyn Layton QC,
Child Protection Review
A STATE PLAN
TO PROTECT AND ADVANCE
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March 2003

The Hon Stephanie Key, MP
Minister for Social Justice
GPO Box 1838
ADELAIDE SA 5001

Dear Minister

It is with pleasure that I submit to you the report of the Review of Child Protection in South Australia.

I believe I have put forward a plan, based on best practice and evidence, that will assist the South Australian Government address more effectively the prevention of child abuse and neglect in the community and ensure improved outcomes for those children and young people who have been abused and neglected and their families.

The recommendations aim to assist South Australia to move forward as a State in modelling best practice in child protection by establishing a comprehensive whole of community approach.

I commend the report to you and wish you well with its implementation.

Robyn Layton, QC
Chair
This formidable report was essentially produced within nine months from the time of my appointment to the time of initial delivery of the raw product to the Minister, with a further three months for the exhaustive editing and printing processes necessary for publication. This birth would not have been possible without the totally committed secretariat of four persons who worked also at nights and weekends to assist me with my obsession to accomplish the task on time.

The breadth of the topics required to be considered in this Review was daunting and it was necessary at all times to maintain a focus on the main purpose for the Review. My prime aim was to provide an overall framework for child protection. It was to draw the tree with the trunk and the branches so that the leaves could later be discussed and drawn by others. At the risk of taking the metaphor too far, sometimes the outlines of the leaves have also been sketched to indicate a direction.

It was essential that the framework be a best practice model with creative extensions suitable for implementation in South Australia. It was also my intention to make specific recommendations which were sufficiently developed to enable a decision to be made by Government as to whether to agree, modify or reject particular recommendations.

If there is one message to be conveyed by the Review it would be the need for inter-agency collaboration. This is not a financially expensive commodity to provide, it requires instead a different way of working and targeting the use of existing resources. Of course additional staff and services are also required to better support the needs of children at risk and their families, but even without those additional services, more strategic use can be made of the services which presently exist.

It was apparent to me that best practice in child protection had been difficult to implement and in many areas it not been done for some years. The task of child protection had exceeded the ability of Government to deliver the support and services required, with the staff and resources it had made available. This was most evident in Family and Youth Services (FAYS). Yet at the same time FAYS had developed best practice protocols and guidelines in a number of strategic areas, the problem was a failure to be able to implement them fully, due largely to the overwhelming workload.
I have found the process of the Review quite humbling. In addition to people who were prepared to share their personal experiences with me, the submissions and consultation process revealed many hundreds of people working in Government Departments and non-Government agencies in the State who are dedicated to working in the best interests of children. In particular, a number of Advisory Groups acknowledged in the Appendix, consulted with and compiled the views of the various sectors within their Departments and provided me with detailed responses to the issues raised by the Review. Many people were involved in that process and without the candour and thoughtfulness of their responses, this Review would not have been able to obtain the breadth and quality of contributions within the time frame.

All persons and organisations with whom I have come into contact, expressed an enthusiasm about the need for an overall Government framework for child protection. They greatly assisted me with their ideas and also overwhelmingly reaffirmed the importance of interagency cooperation. They demonstrated eagerness to participate in a future process which would allow coordinated and relevant services to be provided to the children and their families in need. It is possible for South Australia to have one of the best systems for child protection in the world because we have a relatively small population with a long history of comparative accessibility between the public and Government at all levels. These features, combined with a commitment to make the system work, should enable the State to produce real outcomes to help children and their families.

Children and young people are the future of our State and their protection is our best investment.

Robyn Layton, QC
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(a) To deliver a plan to the Minister of Social Justice that provides effective strategies to improve the provision of child protection services in this State and ensure better outcomes for children, young people and their families.

In doing this, the Review will:

- Review Department of Human Services policy, practice and procedures and include both government and DHS funded services.
- Determine the effectiveness of the legislation, practices and services in protecting children and young people.
- Provide advice on early intervention and prevention strategies that prevent abuse of children.
- Ensure particular attention is given to the needs of indigenous children and their families.
- Consider whether current Acts (Children’s Protection Act 1993 and Family and Community Services Act 1973) adequately provides for the care and protection of children and young people and provide advice on any legislative reform.

(b) Examine the adequacy of the SA criminal law and police procedures in dealing with child abuse.

(c) Provide advice to government on the strategies and systems required to achieve a whole of government coordinated and integrated response to the protection of children.

(d) Provide advice to government and consider legislation to ensure organisations protect children from sexual and physical violence whilst in their care. Particular attention will be given to screening mechanisms for checking suitability of employees/volunteers, policies, procedures and training.
### APPENDIX 2 - SUBMISSIONS

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<tr>
<td>1</td>
<td>Professor Freda Briggs</td>
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<td>2 &amp; 8</td>
<td>Ms J. K. Jones</td>
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<td>3 &amp; 10</td>
<td>Mr Ian Johnson</td>
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<td>Mr Kris Hanna, MP, Member for Mitchell</td>
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<td>Mr Joe O’Loughlin</td>
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<td>6</td>
<td>Victim Support Service</td>
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<td>7</td>
<td>Ms Fiona Clarke</td>
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<td>12</td>
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<td>13</td>
<td>Mr &amp; Mrs J. Lehmann</td>
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<td>Ms Meryl Thompson</td>
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<td><strong>Bailey-Harris, Prof Rebecca</strong> - Snr Law Lecturer, Bristol University, UK &amp; Barrister</td>
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<td><strong>Beech, Dr Anthony</strong> - Snr Lecturer &amp; Research Fellow, Uni of Birmingham</td>
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<td><strong>Ben-Tovim, Dr Arnon</strong> - Consultant, Paediatrics, London, UK</td>
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<td><strong>Bicknell, Mr Peter</strong> - General Manager, Port Adelaide Central Mission</td>
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<td><strong>Birchall, Mr Paul</strong> - Asst Executive Director, Department of Community Development WA</td>
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<td><strong>Browne, Prof Kevin</strong> - Head Clinical Criminology Department Birmingham University, UK</td>
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<td><strong>Budiselik, Mr Bill</strong> - Consultant, WA</td>
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<td><strong>Crozier, Mr Rob</strong> - Solicitor, Youth Court Legal Services</td>
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<td><strong>Duggan, The Hon Justice K.P. &amp; The Hon Justice E.P. Mulligan</strong>, (Supreme Court) - Stipendiary Magistrate M.E. Bolton, (District Court) - <strong>The Hon Judge P. Rice</strong> (Adelaide Magistrates Court)</td>
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Department of Human Services Advisory Groups Chairpersons & Executive Officers

Dolgopol, Ms Tina & Ms Rosemary Steen - Lecturers, Flinders University of South Australia

Early Intervention Advisory Group coordinated by the Department of Human Services

Education Advisory Group coordinated by Department of Education and Children's Services (2)

Esam, Ms Barbara - Lawyer, Child Protection Awareness & Public Advocacy, NSPCC, London, UK

Family & Youth Services - Crisis Response & Child Abuse Services (CRACAS)

Family & Youth Services - Enfield District Centre

Family & Youth Services - Murray Bridge District Centre

Family & Youth Services - Noarlunga District Centre

Family & Youth Services Advisory Group coordinated by Department of Human Services (2)

Glaser, Dr Danya - Consultant Child & Adolescent Psychiatrist, London, UK

Golias, Ms Penny - Manager, CUBIT & CORE Program Sex Offender Program, Long Bay Gaol Complex, Sydney.

Gordon, Ms Sue - Magistrate, WA Children’s Court

Hamilton, Dr Catherine - Forensic Psychologist, Birmingham University, UK

Hancock, Mr John - A/Director, Operational Policy & Support, Department of Community Development, Perth WA

Hobbs, Dr Christopher - Community Paediatrics, St James Hospital Leeds UK

Individual Confidential Consultations (13 individuals)

Investigatory Advisory Group coordinated by the Women’s & Children’s Hospital

Iwaniec, Prof Dorota - Director, Institute of Child Care Research, Queens University, Northern Ireland

Jenkins, Mr Alan - Clinical Psychologist, NADA Adolescent Offenders Programmes

Justice Advisory Group coordinated by the Attorney-General’s Department of Justice (2)

Keating, Ms Nuala & Mr Paul Yovich - Office of the Director of Public Prosecutions, WA

Malcolm, Chief Justice David - Supreme Court, Perth WA

Manley, Ms Rachel - Coordinator, Child Witness Services, Child Victim Support, Perth, WA
- Margaret Ives Children's Centre - SA

- Markham, Ms Rae - Project Manager, Department of Community Development, WA

- Marsh, Ms Mary - Chief Executive, NSPCC, London, UK

- McCallum, Ms Sharon - Sharon McCallum & Associates P/Ltd, Consultant

- Morrison, Mr Tony - Consultant, Child Protection (UK)

- Mr Andrew Webb - Chair, Chesire ACPC Manchester, UK

- Nicholson, Chief Justice A., Justice Burr & Mrs Margaret Harrison - Family Law Court of Australia, South Australia

- Nicolaou, Ms Anne - Principal Social Worker, Family & Youth Services

- Nossar, Dr Victor - Service Director, Department of Paediatrics, South Western Sydney Area Health Service

- O’Brien, Judge Kate - President, Children’s Court, WA

- Parent Advocacy Inc - SA

- Parent Advocacy Inc - St Ann’s Parent Group, SA

- Parents Want Reform - SA

- Playgroup Association of SA

- Protective Parents Committee - SA

- Proeve, Mr Michael & Ms Marie Thomas - Manager and Clinical Psychologist, Sexual Offenders Treatment Assessment Programme (SOTAP), SA.

- Rayner, Ms Moira - A/Equal Opportunity Commissioner, Perth, WA

- Reed, Ms Beatrice - Coordinator, Clinical Services, Cedar Cottage Sex Offender Treatment Program, SA

- Richard Hillman Foundation - SA

- Rose, Ms Wendy - Snr Research Fellow, School of Health & Social Welfare and Open University Walton Hall, UK

- SA Association of School Parent Clubs

- Simpson, Judge Andrea - District Court & Former Judge of Youth Court SA

- SA Council of Social Services Policy Council (SACOSS) - SA

- Special Education All Schools Support Group (SEAS) - SA
- Tolhurst, Mr Jay - Principal Social Worker, Family & Youth Services
- Triangle Services for Children - UK
- White, Mr John - Deputy Commissioner of Police, SA
- Wundersitz, Ms Joy - Director, Office of Crime Statistics, SA
- Youth Views - SA
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## APPENDIX 6 - STAFF

### CHILD PROTECTION REVIEW

Robyn Layton, QC  
Chair/Reviewer

### SECRETARIAT

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<th>Name</th>
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<tr>
<td>Helen Shepherd</td>
<td>Executive Officer, Secretariat</td>
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<tr>
<td>Kay Anastasiadis</td>
<td>Project &amp; Research Officer</td>
</tr>
<tr>
<td>Rae Rix</td>
<td>Administrative Officer</td>
</tr>
<tr>
<td>Taruna McLean</td>
<td>Research Assistant (Feb/March part-time)</td>
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APPENDIX 7 - ADVISORY GROUPS

ADVISORY GROUPS

Aboriginal Advisory Group
coordinated by the Aboriginal Services Division of the Department of Human Services

Early Intervention and Prevention Advisory Group
coordinated by the Department of Human Services

Education Advisory Group
coordinated by the Department of Education and Children's Services

Family & Youth Services Advisory Group
coordinated by Family and Youth Services

Justice Advisory Group
coordinated by the Attorney-General's Department

Investigatory Advisory Group
coordinated by the Women's & Children's Hospital
APPENDIX 8 - LEGISLATION

Adoption Act, 1988 (SA)
Bail Act, 1985 (SA)
Broadcasting Services Act, 1992 (Cth)
Child Abuse Prevention and Treatment Act, 1996 (USA)
Child Protection (Prohibited Employment) Act, 1998 (NSW)
Child Protection (Offenders Registration) Act, 2000 (NSW)
Child Protection Act, 1999 (Qld)
Children & Young Persons (Care and Protection) Act, 1998 (NSW)
Children (Care and Protection) Act, 1987 (NSW)
Children and Young Persons Act, 1998 (NSW)
Children and Young People Act, 1999 (ACT)
Children’s Act, 1939 (UK)
Children’s Act, 1989 (England & Wales)
Children’s Order, 1995 (Northern Ireland)
Children’s Services Act, 1985 (SA)
Children Services Tribunal Act, 2000 (Qld).
Children’s Protection Act, 1993 (SA)
Child Protection Review (Powers & Immunities) Act, 2002 (SA)
Children’s Services (Child Care Centre) Regulations, 1998
Children’s Services Act, 1985 (Qld)
Classification (Publications, Films and Computer Games) Act, 1995 (Cth)
Commission for Children and Young People Act, 2000 (Qld)
Commissioner for Children and Young People Act, 1998 (NSW)
Commonwealth Places (Application of Laws) Act, 1970 (Cth)
Commonwealth Privacy Act, 1998 (Cth)
Consent to Medical Treatment & Palliative Care Act, 1995 (SA)
Coroner’s Act, 1975 (SA)
Crimes Act, 1914 (Cth)
Disability Services Act, 1993 (SA)
Domestic Violence Act, 1986 (ACT)
Domestic Violence Act, 1996 (SA)
Education Act, 1972 (SA)
Evidence Act, 1906 (WA)
Evidence Act, 1908 (NZ)
Evidence Act, 1929 (SA)
Evidence Act, 1995 (Cth)
Family & Community Services Act, 1972 (SA)
Family Law Act, 1975 (Cth)
Freedom of Information Act, 1991 (SA)
Health Commission Act, 1976 (SA)
Human Rights and Equal Opportunity Act, 1993 (Cth)
Immigration (Guardianship of Children) Act, 1946 (Cth)
Industrial & Employee Relations Act, 1994 (SA)
Migration Act, 1958 (Cth)
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Mines & Works Inspection Act, 1972 (SA)
Ombudsman Act, 1972 (SA)
Ombudsman Act, 1974 (NSW)
Ombudsman Act, 2001 (Qld)
Privacy Act, 1988 (Cth)
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South Australian Housing Trust Act, 1995 (SA)
Summary Offences Act, 1953 (SA)
Summary Procedures Act, 1921 (SA)
Telecommunications Act, 1997 (Cth)
Young Offenders Act, 1993 (SA)
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INTRODUCTION

This chapter describes the overall State Plan for Child Protection (“the State Plan”) and in the broad, articulates the four major aspects of the State Plan:

- the purposes and goals
- the framework and major structural reforms
- the major action areas
- priorities for implementation.
PURPOSES AND GOALS OF THE STATE PLAN

PURPOSE OF THE PLAN

- to achieve real changes in the lives of the most vulnerable people in our community in a cohesive and integrated manner
- to ensure that the Government takes the overall responsibility for strategies to protect children from abuse and neglect
- to shift the current paradigm from a reactive system of child protection based upon response to incidents, to a proactive system which is focused on prevention and early intervention
- to stimulate interagency cooperation between Government and non-Government organisations at all levels
- to ensure that there is a skilled professional workforce making assessments and delivering services
- to involve and be accountable to the community for child protection outcomes
- to identify the needs for and delivery of education and training within the community
- to ensure effective, efficient delivery of holistic services on a continuum basis.

COMPREHENSIVENESS OF THE PLAN

The Plan is comprehensive and integrated across all areas which impact on children and their lives including all relevant Government sectors. It is unashamedly focused on the child’s best interests as being the primary concern, acknowledging that those interests will often be reliant on the support by and to the family.

GOALS OF THE PLAN

The goals of this Plan are:

- promoting a whole of Government and whole of community response to child protection and the prevention of child abuse and neglect
- ensuring a voice for children and young people and promoting their best interests
- promoting quality and strategic governance, public accountability and transparency
- improving quality in the child protection system focussed on better outcomes for children, young people and their families
- developing and supporting a sustainable skilled workforce
- preventing child abuse and neglect and improving outcomes for children, young people and their families and communities
- promoting safer communities for children and young people.

RELATIONSHIP OF THE PLAN TO THE GOVERNMENT’S STRATEGIC POLICY INITIATIVES ACROSS GOVERNMENT

This Plan has been designed to support and be compatible with the Government’s

- strategic policy initiatives across Government
- social and economic objectives
- the Social Inclusion Unit and the Economic Development Board, both of which reflect the Government’s recognition of the need to develop joined-up solutions
overall strategies in the areas of:
- community safety and crime prevention
- social inclusion
- early intervention and prevention.

Whilst these strategies have different primary objectives, child protection is often an adjunct or secondary objective. Some of these strategies are dealing with the downstream effects of child abuse and neglect. In particular the Plan recognises that the secondary effects of abuse and neglect of children and young persons involves:
- significant social, health and economic costs
- losses in productivity for individuals who have been abused
- losses in productivity for the Government and for the community and is strongly associated with:
  - criminal activity
  - the uptake of illicit drugs and alcohol
  - homelessness
  - school truancy
  - low achievement and school withdrawal.

The service framework and range of early intervention and prevention services which is critically important to the State Plan on child protection is also highly relevant to these other areas, therefore an investment in this area is an investment in the others.

**THE FRAMEWORK AND MAJOR STRUCTURAL REFORMS**

Considerable work has been undertaken in the development of detailed frameworks, strategies, protocols and policies over recent years, many of which will bear similarity to recommendations made by this Review. However, many have either been ignored, not implemented or partially implemented with no monitoring of implementation or outcomes. This has meant that the child protection system has not seen the incremental advancement that one would expect to see with implementation and monitoring of sound recommendations.

In addition, there is a problem in ensuring all relevant Government sectors and stakeholders are committed to a single child-focused strategy across all areas from central to regional and to case management level in a way that allows ‘feeding down’ and ‘feeding up’. There is an urgent need to get all committed to communicating more effectively at all levels instead of creating artificial sector/agency funding barriers which become impediments to the focus on effective child protection.

Five major structural reforms are recommended in the framework, namely the creation of the following statutory bodies:

- South Australian Child Protection Board
- Regional Child Protection Committees in country and metropolitan areas
- Commissioner for Children and Young Persons
- Guardian for Children and Young Persons who are in any out of home care situation, with a particular focus on those under the Guardianship of the Minister
- Child Death & Serious Injury Review Panel.

A Joint Parliamentary Committee on Child Protection is also recommended to be set up.
SOUTH AUSTRALIAN CHILD PROTECTION BOARD

Membership:
- Independent Chair.
- CE’s of all Departments, the Crown, the Commissioner for Children and Young Persons, Local Government, non-Government and an academic representative.

Reports to:
- The Premier in recognition of the whole of Government approach and its role and functions which will be embedded in legislation.

Purpose:
- To promote a unified approach to child protection and to encourage agencies to communicate meaningfully on an ongoing basis.

Funding:
- Treasury
- The Board to have pooled funds available to it to encourage development of collaborative initiatives which initially focus on five major topics:
  - Children and Young People under the Guardianship of the Minister
  - Adolescents at Risk
  - Early intervention and prevention initiatives especially for 0-3 years;
  - Aboriginal families and communities
  - Community education

Staffing:
- Five staff

REGIONAL CHILD PROTECTION COMMITTEES

Membership:
- Will include key senior individuals from regional Government services such as education, SAPOL, FAYS, health services, local Government and possibly extend to include other key non-Government agencies and services within the area such as general practitioners.

Reports to:
- South Australian Child Protection Board

Purpose:
- The establishment of regional committees in 4 metropolitan and 5 country areas as an important basis for:
  - creating a focus on inter-agency collaboration at this level
  - improving the focus on developing community responses to local variations on child protection
  - providing a vital link between the South Australian Child Protection Board and inter-agency case management process and to develop appropriate responses and support for quality outcomes across a range of service providers
  - promoting a unified approach to child protection and to encourage agencies to communicate meaningfully on an ongoing basis.

Funding:
- Department of Human Services

Staffing:
- A Regional Liaison Officer for each region
COMMISSIONER FOR CHILDREN AND YOUNG PERSONS

Comprises:
- Commissioner
- Indigenous Deputy Commissioner

Reports to:
- Parliament

Purpose:
- The voice of, and advocate for the child.
- Promote the UN Convention on the Rights of the Child in all areas of community life.
- Monitor the decisions of Government and non-Government agencies in terms of their inclusiveness in considering the rights and interests of children and young people.
- Research in areas of child interests.

Staffing:
- 2 Commissioners and 6 staff

GUARDIAN FOR CHILDREN AND YOUNG PERSONS

Comprises:
- Guardian

Reports to:
- Parliament in conjunction with the Commissioner for Children and Young Persons.

Purpose:
- To provide a means for ensuring that the statutory duties of the Minister in relation to all children under the Guardianship of the Minister, children in out of home care, children in residential care and secure care are appropriately fulfilled.
- To ensure children and young people in alternative care receive an appropriate quality of care and support commensurate with current community standards and expectations.

Funding:
- That a separate office of a Children’s Guardian sit within the Commissioner of Children and Young Persons and be funded through the Commissioner’s Office.

Staffing:
- 1 Guardian and 2 Deputies

CHILD DEATH & SERIOUS INJURY REVIEW PANEL

Membership:
- Core membership of 5 or 6 including paediatric expertise, high level representation from FAYS and SAPOL, relevant independent expert, the Coroner and Commissioner for Children and Young Persons.
- Other co-opted persons as required.

Reports to:
- Parliament

Purpose:
- Review child deaths and serious injuries to children.
- Collate epidemiological and other data.
- Advise on and devise strategies for improvement and prevention of child death and serious injury.

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1 Not including dedicated staff for the Guardian for Children and Young Persons and Child Death and Serious Injury Review
**Funding:**
- Administratively attached and funded to the Commissioner for Children and Young Persons.

**Staffing:**
- 3 staff

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**The State Framework for Promoting the Interests of Children and Young People**

**Diagram 1: State Framework for Promoting the Interests of Children and Young People**

Whilst there are many recommendations made in this Review, a number of them are clustered around some major areas of reform. These are summarised here and the detail of these reforms and others are reflected in the various chapters and in the summary of Recommendations, Chapter 2.

**EARLY INTERVENTION AND PREVENTION FRAMEWORK AND SERVICES**

The Review recommends the development of an overall strategy for services using the suggested framework model. Pending the implementation of such a strategy, that there are a number of priorities required now:

- a state-wide Nurse Home Visiting Service
- increased and improved counselling and therapeutic services for children and young people
- increased and improved Personal Safety and Protective Behaviours programs in schools
- development and enhancement of community and education services for children and young people such as breakfast programs, after-school care and vacation care, utilising volunteer support workers
- a package of services for adolescents at risk (to be grouped as “Youth Help”)
- culturally appropriate services for Indigenous children and young people, in particular in remote communities
- development of services for substance affected high risk infants
- increasing the range of flexible alternative care options including review of the subsidy payments and payment for specialised professional care
- increasing the range, nature and availability of parenting skills programs
improving information about and access to basic family support services for high needs families

- extending the current family preservation/reunification programs

- extending and improving the respite and emergency care services

- expansion of after-school and vacation services for young people between school Year levels 8 to 10 and for older children with disabilities

- establishment of therapeutic and treatment services for parents and caregivers who abuse children and young people emotionally

- increasing the timely availability of therapeutic and treatment services for children who have been abused and also adult survivors of abuse

- development of treatment programs for sex offenders of children when such offenders are in gaol, on diversionary programs or in the community on parole.

The Review also recommends that all programs and services express desired outcomes for child protection and further that there be the development of a flexible system of performance measurement of programs and services.

DEPARTMENT OF HUMAN SERVICES - FAMILY AND YOUTH SERVICES

The Review recommends improvements in two major areas:

- Quality of services
- Quality of workforce

**Quality of services**

Improvements in practices to promote a return to quality social work including:

- assessing needs rather than focusing only on incidents
- applying co-operative interagency case management at a local level through Inter-agency Case Management meetings
- investigating and assessing Tier 3 notifications
- being subject to quality audits
- being subject to a complaints mechanism which includes an independent decision-making body
- major improvements to improve the quality of alternative care
- providing specific services to meet the needs of adolescents at risk

**Quality of workforce**

Improvements to the quality of the workforce including:

- return to quality social work skills
- strategies for staff recruitment and retention
- workload management system
- wage parity and classification enhancement
- training at all levels on ongoing basis
- additional staff and resources.
REFORM OF THE JUSTICE SYSTEM

It has become increasingly apparent that the criminal justice system in particular is not working for children. A number of proposals are suggested:

Children as witnesses in the criminal court

- allowing different forms of evidence of children to be admitted other than by direct appearance of a child in Court, including pre-taped video evidence in chief in examination, cross-examination and re-examination (‘the Pigott system’)
- establishing an improved Children’s Witness Service attached to the Court to support children who give evidence through a video recording or direct video through to the Court
- pending implementation of Pigott System, to improve the availability of modifications to the ambience of the Court to reduce the level of formality in the environment that can make it difficult for a child to give evidence.

Providing for diversionary processes for sexual offenders of children

Two diversionary processes have been proposed:

- first, diversion for perpetrators of intra-familial abuse as an alternative to imprisonment, being a Court ordered strict regime of intensive treatment and obligations which if not complied with will result in imprisonment
- second, instituting ‘civil proceedings’ at the option of the Director of Public Prosecutions against offenders who do not admit their guilt.

Family Court

Main proposals include:

- developing an extension of the Magellan program in this State supported by Commonwealth legal aid
- consideration to be given to cross-vesting of State jurisdiction to Family Court to avoid duplication in limited circumstances
- requiring FAYS involvement in cases notified by the Court
- consistent training and improvement of child representatives services.

Youth Court

Main proposals include:

- liaison with FAYS on matters to improve Court procedures and services
- ensuring that supervised access arrangements are practical and in the best interests of the children
- improving ambience of Court to be more child friendly and more friendly to Indigenous people through the development of a process similar to the Nunga Court in Port Adelaide
- improving Family Care Meetings by having them at an earlier point of time and underscoring that they are optional
- extending time for Investigation and Assessment Reports from 28 days to 35 days with renewal of 28 days
- encouraging earlier long-term planning with reunification not being pursued when there is little chance of success
- enabling the Court to make orders that parents undergo assessment in order to assist Court with decision-making.
EDUCATION AND CHILDREN’S SERVICES IN CHILD PROTECTION REFORM

Schools and children's services play a major role in child protection but need to recognise their community education and development role, as well as their service role in supporting children and young people at risk and their families. There is a need to improve recognition of this role and to develop a service culture and infrastructure that supports this role.

Initiatives proposed include:

▫ improved school based counsellor / social work support
▫ improved personal safety / protective behaviours curriculum and delivery with appropriate teacher training and parent participation
▫ child safe services / school initiatives incorporating safe employment practices
▫ improved focus on child protection linked to improving child education outcomes, retention rates and reducing truancy
▫ development of collaborative education and community-based initiatives.

SCREENING AND MONITORING OF PERSONS WORKING WITH CHILDREN

A statutory scheme for screening and monitoring of persons who are working with children, whether as employees or volunteers in education institutions, sports or recreation bodies or religious organisations. The essential features of such a scheme include:

▫ a Screening and Monitoring Unit sited in SAPOL with restricted access, to be defined in legislation
▫ maintaining a register for three categories of persons who are deemed “unsuitable” to be able to work with children such as:
  ▫ persons convicted with sexual or violent offences to be defined in legislation
  ▫ persons who have undergone a disciplinary hearing, to be defined in legislation, where similar inappropriate conduct has been found
  ▫ persons charged with sexual or violent offences or subject of allegations pending in disciplinary hearings, to be defined in legislation are to be placed on a temporary register
▫ a right of appeal from inclusion of name on the register
▫ a statutory requirement for employers to require declarations from potential employees
▫ a statutory requirement for employers to undertake a “check of the register” before employing persons to work in child related areas.

LEGISLATIVE REFORM

Significant legislative changes are suggested across several Acts, in particular in the area of child protection and child related employment for screening and monitoring purposes and for the establishment of the statutory bodies such as Commissioner for Children and Young Persons and the South Australian Child Protection Board.
TRAINING AND EDUCATION

Recommendations include:

- development of a community education framework
- the need for a comprehensive review of education and training programs involving the higher education sector
- a number of training programs including inter-agency and multi-disciplinary training on specific topics
- judicial training programs.

CHILDREN IN DETENTION

The major recommendation is that children in detention centres are in a situation of serious risk of abuse by reason of the circumstances of their detention and that the State Government should urge the Federal Government to release them and their families into the community on a cost-sharing basis.

PRIORITIES FOR IMPLEMENTATION

There are many recommendations made in this Review. Some recommendations are of an administrative nature and involve changes of approach with no significant cost implications, others have moderate cost implications, and still others have significant cost implications.

Of course it is for Government to choose whether it wishes to implement any of these recommendations and if so which ones.

The following expresses the view of this Review as to what appears to be the most important recommendations in order to produce improved outcomes for child protection. The priorities have inherent within them training and education requirements.

PRIORITIES WITHOUT SIGNIFICANT COST IMPLICATIONS

- setting up the South Australian Child Protection Board and the Regional Child Protection Committees for inter-Government and non-Government collaboration
- re-focussing FAYS on social welfare work, less incident based interventions and case management work and minimising contract workers
- expanding the Magellan program with the Family Court in the State
- developing a collaborative child protection focus within DECS involving community strategies
- implementing the recommendations for children in detention.

PRIORITIES WITH MODERATE COST IMPLICATIONS

- creating the statutory office of Commissioner for Children and Young Persons
- creating the statutory office of Guardian for Children and Young Persons
- providing priority services for Children under the Guardianship of the Minister and implementing annual reviews and long term planning across all areas including education and transition on leaving care
-providing relevant services for Indigenous children and young persons, in particular in remote communities
-implementing the recommendations related to children giving evidence in the criminal justice system
-provision of services for substance affected high risk infants
-providing therapeutic and treatment services for children and young persons who have been abused as well as adult survivors of child abuse
-increasing the availability of parenting skills enhancement through a flexible delivery of programs or services, including community education
-increasing the availability of family support services for Indigenous and families of high need
-increasing the availability and range of therapeutic services and treatment for children and adolescents in need
-increasing the availability of respite care, particularly for families with children who have disabilities
-improving the Protective Safety and Behavioural Programs within schools
-implementing a screening and monitoring unit in SAPOL
-providing a child sex offender treatment program for treatment of adult sex offenders whether in prison, on diversionary programs or in the community
-increasing and improving the Mary Street project for treatment of juvenile sex offenders
-providing therapeutic safe keeping facilities for adolescents in situations of serious risk.

PRIORITIES WITH SIGNIFICANT COST IMPLICATIONS

A number of these priorities could be phased in over a period of time with emphasis being given to regions or locations of greatest need:

-implementation of State-wide Nurse Home Visiting Services
-increasing the staff of FAYS and reviewing their levels of remuneration at the base level
-increasing the availability and flexibility of suitable alternative care placements particularly for children under the Guardianship of the Minister
-developing and providing a package of services called “Youth Help” for adolescents at risk.
Chapter 2
Recommendations and Reasons

RECOMMENDATIONS AND REASONS

This Chapter contains a complete list of all of the Recommendations made by this Review with the essential reasons underpinning them. They are set out in the order in which they appear under the Chapter headings.

As the Recommendations and reasons are extracted from the text of the Chapters, they may not necessarily appear in the list in consequential fashion due to their lack of context.

There is also cross referencing to discussions and Recommendations in other Chapters so that the reader may have an appreciation of their interrelatedness.
CHAPTER 5 - STATUTORY BODIES PROTECTING CHILD AND YOUTH INTERESTS

RECOMMENDATION 1

That a statutory Office of Commissioner for Children and Young Persons be created to:

- include the functions of advocacy, promotion, public information, research, develop screening processes for work with children and young persons
- be based largely on the model in the Children and Young People Act 2000 (Qld) as contained in sections 15 (c) to (j) and (l) to (o), 19, 90, 92 and Part 6, combined with the Commission for Children and Young People Act 1998 (NSW) sections 11 (a) to (h), 14, 15, 16, 17, 23, and 24
- include sitting as a member of the South Australian Young Persons Protection Board
- be independent of Government
- report to Parliament.

That a statutory position of Deputy Commissioner of Young Persons be created and to be occupied by an Indigenous person.

That a Joint Parliamentary Committee on child protection be created and statutorily mandated in a way similar to section 27 of Commission for Children and Young People Act 1998 (NSW).

Reason

A Commissioner is needed to give the voice of the child. This model includes the best features of the Commissions in Queensland and New South Wales. It specifically does not include the function of deciding complaints and grievances. It is part of an overall framework of protection of the interest of children and young people. It incorporates recognition of the special concerns of Aboriginal children. It also incorporates commitment by all political parties to protecting children.

RECOMMENDATION 2

That a complaints and grievance process relating to administrative actions decisions (but excluding services) include review by the Ombudsman. See Recommendation 43.

Reason

Whilst the system of merits review in Queensland through the Children Services Tribunal appears to be an excellent precedent for a review of administrative decisions, it would be significantly more costly than extending the role of the Ombudsman by a dedicated service. The essential function could also be effectively and efficiently performed by the Ombudsman using well-trained staff who become familiar with the complex area of child protection.
RECOMMENDATION 3

That a special unit be created within the proposed office of the Health and Community Services Ombudsman, to investigate complaints and grievances in relation to services concerning children and young persons.

Reason

Due to the special complex issues related to child protection a specially trained unit should deal with such complaints, which would come within the proposed jurisdiction of the Health and Community Services Ombudsman.

RECOMMENDATION 4

That a statutory Office of Children and Young Persons’ Guardian be created and placed in the Office of the Commissioner, having a separate function namely:

- to ensure that children and young people under the Guardianship of the Minister are cared for in accordance with guidelines set out in a Charter of Rights of Children in Care to be developed consultatively and enshrined in legislation in similar fashion to section 74 and Schedule 1 of the Child Protection Act 1999 (Qld)
- include functions similar to the “community visitors” set out in Part 4 of the Commission for Children and Young People Act 2000 (Qld)

That in addition, the functions of the guardian should include:
- monitoring the annual reviews of children and young people in long term care as discussed in Chapter 9
- receiving information from DHS/FAYS.

That FAYS have responsibility to inform the Children and Young Persons’ Guardian on matters of significant concern regarding a child or young person in care. Such matters would include repeated placement breakdown, serious abuse in care, criminal conduct, chronic truancy, homelessness and major health problems.

Reason

There is a need to ensure that those children who are most vulnerable and who are under the statutory guardianship of the Minister or otherwise in care away from their parents have their rights articulated and safeguarded. This should be a specific statutory position although the office can administratively be sited with the Commissioner. The Guardian should report to Parliament and have the report included as part of the report of the Commissioner. The Guardian should proactively check on such children and young persons to ensure their welfare. This to be done through persons similar to the community visitors described in the Queensland legislation. This is similar to the functions which are performed in the United Kingdom by the very successful Children’s Rights Officers. This model is deliberately suggested to have some parity with the approach of another State in Australia rather than develop yet another model.
RECOMMENDATION 5

That a South Australian Child Death & Serious Injury Review Committee be established. 
(See Chapter 18)

CHAPTER 6 - EARLY INTERVENTION AND PREVENTION FRAMEWORK AND SERVICES

RECOMMENDATION 6

That an overall strategy for service provision across all Government departments and non-
Government agencies be developed in relation to child protection. Such a strategy is to focus firstly 
on the needs of the child and secondly on the indirect services which will ensure protection for the child 
including services for parents, carers and other persons affecting children and young peoples protection.

Reason

The development of an overall service strategy is recommended. Such a strategy must commence with 
placing the best interests of the child as the prime focus. The cross sectorial nature of the services 
requires an holistic approach to service delivery and a proper assessment of the current service 
framework. It is essential to ensure Government is provided with relevant and up-to-date information 
about the effectiveness of current services and to ensure that funding is strategically applied throughout 
the service sector. Further it is necessary to identify future trends and existing gaps in services.
RECOMMENDATION 7

That a Statewide Nurse Home Visiting Service be implemented which has a number of key elements:

- A universal service for all mothers providing a minimum plan of home visits (five) the first being antenatally with the second within two months of birth, the third six months later then followed by a further visit at the two year milestone and a fifth visit at the three-year milestone.
- A process whereby all families are assessed and those presenting with higher risk factors are offered further services (risk factors such as economic deprivation, antenatal health damaging behaviours and poor family management practices would qualify the family for further services). Staff would need to be trained to undertake assessment processes and to refer families to other programs/services to provide higher levels of intervention which may include trained volunteers, (featuring two to three visits per week in first months of service and then tapering off depending on need).

Reason

This recommendation is made as part of a universal non-stigmatising strategy for providing home-based visits for a twofold process:

- firstly, to directly assist the mother in the early stages of child development through to various milestones up until three years and
- secondly, at the same time to assess whether there are any other factors which suggest that the child is potentially at risk and to then refer the family for services. This will require the nurse to be appropriately trained to recognise risk factors. The above represents a minimum standard which should be provided.

RECOMMENDATION 8

That there be increased and improved counselling and therapeutic services for children and young people who:

- have suffered abuse and neglect
- have special needs including
- children and young people with disabilities
- at risk adolescents
- children and young people with significant emotional or behavioural problems
- are Indigenous children and young people in need.

Reason

Currently children and young people who have suffered abuse or have severe emotional or behavioural problems receive services principally the Child Adolescent and Mental Health Services (CAMHS). It is often very difficult for CAMHS to provide services due significant demand pressures on that agency. Further, there are also limited types of counselling and therapeutic services appropriate for adolescents at risk, children and young people with disabilities, Indigenous children and young people. In addition, those children who have less significant problems may not fit the criteria for current service provision under CAMHS. Greater expansion of these types of services is warranted.
RECOMMENDATION 9

That there be increased and improved Personal Safety and Protective Behaviours programs in schools with particular emphasis on Indigenous children and young people and those with special needs. See Chapter 19, Recommendation 137.

Reason

Personal safety and protection behaviour programs are required to equip children and young people with skills and knowledge vital for safety and protection. This is dealt with in Recommendation 137.

RECOMMENDATION 10

That there be further development and enhancement of partnerships, community and education services for children and young people. Such programs could include:

- school breakfast programs
- after school care and vacation care
- programs for special groups, for instance, pregnant teenagers, children with disabilities
- Volunteer support workers for children with high needs, where such services are required.

See also Chapter 19 and Recommendation 142.

Reason

There are many initiatives which could be explored by the education sector in conjunction with community, which would enhance child protection.

RECOMMENDATION 11

That adolescents at risk be entitled to a package of services to be grouped together as ‘Youth Help’ and developed by the Child Protection Board and to include the following:

- drug and alcohol education and treatment services
- counselling, psychological and psychiatrist assessment and mental health services
- school based counselling programs and other supports to assist adolescents continue their education
- drop in centres designed to attract young people at risk
- therapeutic services for children and young people under short term safe keeping arrangements.

See also Chapter 13.

Reason

Young people and their parents have reported significant difficulty in accessing timely, appropriate and professional services for adolescents at risk. This is dealt with in detail in Chapter 13.
**RECOMMENDATION 12**

That in addition to the services described in Recommendation 11 above being provided in a culturally appropriate manner, special areas are highlighted for Indigenous children and young people:

- specific attention to the provision of services for children and young people living in remote communities and in particular, the AP Lands as indicated in the AP Lands Agreement
- the need for Indigenous youth clubs and sporting facilities
- personal safety and protection behaviours programs to be provided by Indigenous workers. See also Chapter 8.

**Reason**

Culturally appropriate service provision to Indigenous children and young people is needed to restore wellbeing and assist with healing. Many Indigenous children and young people require services, programs or facilities that are specifically developed with Aboriginal leaders and elders, so that the most culturally appropriate approach is ensured.

**RECOMMENDATION 13**

That a service agreement be developed by leading hospitals, Drug and Alcohol Services, FAYS and Child and Youth Health to ensure the coordination of the provision of services and case management of babies and infants affected by substance abuse and their parents/carers.

**Reason**

This Review was informed that a number of babies are being affected in-utero by drug or alcohol consumption by their mothers and as such, there are significant child protection issues. These circumstances require a highly managed and coordinated approach of all the relevant agencies involved. Many women need high level support to reduce alcohol or drug abuse, and to care for babies that may be born with difficulties or in severe cases, with significant disabilities as a result of the mother’s drug or alcohol abuse. Hospital based services are limited and many women need significant home based care and support. It is therefore critical that services develop clear plans jointly for intervention with the family, in order to prevent families ‘falling through the gaps’ and/or to avoid duplication.
RECOMMENDATION 14

That a range of flexible care options be developed for children and young people who cannot remain within the care of their birth family. Placement services must include specialised professional care options particularly for children and young people who have significant needs. See also Chapters 11, 12 and 14.

Reason

Currently South Australia’s alternative care system relies predominantly on home based foster care with majority of children and young people living in a family based placement. There needs to be greater variety and flexibility as to the types of alternative care placements available. Placement types must be matched with the assessed needs of the child or young person. Specialist placement options such as small residential centres, cottage homes, and individual professional carers are recommended.

RECOMMENDATION 15

That parenting skills and parental capacity be increased through a variety programs and delivery methods and a particular focus on high risk or high need groups. Such programs are to be identified, so that an appropriate service is known, with further development of programs if there are gaps in coverage for parents, particularly for high risk or high need families.

Reason

A number of agencies are currently delivering services which aim to improve parenting skills and parenting capacity. These include agencies such as Child and Youth Health, hospitals, the Play Group Association of SA Inc; a variety of non-government agencies etc. Methods of delivery include in-hospital and community based ante-natal and post-natal education, targeted programs for new parents, parents of toddlers for instance, and other groups including multi-cultural, Indigenous and high risk families. There are also a variety of other activities and courses that may address parenting issues peripherally. Greater emphasis on parenting skills and parenting capacity is required to ensure that parents have the skills and knowledge required to enable them to successfully parent through out all the developmental phases and transitions points of childhood and adolescence.
### RECOMMENDATION 16

Pending an overall strategy, further improvements are required to ensure that families, particularly those with high needs, are informed about and have at least a basic access to a range of services that support them at particular times. That these services be delivered in culturally appropriate and where possible in an holistic manner.

**Reason**

Currently there are a number of services supporting families which are delivered through a range of agencies such as Community Health Centres, Child and Youth Health and Hospitals, and non-government agencies such as those funded under the DHS Family and Community Development Fund and the Commonwealth Stronger Families initiative. It is difficult for many families to have knowledge of and access to, the range and types of services they require, as there are often strict eligibility criteria, long waiting times, or services not available where families are located.

### RECOMMENDATION 17

That urgent consideration be given to extending the current family preservation/reunification program to ensure that where possible, every effort is made to enable families to remain together and for children and young people to be returned home as soon as possible. Further that this program be made available to families who are outside of the FAYS system, who may benefit from such home based, intensive counselling and intervention.

**Reason**

Currently Family Preservation/Reunification Services are provided by nine non-government agencies located in both metropolitan and country regions and include four Aboriginal specific services. These services are available only through referral from FAYS and are usually provided when family or placement breakdown is imminent or when children and young people are being ‘reunified’ with their family of origin. They are intensive services which aim to keep families together. In 2001-2002, 175 children and young people received an intensive family support service, with 80 of those children or young people being in an alternative care placement. Further expansion of this service type is seen as highly desirable and would be beneficial for many families at an early stage and may prevent them from entering the FAYS system.
RECOMMENDATION 18

That further extension of respite and emergency care services is required particularly for at risk families, families in general need and for carers of children with disabilities. Further, that the recommendation in the Semple Review regarding respite care for foster carers is endorsed by this Review, namely that the current system of 52 days carer respite be replaced by a system which allocates eligibility based on the needs of the child and young person and their family/carer.

Reason

Respite Care/Emergency Care Services are currently available for families who are clients of FAYS or foster carers, families with children who have disabilities and families who require short term care (up to a week) in an emergency situation. The Review has heard about families, particularly single parent families and families with children who have disabilities who require or could benefit from access to planned respite services or greater access to emergency care services. Families who are at risk would also benefit from planned respite care, which can be viewed as a preventative measure, to enable parents to have a break, and for their children to have an opportunity to meet other children and families.

RECOMMENDATION 19

That practical in-home support be available to families in need, families identified as having significant risk factors and families with children who have significant disabilities, as required.

Reason

Many families require very practical assistance in caring for their child. Practical in-home support such as assistance with cleaning, shopping, budgeting and cooking can be vitally important for families in need as well as families who are experiencing high care needs with children who have disabilities or significant health problems. Indigenous families who are caring for extended family, have spoken of the need to have very practical assistance. Greater attention to this area of support is needed, as it is can be undertaken by volunteers and can be a cost effective way to provide much needed support, as well as involving community participation.
### RECOMMENDATION 20

That there be a further expansion of vacation and after-school care services particularly for young people in Year 8 to Year 10 and especially for older children with disabilities.

**Reason**

Many families require after-school and vacation care programs for children and young people which are easily accessible. There are currently no after-school or vacation care programs for young people in high school and in particular older children with disabilities. While an extension of the age eligibility is available for children with disabilities, for instance, they are able to attend up until age 15 years, these services are usually only supplied from locations providing care for primary age children. Facilities for young people in the Year 8 to 10 levels could be made available through secondary schools and could be funded through community partnerships.

### RECOMMENDATION 21

That consideration be given to establishing a Family Support Response telephone service for persons with general concerns about children and young people and for assisting those persons to appropriate family support services. In addition a Crisis Response Service providing outreach to both parents and adolescence in times of crisis be made available.

**Reason**

Currently a substantial number of calls are received by the Child Abuse Report Line which do not meet the current criteria for FAYS follow-up. Many calls are from persons who require assistance, for instance, family support or have general concerns about children and young people or from parents who have a crisis with an adolescent. Consideration should be given to having a person/s sited at the Child Abuse Report Line to whom such calls could be diverted and an assessment could be made to either provide information and/or referral to other more suitable services. In addition the establishment of an outreach service for parents and adolescents be developed.
RECOMMENDATION 22

That urgent consideration be given to the establishment of therapeutic and treatment services for parents and carer givers who abuse children and young people physically or emotionally. Such services are additional to those services recommended in Chapter 16 for persons who sexually abuse children.

Reason

Parents and carers who are known to have significantly harmed a child or young person, require specialised intervention to assist them to provide children and young people with a safe and protected environment in the future. Presently there are very limited specialised services that provide therapeutic or treatment services or a therapeutic environment in which parents can work through an array of complex issues. Those that have harmed their children may have a range of behaviours or emotional problems that required intensive intervention. The aims of such professional intervention is to both protect the children and to facilitate change in the caregiver so that the child’s care might improve. Specific services are also required for those that sexually offend against children and young people.

RECOMMENDATION 23

That there be further expansion of counselling and therapy services for adult survivors of childhood abuse.

Reason

Retrospective studies of victims of child abuse and neglect indicate that they are vulnerable to many problems including mental health problems, alcohol abuse, drug abuse, crime and violence. Demand for access to specialist counselling and therapy services is high. Many people need professional assistance in dealing with the traumas of childhood abuse. Therapy focused on ‘survival and healing’ are required to support adults through these problems.
RECOMMENDATION 24

That greater emphasis be placed on developing community based initiatives which aim to strengthen community capacity and build community support which in turn provides child safe environments.

Reason

There are already a number of community based programs which aim to build community strengths and increase community capacity. Community development initiatives include those undertaken by Community Health Services; community and neighbourhood houses; community based agencies such as charitable, religious and service agencies; local government and crime prevention initiatives like Neighbourhood Watch and safe houses.

While there are a number of programs occurring in some communities, generally they are ad hoc, often under funded or funded for short periods of time and are unable to fulfill the present and long term demands of the community. The broad aims of child safety and protection in the community are dependent upon building sustainable, functional and supportive environments in which children and young people can thrive and develop. The implementation of an overall strategy should identify the community development initiatives currently in existence, consider areas for further expansion, identify gaps in coverage and the extent of variation between regions as to the nature and quality of the services available.

RECOMMENDATION 25

That the Government ensure that all programs and services express the desired outcomes to improve child protection.

Reason

Programs with either no or poorly expressed outcomes do not ensure that at all times the focus must be on the child and improving his or her protection. It can lead to programs being process driven rather than outcome driven.
**RECOMMENDATION 26**

That the Government develop a uniform but flexible system of performance measurement of efficiency, effectiveness and appropriateness of services for individual, family or groups with the following features:

- the system include identification of client and worker goals using a generic goal framework based on the target outcomes for the program
- success in achievement of goals be identified by both clients (including children and young people, where appropriate) and workers at termination of involvement in the program
- satisfaction with agency involvement be determined using a common client satisfaction questionnaire
- measurement of staff workload with a breakdown of direct and indirect client contact and travelling time
- the system be further reviewed, evaluated and modified either on an annual basis or after a period consistent with contract periods.

**Reason**

A consistent common framework for the evaluation of service outcomes for clients is required to monitor how well services are meeting their needs and achieving objectives for early intervention and prevention. It is currently difficult to assess how well services are operating and to assess performance in a fair and appropriate manner. A common framework will assist in working out what works well, what is not working so well and determining best service investment options.

**CHAPTER 7 - INTERAGENCY COLLABORATION AND RELATIONSHIPS**

**RECOMMENDATION 27**

That the South Australian Child Protection Board auspice the updating of the Child Protection Interagency Guidelines in order to take account of changes to legislation, the development of the Regional Child Protection Committees and Interagency Case Management processes. In doing so, a communication strategy be developed, to ensure that all those with statutory responsibilities are aware of their obligations in relation to confidentiality, information sharing and privacy. This is to be explained in language which can be easily understood and applied.

**Reason**

There would appear to be a number of impediments to appropriate information sharing and collaboration, based on privacy and confidentiality concerns. A review of the current guidelines is warranted as well as the development of appropriate communication strategy and training, to ensure all those with statutory responsibilities are aware of how and when to share sensitive information.
RECOMMENDATION 28

That a South Australian Child Protection Board be created and mandated by statute.

That the role and function of the Board include:

- develop protocols and guidelines within and across departments and agencies generally and on particular projects using best practice
- oversee implementation of protocols and guidelines
- undertake research and analysis on child protection issues
- identify particular child protection issues for inter-agency collaboration
- review and monitor legislation, policies, practices and services regarding child protection and making recommendations to Parliament
- develop strategies for involvement with national programs or sources of funds or seeking Commonwealth funding for projects
- receive and monitor reports from the Regional Child Protection Committees on regional plans.

Reason

The main purpose for the creation of the Board is to promote collaboration and coordination between all bodies. It is a Board which is designed to overcome “silos” which currently exist between sectors and agencies. Interagency and inter-professional coordination and communication has been well documented as having the potential to enhance or undermine child protection. Interagency coordination is not a natural state of affairs and it does not merely result from good intentions. Structural mechanisms must be in place to ‘enforce’ a high level of dialogue and cooperation.
RECOMMENDATION 29

That Regional Child Protection Committees be created and mandated by statute.

That the functions of the Committees include:

- implementing the protocols, guidelines and policies developed by the South Australian Child Protection Board
- developing a plan for child protection in the region, the means of collaboration in the region and forwarding the plan to the South Australian Child Protection Board for approval
- making recommendations to the South Australian Child Protection Board for changes or for suggestions for future collaborative strategies
- applying to the South Australian Child Protection Board for portions of the pooled funding to implement strategies in the region.

That pending future longer-term alignment of boundaries between agencies such committees be attached to and be served by DHS and aligned to the current 4 Community Health Regions (Metropolitan) and 5 of the Major Regional Health Committees (Country).

Reason

The main purpose for creating Regional Child Protection Committees is to encourage inter-agency collaboration at this level and improve the development of community responses to local variations on child protection. They will also act as a support for Inter-Agency Case Management Committees (described in Chapter 9). Such committees will:

- provide a capacity to monitor regional / local efforts for the prevention of child abuse and neglect and monitor local agency work and inter-agency collaboration
- will enable an improved identification of regional / local service needs and influence planning by Government departments and agencies.

RECOMMENDATION 30

That an Interagency Case Management model be established for all child protection cases assessed as having very high, high, or moderately high risks as set out in Recommendation 40 in Chapter 9.
CHAPTER 8 - INDIGENOUS CHILDREN AND YOUNG PEOPLE

RECOMMENDATION 31

That the principles contained in the United Nations Convention on the Rights of the Child (UNCROC) be reflected in all statutes affecting Indigenous children and young people and form the underpinning principle objectives driving legislation in this State.

That the South Australian Child Protection Board, when developing protocols and guidelines, has regard to the three targets identified by UNICEF in its New Global Agenda for Children (2000).

Reason

The situation facing many Aboriginal communities in South Australia is dire. Unless the Government views what is happening within these communities as a major human rights issue, it is likely that minimal change will be forthcoming. While many Government agencies have begun to acknowledge the inadequacies of the current service system and have developed statements of reconciliation to underpin service delivery, legislative recognition of the situation is required to ensure the situation receives the highest level of attention.

RECOMMENDATION 32

That the message of Aboriginal disadvantage be a matter of specific community education.

That all Government agencies take into account the priorities and recommendations detailed in the key National and State Reports before developing new policies, programs and services.

That the yet to be established South Australian Working Group on the Indigenous Child Safety and Family Wellbeing provide a representative on the Child Protection Board so that initiatives designed to progress the safety and wellbeing of all children and young people have a strong Indigenous focus.

Reason

These recommendations are aimed at assisting the process of obtaining outcomes for Aboriginal communities. They must be seen in the context of the more specific recommendations of this Review.

They recognise that the disadvantages suffered by Aboriginal people are the responsibilities of the whole community, and that the community needs to be informed of their situation.
RECOMMENDATION 33

Whilst it is acknowledged that mandatory reporting requirements do present many dilemmas and difficulties for Indigenous communities, it should be retained and further, provision for specific education programs for Aboriginal workers and community be developed to ensure culturally appropriate mechanisms are in place for dealing with reports within their community.

Reason

Children, whether they be Indigenous or non-Indigenous, have a right to be protected and mandatory reporting makes a public commitment and increases the general community awareness of child abuse. Whilst it is given that there are an unknown number of incidences of abuse and neglect that are not reported, mandatory reporting does assist in establishing, to some degree, the nature and incidence of child abuse within our community. This is highly desirable within Indigenous communities where there are particularly sensitive issues concerning child abuse and domestic violence.

RECOMMENDATION 34

That Yaitya Tirramangkotti continue in its current operational form. Further, that a review be undertaken to assess:

- general awareness and usage of the service by the Indigenous community
- the efficacy of current safety and risk assessment tools and
- whether current staffing requirements are sufficient to provide an appropriate first point of contact service for persons with concerns about Indigenous children and young people.

Reason

While the Aboriginal specific ‘report line’ operates within a ‘western’ child protection framework, it is generally believed to be in practice, a more ‘culturally appropriate’ service than was previously available through individual district centres. It should therefore be retained, but improved through a review of its current service and functions.
RECOMMENDATION 35

That an Aboriginal Child, Family and Community Advisory Committee be formed in conjunction with each FAYS District Centre. That each Committee:

☐ have a permanently appointed local Aboriginal coordinator
☐ meet on case by case needs basis
☐ roles and responsibilities are articulated in legislation with clear processes for appeals
☐ have a FAYS Principal Cultural Consultant or Senior Aboriginal person permanently appointed.

Such Principal Cultural Consultant to provide input to the Committee on the need for the development of services and processes that culturally supports the community.

Reason

The basis for the establishment of a local Aboriginal Child, Family and Community Committee and local and regional coordinators arises from two main arguments. Firstly, this type of structure has, in a similar form, been seen to be effective in the past and is supported by many Aboriginal staff across the public sector and, secondly, it is sufficiently similar and complementary to changes being recommended by this Review for the broader child protection system.

RECOMMENDATION 36

That Aboriginal Service Division with key parties and service providers such as ATSIC, AFSS and FAYS develop an agreed process for sharing information about children, young people and families that are involved with the child protection system. The aim of the protocol is to ensure that children and young people are safe and protected.

Reason

An agreed process will ensure that all parties are aware of their responsibilities in relation to information sharing. It will make clear to families, children and young people what information will be shared, and to whom and how and will enable families to have a say about what they believe is important to be passed on. An agreed protocol will cover the sharing of written and verbal information and will be consistent with legislative and Government regulations.
RECOMMENDATION 37

The Review endorses the recommendations of the Coroner in the Inquiry into the deaths of 3 young adults from petrol sniffing on the AP Lands and urges that they be implemented quickly.

That DHS consultatively develops an overall strategy to target specific and urgent needs of Aboriginal children and young people on the Lands. This requires strategic action with expressed outcomes and continuing monitoring to assess its effectiveness.

Reason

The situation of Aboriginal children and young people on the Lands is a critical problem which needs urgent attention and practical solutions. Too many children and young people are in circumstances which are dramatically worsening their health and wellbeing and will have long-term effects for the future of those communities apart from the current stress which is caused by those circumstances.

RECOMMENDATION 38

That Aboriginal community education and development officers be attached to each FAYS District Centre. Part of their role would include the delivery of community information and education initiatives with a major focus on child protection.

Reason

A range of information, education and community development initiatives are required for Aboriginal communities in relation to child protection, in order that they provide a process for community to discuss sensitive issues and develop solutions relevant to those communities. Damaging silence around abuse, particularly sexual abuse of Aboriginal children and young people, impedes their protection and leaves them at risk.
**CHAPTER 9 - FAMILY AND YOUTH SERVICES**

**RECOMMENDATION 39**

That DHS undertake a comprehensive review of all human resource management policies and practices within FAYS to ensure appropriate management policies and practices are in place, specifically to:

- reduce the number of contract staff
- increase the level of skill of the workforce
- provide an incentive scheme for the recruitment and retention of Aboriginal, culturally diverse and country staff
- enable appropriate progression commensurate with knowledge and skills.

That DHS develop a business case for Treasury which looks at providing appropriate classification and wage parity for FAYS base grade social worker level in line with other social work staff across DHS.

That DHS consider setting a minimum of two years’ experience for social worker entry before employment within FAYS.

That DHS/FAYS undertake the development of a workload measurement and management system that appropriately calculates workload volume and takes into account regional and socio-demographic factors, in order to determine the most appropriate allocation of resources. This should be undertaken in consultation with staff, unions and professional bodies with consideration being given to the WA model, as an example of a workable model.

That DHS/FAYS explore further workplace opportunities for psychology staff and community support workers.

That DHS/FAYS review the information which is being placed on the Client Information System to ensure that it is relevant and concise.

**Reason**

The combination of these strategies will ease the pressure on overburdened staff, encourage recruitment and retaining of skilled staff, restore the capacity of FAYS to perform its statutory functions and better utilise the skills of its workforce.
RECOMMENDATION 40

That an Interagency Case Management model be adopted for all child protection cases assessed as having very high, high or moderate risk. The broad application of such a model to be also applied to low-risk cases and other program areas.

Such a case coordination mechanism should:

- involve formal meetings of all relevant service providers that have a direct and significant relationship with the child and family as well as the child and family
- ensure appropriate processes for shared decision-making and allocation of responsibilities
- focus on determining priority needs of the child and family
- develop a case management plan that is available to the child and family and relevant service providers and establishes appropriate and reasonable objectives and timeframes for families
- determine and agree about responsibilities for aspects of treatment, monitoring progress and provision of support and reporting back to the group
- be led and managed by FAYS case workers in recognition of statutory responsibilities and mandate. However, another service provider may become the lead agency undertaking the majority of the work.

Reason

Involving all key participants at an early stage ensures that agencies, including FAYS, are clear about their roles and responsibilities and the family has significant input into decision-making and understands what is required of it. It is a proven model that has been shown to improve outcomes for children, young people and their families and allows appropriate review and monitoring of the child/ren or young person’s at risk.

RECOMMENDATION 41

In relation to FAYS training, see Chapter 21 Education and Training.
RECOMMENDATION 42

That DHS/FAYS ensure that Managers, Supervisors and others in leadership positions have access to, are supported and encouraged to undertake regular training and staff development.

That DHS/FAYS review all delegations with particular focus on the delegations of supervisors, in order to determine whether such delegations are appropriate for critical decision-making and accountability.

Reason

Ensuring staff in positions of supervision and leadership have opportunities for learning and development is crucial in child protection work. This includes not only managerial/leadership development but also training in ‘best practice and current theoretical perspectives’ to ensure their professional skill level is kept up to date, as is the case with most other professionals (for example, doctors, psychologists).

Supervisors are well placed in the agency to assist workers making critical decisions and plan for interventions. They must have a high level of skills and knowledge and be capable in a range of very complex tasks. Whilst they are in turn supervised by managers, such supervision may not include case decision making. It would seem an important time to review the delegations in light of the new regional arrangements.

RECOMMENDATION 43

That DHS establish and publicise a three-tier review process that involves:

- a local resolution process at the District Centre level
- a Specialist Review and Investigation Unit within DHS but removed from FAYS
- a specialist unit sited within the Ombudsman’s Office.

in relation to complaints against decisions and actions of FAYS, including allegations of abuse against foster carers, FAYS employees and volunteers.

Reason

The above three-tier review process in relation to complaints will provide an avenue for accountable, independent and transparent review of complaints as the to management of cases and any allegations of abuse within the system. Such mechanism is not applicable to complaints against “services” which according to a proposed Bill already before Parliament, are to be dealt with through a Health and Community Services Ombudsman.
RECOMMENDATIONS 44

That the Annual Reviews for all children and young people under the Guardianship of the Minister be retained as a function of FAYS in the manner indicated in legislation and be enforced within the Department.

That the outcome of the Annual Review to be reported to the Children and Young Persons’ Guardian. (Further see Recommendation 4 in Chapter 5)

That consideration be given to establishing a Client Information Monitoring and Reporting System to support FAYS Senior Executive and FAYS Managers’ in monitoring critical cases and critical incidents, evaluating practice quality and other service initiatives. Such a system will require:

- the development of appropriate reporting mechanisms across program areas
- clear processes for reporting
- detail the types of situations which will need reporting, for example all Aboriginal children removed from birth family, all substantiated Tier 1’s of children under one year etc.

Further, that consideration be given to establishing a permanent Quality Assurance Unit within FAYS. Such a unit could be located within the FAYS Quality Service and Programs Section and as part of its general functions include:

- conducting audits of randomly selected files
- collating information from Annual Reviews and referring this information to the Guardian for Children and Young Persons
- identifying practice and research issues arising from audits and making recommendations for action to management.

Reason

In relation to annual reviews, information from the Practice Audit revealed that only 37% of Annual Reviews were conducted within FAYS. Apart from being contrary to provisions of the Act, it demonstrates a marked divergence from good practice in relation to vulnerable children. Compliance with the Act is urgently needed.

In relation to quality assurance process, while there has been considerable improvement by FAYS to develop quality improvement mechanisms in recent years, a dedicated unit with the overall responsibly for quality assurance is deemed necessary. The new structural arrangements being proposed will assist in improving quality arrangements, however, a unit with a designated task of developing quality measurements and monitoring outcomes for children and young people is viewed as highly desirable. In turn, this unit to could be the conduit for information flow to the Children and Young Persons’ Guardian.
RECOMMENDATION 45

That instead of a piecemeal approach to extra resources, DHS staff and Senior Treasury with Cabinet approval, undertake a comprehensive budgetary and workload analysis of Family and Youth Services to determine current demand. Such an analysis is to take into account socio-economic and trend data, with a view to developing funding models based on agreed formulas.

Reason

The child protection system within FAYS is not currently fulfilling its statutory functions. Whilst some improvements can be made which are cost neutral, most are not. An overall assessment of extra resources is required in order to provide appropriate statutory and other services. The current ad hoc approach of requests to obtain extra resources is not adequate and funding should be provided using an appropriate model.

RECOMMENDATION 46

That the 24-hour central intake telephone service (Child Abuse Report Line) for receiving all reports of suspected child abuse and neglect be continued and improved.

That consideration be given to increasing staff and specialised equipment to ensure that all calls are answered or provided with a phone ‘call back’ service for those calls that drop out.

That all workers receiving calls have a minimum of two years’ field experience in child protection with an optimal level of experience being five years or more.

That DHS give consideration to analysing the potential for diverting calls about general concerns of children and young people or those seeking broader family support services, to other more appropriate help lines or support services.

That DHS in conjunction with the non-Government sector develop funding and service agreements (including protocols and confidentiality provisions) with ‘specified and accredited’ non-Government agencies to offer services to families not classified as needing a FAYS service by the child abuse report line.

That DHS consider the feasibility of providing a mechanism to give ‘feedback’ to notifiers who wish to know the outcome of a notification.

Reason

The Child Abuse Report Line is seen as an effective service for receiving, recording and assessing all ‘notifications’ of child abuse and neglect. It provides clarity in the community about where to ring if a person has a concern about a child or young person and provides a consistent response based on risk and safety considerations.

It receives many calls that do not fit the current criteria for abuse and neglect. There are concerns that these reports are taking up valuable assessment time from situations of abuse and neglect. It is also clear that the incoming calls are reaching a crisis point, reducing the capacity and effectiveness of the service. There are considerable benefits to be gained from diverting calls about ‘concerns’ to other support lines or services.
## RECOMMENDATION 47

DHS/FAYS regularly review all Tier 1 cases to determine whether existing procedures and protocols are efficient and effective, and to make findings on whether any action could have prevented serious abuse or neglect. See also Chapter 18 Child Death and Serious Injury Review.

That FAYS will add a further Outcome Decision category on the Client Information system to allow for a category ‘risk of serious harm’.

That FAYS will apply the risk assessment tool at the point of confirmation where abuse and neglect has been confirmed as well as those situations where the child/ren is assessed to be ‘at risk of serious harm’.

That FAYS cease the current response to Tier 3’s by letter only. All Tier 3’s are to be appropriately investigated and assessed. Initial contact with the family can be made by phone to determine the most suitable place and time of visit or by letter, but a home visit where each subject child is interviewed or seen and a proper assessment of the child and family circumstances is taken into account.

That all Tier 3 cases require a determination as to whether the circumstances of the allegation are confirmed and an appropriate classification of type of abuse for instance, neglect, emotional abuse applied.

That all Tier 3 families assessed as requiring further intervention (on-going risk) will be ‘encouraged’ to attend locally contracted family support services or other services that may be deemed appropriate. That a FAYS worker facilitate referral and link family with service.

That all Tier 3 cases remain open, with FAYS maintaining a case management responsibility until further assessment of risk factors indicates higher protective capacity within the family.

### Reason

Child protection processes in FAYS whilst similar in many respects to those employed in other States and Territories have their own uniqueness and particular qualities. FAYS has spent considerable effort and energy devising a system for ‘differentiating’ the type of responses needed and, in doing so, has ensured that children and young people at highest risk receive some type of response.

FAYS has supported field workers through the development of tools and instruments to assist and guide practice and aid decision making, in an area of particular complexity and changeability. FAYS needs to be commended on these innovations in practice and service.

Further improvements are required in response to cases classified as Tier 1, Tier 2 and Tier 3, to ensure vulnerable children, young people and their families receive appropriate support and timely intervention. A significant number of these children are likely to be suffering from emotional abuse or neglect which is an area increasingly being recognised as having the poorest outcomes for long-term of the welfare.
RECOMMENDATION 48

That DHS/FAYS develop a research agenda with the field and other relevant service providers and partners, including universities.

That the development of such an agenda will include a range of research and analysis activities at both an operational and broader service level.

That in order for this to occur serious and urgent consideration be given to establishing within DHS/FAYS a dedicated Research and Evaluation Branch which focuses principally on FAYS clients and data collection.

Such a branch would have responsibility for

- analysing FAYS data
- developing research and evaluation proposals internally or with external stakeholders
- assisting in the production of regular reports for DHS and FAYS Senior Executive, assist in monitoring and enhancing best quality practice.

One the first tasks will be to undertake a comprehensive analysis of cases classified as ‘notifier concern’ to ensure all cases assessed in this category do not require further intervention.

Reason

The DHS/FAYS data collection system (DHS Warehouse and Client Information System) enables the aggregation of data held in a variety of program areas including child protection. While FAYS has undertaken a number of research projects in the past which have made use of this aggregated data and provides data nationally on child protection, a discrete unit whose sole responsibility is research and evaluation would have considerable benefits in providing analysis and tracking of child protection outcomes within the FAYS system. It would provide senior management with an effective means of determining the effectiveness of the system in the protection of children and young people.

FAYS has undertaken evaluation and research on practice without having a designated branch to undertake activity. In order for it to continue to keep abreast of the latest models of practice, have a greater understanding of its own system through the timely and accurate reporting of data and analysis FAYS must have the resources to put in place a proper system for analysing, reporting and monitoring data. It needs to also do this in a transparent and accountable manner that can be readily accessible to the broader community.
RECOMMENDATION 49

That FAYS assume a case management responsibility in all matters of extra-familial abuse except for those which are still proceeding through criminal justice process with SAPOL. All matters that do not proceed must be referred back to FAYS for investigation and assessment and referral to the Interagency Case Management process.

Reason

The community is demanding a transparent, accountable and fair process for persons who are alleged to have sexually abused children outside of the family system. Without such a system in place, the community loses faith and trust in the processes which are set up to protect its most vulnerable citizens. It is concerning that many children and young people who are being abused outside of their home environment, usually by persons known to them, are not having their cases dealt with consistently through a coordinated, case-managed approach. While there have been achievements in the development of interagency codes of practice, further work is urgently required, to ensure that all children, young people and their families have the support they require and access to the services for their recovery.

CHAPTER 10 - MANDATORY REPORTING FOR CHILD PROTECTION

RECOMMENDATION 50

That mandatory reporting be retained in child protection legislation.

Reason

Mandatory reporting has significant support within the community across all professional groups as well as the wider community. The statutory requirement to report is seen as an obligation that should be upheld in law as part of broader social and community responsibility and is an effective means of ensuring that vulnerable children and young people are assessed, protected and supported.

RECOMMENDATION 51

That DHS/FAYS promote and ensure the confidence of mandated notifiers in the mandatory reporting system by establishing a survey-based monitoring process as part of a quality assurance program. Such a process is to provide qualitative feedback on a regular basis to FAYS and other relevant agencies on perceptions of mandated notifiers in making mandated notifications in order to improve responses to mandated notifiers.

Reason

There is currently no basis to systematically assess the views of mandated notifiers on their own skills or their perceptions of how well the mandated notification system is operating and responding to notifications.
RECOMMENDATION 52

That DHS/FAYS develop clear guidelines for advising notifiers of the implications of section 13 of the Child Protection Act 1993 that FAYS may be required to disclose their identity in the course of “official duties” to another person acting in the course of “official duties”. Such disclosure may extend to police or the courts.

Reason

Mandated notifiers and members of the community who notify are not necessarily aware of the full provisions relating to confidentiality and disclosure of the Children’s Protection Act 1993. They may also not be aware that FAYS’ child protection investigation officers may wish to speak to the notifier as part of the investigation. Notifiers should be advised of the scope of the confidentiality provisions and of the possibility that disclosure may be required.

RECOMMENDATION 53

That an additional protocol be developed by the Crown Solicitor’s Office in conjunction with FAYS with State and Family Courts to provide improved guidance on the release of information on the identity of a mandated notifier.

Reason

Confidentiality of notifiers needs to be maintained both in principle and as a matter of policy. A clear protocol is required to ensure this principle and policy is vigorously maintained.

RECOMMENDATION 54

That the Children’s Protection Act 1993 be amended to include:

- all church personnel including ministers of religion (except in confessionals)
- all individuals in services providing care to or supervision of children
- all volunteers who are working with children (including both volunteers working in a supervised and unsupervised settings)
- all people who may supervise or be responsible for looking after children as part of a sporting, recreational, religious or voluntary organisation as mandated notifiers.

Reason

It is preferable to adopt the broadest approach to mandated notification because of legal technical issues associated with determining who is a mandated notifier and who is not.
RECOMMENDATION 55

That the DHS in conjunction with the Attorney-General’s Department pursue the issue of establishing an appropriate agreed policy position between States, Territories and the Commonwealth on the exchange of information where there is a child protection concern ensuring appropriate coverage of relevant Commonwealth employees.

Reason

Whilst there are avenues for Commonwealth public servants to make disclosures on child protection concerns to State child protection authorities, the current legislative situation does not facilitate an adequate focus and clear role in child protection for Commonwealth service providers. The Commonwealth is a signatory to the UN Convention on the Rights of Children and under the Convention has obligations to protect children. The recurrent difficulties faced by Commonwealth public servants in taking action on a child protection concerns can be redressed through an agreed policy between the relevant parties. Any agreed policy should also take into account relevant classes of Commonwealth employees who should be subject to the agreed policy, such as social workers employed by the Department of Defence.

RECOMMENDATION 56

That consideration be given to developing a protocol between FAYS and Centrelink with the objective of improving child abuse reporting arrangements.

Reason

Until such time as the legislative issues regarding Commonwealth employees are determined there is a need to develop a protocol between FAYS and Centrelink to address improved communication about child abuse and neglect.

RECOMMENDATION 57

That guidelines be developed by DHS/FAYS which provide guidance to organisations about how to record the fact that a notification has been made about an individual child or young person in a way that does not reveal the notifier’s identity but ensures the child and their family receives appropriate care and support from the organisation. Training on these guidelines be incorporated into mandated notifier training.

Reason

Appropriate confidentially of a notifier’s identity is important but at the same time the child and family need support which includes recognition of this factor.
RECOMMENDATION 58

That DHS/FAYS develop a policy for Government, non-Government and community organisations on how they will record that a notification has been made about a child and young person without disclosing the identity of the notifier and for ensuring the confidentiality of such records.

Reason

Whilst confidentiality in making a notification relates to individuals, many are often undertaking an organisational service provider response as part of the service’s responsibility in caring and protecting. The Act itself does not deal with either the reality or the necessity of this approach.

There should also be a guideline developed by FAYS that provides guidance to organisations about how to record the fact of a notification so that the notifier’s identity is not revealed as such. Such an approach will ensure that Government, non-Government and community organisations are able to provide appropriate community-based protective support and care to the child or young person.

RECOMMENDATION 59

No changes to the penalty for failure to notifier by those mandated to notify, are deemed necessary.

Reason

An increase in the penalty is not proposed but mandated notification training should highlight the potential adverse outcome for children if there is a failure to notify as well as any liabilities which may arise from a failure to make a notification – including the statutory penalty and those that may also arise from professional conduct tribunals.

RECOMMENDATION 60

That all mandated notifier training give appropriate emphasis to the consequences of failure to make a notification covering any case law, penalties and the significance of such failure under any codes of professional conduct or practice.

Reason

The provision of detailed information on law to professionals often enhances their understanding of the seriousness of identifying child abuse and neglect and making notifications.
RECOMMENDATIONS 61

That DHS/FAYS expand the capacity of its Mandated Notification and Consultancy Services to provide:

- an upgrading of the training content and retraining of registered trainers in South Australia
- additional targeted training to new groups of mandated notifiers and to volunteers
- additional support for the coordination, marketing and monitoring of the provision of training in liaison with service providers and other agencies
- more flexible delivery methods to ensure that mandated notifiers in Aboriginal services and communities, rural and remote areas and multicultural community organisations are able to access to appropriate mandatory notification training and
- appropriate support during training for participants.

That all mandated notifiers receive training that is both multi-disciplinary and also tailored to their particular service context.

Reason

There are several objectives in ensuring the provision of mandated notifier training to all mandated notifiers. They include:

- develop the skills of the mandated notifier to identify when child abuse and neglect is occurring and to make a report to child protection authorities
- create an understanding of the role of mandated notifiers in the child protection system as a whole and where the process of notification fits within this system
- promote understanding of the value of informal or formal community based support for a child who may be at risk of abuse and neglect and their family as an important part of early intervention in child protection and the need to build this community based child protection focus in all settings such as Schools, general practice, local Government, childcare services, etc. and
- develop a focus on the ongoing safety of a child within their particular service context and practice, particularly where this service may focus primarily on adults who constitute the principal client for the service.
RECOMMENDATIONS 62

That FAYS develop a model policy to support all employers providing services to children whose staff would be required to make a notification under the Children’s Protection Act 1993. This policy is to provide guidance on developing and implementing policies and procedures to ensure that all staff, paid or volunteer, who are covered by the mandatory reporting provisions:

- are aware of their responsibilities as mandated notifiers
- ensure mandatory reporting training is available for all staff
- have undertaken training on mandatory reporting
- a register of all staff that have undertaken mandatory reporting training and those that have not yet received training.

Reason

If adopted, the Recommendations made in this Review will widen the scope of individuals that will require training. A process of advice and support to agencies on mandatory reporting requirements employing these individuals will be required.

RECOMMENDATION 63

That DHS expand the availability of mandated notifier training and increase its affordability to non-Government community agencies.

Reason

The expansion of mandated notifier status among professionals and members of the community will require an expansion in the availability of mandated notifier training. The current training system cannot adequately meet current need and demand or respond to the new demand that will emerge.

CHAPTER 11 ALTERNATIVE CARE

RECOMMENDATION 64

That this Review in general endorses the principles and concerns expressed in the Semple Review and recommends implementation of its recommendations.

Reason

The Semple Review was comprehensive and was specifically targeted to Alternative Care and recommendations in that Review appear apposite.
### RECOMMENDATION 65

That the current process of competitive tendering be modified in the future to encourage realistic quality participation by an expanded number of Alternative Services Care Providers (ASCP's) in conjunction with prescribing and monitoring of performance standards for those selected as an ASCP.

**Reason**

The significant distrust expressed to this Review about the funder-purchaser-provider split, appears to merit modification to the competitive tendering process. In addition, consistent concern expressed to this Review was the need to expand the pool of foster carers and encourage them to see their role as being not only committed, compassionate people but also performing a professional quality service to children in need.

### RECOMMENDATION 66

That the Government acknowledge the increasingly specialised nature of family-based foster care and increase the current subsidy payments to carers in recognition of this.

That the Government urgently consider further development of the pool of specialised professional carers for children and young people with significant and high care needs.

That specialist training and education be provided on a regular basis for all carers and that this training be compulsory.

**Reason**

Many children and young placed in care have significant needs which over time places not only emotional, but financial stress on many foster carers. Current subsidies often do not meet the high costs of care. Subsidies need to be increased commensurate with expenditure.

Further, that for some children and young people who have very complex needs, family based foster care is not an adequate option. In these situations the State must provide the type of care that meets the specific needs of the child or young person in question. South Australia must urgently extend its range of care options including extending the pool of specially trained professional carers and developing residential or cottage type facilities staffed by specifically trained carers.

All carers must receive adequate and specialised training to ensure carers are equipped to deal with a variety of care situations.
CHAPTER 12 - CHILDREN AND YOUNG PEOPLE UNDER THE CUSTODY OR GUARDIANSHIP OF MINISTER

RECOMMENDATION 67

That the proposed South Australian Child Protection Board facilitate and promote a ‘whole of Government’ approach in recognition of the State’s responsibility and duty of care to children and young people under the Guardianship or Custody of the Minister. Priority access to services across all relevant sectors is seen as an essential first step.

Reason

Children and young people under the care of the State are some of the most vulnerable and disadvantaged. The State cannot separate children and young people from their families of origin on the basis of inadequate care and then fail itself to provide appropriate care and supports. Failing to commit resources and provide timely services compounds deficits and marginalises further those already disadvantaged.

RECOMMENDATION 68

That this Review endorses the formation of the Alternative Care Advisory Committee and suggests as a matter of priority that the committee consider the long term care arrangements for all children under the Guardianship or Custody of the Minister and determine what types of care options are required over the long term to ensure children and young people receive appropriate alternative care.

It is further recommended that the Alternative Care Advisory Committee auspice research on permanent care options which are needed, including the appropriateness of adoption for children and young people under the guardianship of the Minister. In doing so, such research will need to consider culturally appropriate approaches for Indigenous children and young people.

Reason

Children and young people need a family and there is no adequate substitute for stable, permanent family ties. Children who do not grow up in families where they have a sense of security often experience lifelong, detrimental consequences. Early separation and abuse/neglect may affect children’s ability to securely attach to carers and further disruptions place these children at risk of developing insecure and disorganised attachments to foster parents. It is therefore critically important for children and young people to be provided with secure, permanent and nurturing environments, where carers are supported and specially trained to deal sensitively with children’s needs. Planning for permanency is essential and consideration of the appropriateness of adoption in some circumstances may be considered to be in a child or young person’s best interest.
### RECOMMENDATION 69

All children and young people under the Guardianship of the Minister leaving long-term care must have appropriate transition planning involving all key agencies and stakeholders including significant others and the young person. (See also Recommendation 183).

That specific funds be made available for planning transitional arrangements including an option of extended care payments to foster families if the young person remains in their care.

**Reason**

A comprehensive approach is required to address the poor outcomes of young people leaving care and to develop responses and services to improve outcomes. Models that incorporate permanency planning to adulthood are needed. Broadening the concept of ‘leaving care support’ involves redefining service delivery and expanding resources. It also necessitates a reorientation of existing systems and policies across Government to recognise the State’s responsibility for facilitating transitional care in a way that parallels parental responsibilities in the rest of the community.

### CHAPTER 13 - ADOLESCENTS AT RISK

#### RECOMMENDATION 70

That a Commissioner for Children and Young Persons and a Guardian for Children and Young Persons be statutorily mandated. (See Recommendation 1 and 4 in Chapter 5).

That a Statewide framework be developed across all sectors to deliver holistic services for adolescents by the proposed South Australian Child Protection Board. This package, of services to be group together as ‘Youth Help’ (See Recommendation 11 in Chapter 6)

#### RECOMMENDATION 71

See Recommendations in Chapter 19 regarding protective behaviour programs and school counsellors.

#### RECOMMENDATION 72

That account be taken of the issues raised by young people for improving the circumstances for alternative care arrangements. (See recommendations in Chapter 11 regarding alternative care).
RECOMMENDATION 73
That therapeutic safe keeping arrangements with secure short-term accommodation and appropriate services be made available for young people. These arrangements to be developed in conjunction with transition processes back into the community. See Recommendation 174 in Chapter 23.

Reason
There is a clear need for such services and many young people are in serious conditions of risk when they need protection and therapeutic treatment.

RECOMMENDATION 74
See Recommendation 11 in Chapter 6 relating to counselling and mental health services.

RECOMMENDATION 75
See Recommendation 139 in Chapter 19 regarding School-based counselling/social workers.

RECOMMENDATION 76
That Yarrow Place be provided with more resources to enable them to provide services to adolescents between the ages of 14 and 16 years.

That there be complementary legislative amendment if the consent to medical treatment legislation would be an impediment to the provision of such services.

Reason
This group of traumatised adolescents should be examined through services already available to adults at Yarrow Place.

RECOMMENDATION 77
That consideration be given to extending facilities such as the Second Story Health Service to areas other than the three present locations at Adelaide, Elizabeth and Christies Beach.

Reason
These particular service facilities could be incorporated as part of the ‘Youth Help’ package referred to in Recommendation 11 of Chapter 6.
RECOMMENDATION 78

Mechanisms to improve handling of complaints and ensuring appropriate feedback should flow from the Recommendation 43 contained in Chapter 9 Section A.

RECOMMENDATION 79

See Recommendation 129 in Chapter 16 on diversionary program for adolescents who sexually offend.

CHAPTER 14 - CHILDREN WITH DISABILITIES

RECOMMENDATION 80

That consideration be given to a process for annually collecting and publishing information pertaining to children and young people with disabilities who are the subject of a child protection notifications. Such notifications to include in out-of-home care and whether the notification is investigated and substantiated on the Department of Human Services, Family and Youth Services Client Information System.

Reason

While research indicates that there is a greater vulnerability for children with disabilities to child abuse and neglect, there are no State or national reporting mechanisms currently in place to report on the incidence of abuse or neglect for this group of children. Establishing a specific data collection and reporting process on child abuse and neglect of children with disabilities is considered a necessary first step in clearly identifying the vulnerability and special needs of this group of children within the community.
RECOMMENDATION 81

That the proposed South Australian Child Protection Board and Regional Child Protection Committees develop a focus on safeguarding the interests of children with disabilities by undertaking the following activities:

- raising awareness amongst service providers in the State and in regions about disability and child protection issues
- identifying inter-agency training needs and providing access to training which encourages the pooling of expertise between professionals with specialist skills and knowledge in disability with those with knowledge and skills in child protection and
- ensuring that the development of policies and procedures for safeguarding children generally take into account and meet the needs of children with disabilities.

Reason

Without a focus on the needs of children with disabilities, their interests and special needs can be overlooked. Greater emphasis must be placed on highlighting this group of vulnerable children to ensure their wellbeing and interests are safeguarded.
**RECOMMENDATION 82**

That service requirements for children, young people with disabilities and their families be improved. In particular, that greater emphasis be placed on providing timely, appropriate and accessible support services for families to ease the burden of care and to ensure that children with disabilities are not abused or neglected.

That respite care options be expanded (including before and after-school care and vacation care especially for adolescents), so that families have real choices and children and young people are provided with professional accredited care options.

That practical, regular and available in-home support be developed and /or improved to assist with domestic duties and personal care tasks, be readily available.

That the level of therapeutic and support intervention required particularly for disabled school aged children be increased to assist them in coping with any issues arising as a result of their disability and to assist them with integration into the broader community.

**Reason**

While there are some respite options available for families a greater expansion and flexibility of care options is essential, for instance, professional cottage respite care, in-home respite, after-school, before-school care and vacation care. Such care needs to be age appropriate especially taking into account the needs of teenagers. A paucity of options places further burden on families and increases the likelihood of children being relinquished into State care, or abused or neglected because of the stresses of caring for children and young people with significant disabilities.

Many families require very practical assistance in caring with their child. Help with dressing, feeding, using equipment, help with establishing routine and behaviour management as well as other practical help such as shopping, cleaning and assistance with attending medical appointments. Many families struggle with heavy care routines on a daily basis. As children get older this becomes increasingly difficult, and for many, it is a source of on-going stress and frustration. The toll on many families is great and includes marital disharmony and breakdown, children being placed in long term care, health and other emotional problems associated with the burden of care.

Children and young people need to feel a part of the community and acceptance by peers is vitally important to a positive self-development. Schools require practical and therapeutic supports to enable them to provide the level of care and attention that is required for children with disabilities and to assist them in increasing the level of understanding and awareness of the school community about the needs of these children.
RECOMMENDATION 83
That personal safety and protective behaviours programs be improved particularly in catering for children with disabilities. See Recommendation 137 in Chapter 19 Child Protection in Education.

RECOMMENDATION 84
That DHS coordinate an across agency working party with representatives from Disability Services Office, (DSO) FAYS, Intellectual Disability Services Council, (IDSC) the Crippled Children’s Association (CCA) and other relevant agencies, to develop an appropriate interagency case management model for children and young people who are notified as having been subjected to abuse or neglect or for children with disabilities requiring out-of-home care. (See also Recommendations 40 & 66 outlined in Chapters 9 Section A and 11)

That this working party also undertake a review of the effectiveness and applicability of the Protocol Guidelines for Coordinating the Provision of Alternative Care Services for Children with Disabilities, September, 1998 as it now stands, to develop further protocols or guidance as required.

Reason
While the Protocol as it currently stands may well be appropriate, its operational effectiveness requires further examination. It would appear that greater emphasis must be placed on working together at the regional and local level to achieve more effective collaboration and coordination for children with special needs and/or disabilities and their families.
RECOMMENDATION 85

That urgent consideration be given by DHS and other relevant Departments and agencies, to the development of a service delivery policy with detailed standards and guidelines for all agencies involved in the provision of services to children and young people with disabilities to ensure their rights are upheld in accessing and whilst using services.

Reason

Children without disabilities gain greater levels of independence and autonomy as they progress through life (self toileting, self feeding, playing independently, etc). Many children and young people with disabilities, however, are often restricted by their disability in gaining the level of independence and autonomy that children without disabilities are expected to acquire. They may in fact be subjected to high levels of intervention throughout their whole lives, may have strict behavioural management regimes placed on them, be subjected to high levels of medical intervention and/or treatment and be cared for by a variety of carers and professionals.

When any intervention occurs for a child with a disability it must be viewed through the perspective of ensuring the best interests of that child. Children and young people with disabilities have the same right to be treated with dignity and respect, to be involved in decision making commensurate with age, maturity and capacity, provided with appropriate information and communication of information to support informed decision-making and a right to privacy and confidentiality, as afforded other children and young people.

RECOMMENDATION 86

That DHS provide increased funding to individuals and agencies to enhance and increase the recruitment of carers who are willing and suitable to provide care to children and young people who have high, multiple and complex needs.

That such funding include appropriate payment for carers, commensurate with the levels of care required. Funding must also be available for education and training of carers.

The DHS ensure all agencies funded to provide out-of-home care for children and young people with disabilities have appropriate policies, standards and guidelines in place which outline the agency roles and responsibilities for providing competent and safe care for children including the guidelines and standards on the prevention, detection, investigation and reporting of abuse. (See also Chapter 17)

Reason

All children require carers who are suitable and competent in providing care. However children and young people with disabilities are a highly vulnerable group that have many special needs. Care must be of the highest quality and every effort must be made to ensure that they are cared for appropriately within an out-of-home care environment. There are, unfortunately, many cases of children and young people who have been abused in care, particularly in institutional care which have been reported nationally and internationally. Greater community awareness and a willingness to accept that children with disabilities can be abused has resulted in parents and the community, in general, demanding that governments reassure them, that every effort has been made to provide suitable care.
RECOMMENDATION 87

That a detailed analysis of all cases of children and young people with disabilities/special needs entering into care under the Guardianship or Custody of Minister be undertaken. Such analysis to ascertain the reasons why they are entering alternative care and through which pathway they are entering care, that is, for child abuse matters or where parents are unable to provide care. Such an analysis should include whether adequate and effective preventative and supportive measures were in place before entry into long-term care.

Reason

In South Australia currently, over 10% of all children in alternative care are classified as having some form of ‘special need’. Many children are entering the care system at later ages, between 12 years and 14 years, often due to the increasingly demanding nature of the physical care requirements and/or challenging behaviour as these children mature. A smaller proportion may enter care because of neglect or abuse reasons. Analysis is required to ascertain the extent to which system responses are working effectively to prevent those children and young people from entering care when they have family willing and able to care for them.

RECOMMENDATION 88

That DHS, in particular the Disability Services Office, continue to work towards full implementation of the recommendations outlined in the Disabilities Services Framework 2000 – 2003. In particular implementations aimed at improving the responsiveness and quality of services, the level of cooperation and coordination across the sector and also encouraging a more integrated approach to service delivery. This could be further achieved through a comprehensive case management approach, where one agency takes responsibility for leading coordination of services and supports.

Reason

The service sector in relation to disability is complex, fragmented and difficult for many families and service users to negotiate. While improvements have occurred in some areas through the development of coordination models for instance, Options Coordination, further improvements are required. A comprehensive case management approach which is the responsibility of one lead agency would provide greater opportunities for collaboration and coordination. While some agencies provide some level of case management, many families are required to contact a variety of agencies, seeking assistance and services. This process is often time consuming, confusing and frustrating with families having a variety of agencies and workers involved in their lives providing discrete services that are uncoordinated with each other and having to negotiate this service delivery maze.
RECOMMENDATION 89

That consideration be given to the deployment of specialised FAYS staff, trained in disability who could undertake or provide consultancy advice on the conduct of investigations for children and young people with a disability.

That a training program be developed for disability awareness as well as training to improve the recognition of abuse and neglect in children with disabilities on an inter-agency basis.

Reason

There is a high level of skill and time required to ensure appropriate conduct of investigations of child protection matters for a child or young person with a disability. The availability of specialised staff to undertake investigations or who can provide consultancy advice and support will ensure that investigations are conducted effectively within the context of the child’s capacity and the process focused on their best interests.

Even if specialised staffing is established, FAYS, SAPOL, health, teaching, welfare and disability services staff all require disability awareness training as well as specialised training to improve the recognition of abuse and neglect in children with disabilities.

RECOMMENDATION 90

That consideration be given to amending legislation, so that children and young people with disabilities and/or special needs can be placed in long term care without the need of the Minister to determine an opinion as to whether the child is a child ‘at risk’. (See Chapter 23 Recommendation 169).

Reason

Amendment along these lines will alleviate ‘proving’ whether a disabled child is a child ‘at risk’ under the current definition and effectively ensure that children and young people with disabilities could have long-term alternative care available to them. A proper assessment of the family and child’s circumstances would need to be undertaken and presented to the court.
### RECOMMENDATION 91

That UK guidelines in the Memorandum of Good Practice be used as a base together with the Interagency Code of Practice Interviewing Children and Caregivers, for the purpose of developing guidelines which can be incorporated into Practice Directions to guide professional interviewing of children in relation to potential criminal proceedings.

**Reason**

This recommendation recognises the need for training, accountability and standardising of child interviews to ensure that the best possible quality of interviews are available if required for the use in the criminal justice system. Many of the criticisms referred to in the submissions in respect of the interviewing processes can be dealt with by implementing proper processes as recommended.

### RECOMMENDATION 92

That a video interview(s) should be shown to the accused in a formal setting, with legal representation if the accused desires. This should take place in an interview room and the accused should be warned that anything he/she says during the process of the viewing will be noted and may be used as evidence. Guidelines should be drawn up as to the circumstances of the formal viewing and may be issued as Practice Directions by the Court.

**Reason**

Such a process of early viewing may have many advantages. First, it will encourage early interviewing of the child. Second it will give an early opportunity for the accused to assess his/her position. Third, it may enhance the possibility that the viewing of such interviews will lead to the accused accepting guilt and not proceeding to a criminal trial.

### RECOMMENDATION 93

That where questions regarding children’s competency arise, the court should be encouraged by the prosecutors, or by any person acting as the legal representative of the child, to take a flexible approach to competency testing including obtaining expert opinion and reports as well as considering testing in other than a courtroom situation.

**Reason**

This recommendation will enable a Court to more accurately assess a child’s competence.
RECOMMENDATION 94

That, in keeping with Recommendation 100 of the ALRC Report, the Evidence Act 1929 (SA) be amended to provide that corroboration of the evidence of a child witness whether sworn or unsworn, should not be required.

That Judges be legislatively prohibited from warning or suggesting to a jury that children are an unreliable class of witness. An example of such legislation is section 106D of the Evidence Act 1906 (WA).

That in accordance with Recommendation 100 of the ALRC Report, legislation provide that judicial warnings about the evidence of a particular child witness should be given only where

1) a party requests the warning, and
2) that party can show that there are exceptional circumstances warranting the warning.

Such exceptional circumstances should not depend on the mere fact that the witness is a child, but on objective evidence that the particular child’s evidence may be unreliable.

That the warnings which are given should follow the formula in Murray v R to reduce the effect of an individual Judge’s bias against, or general assumptions about, the abilities of children as witnesses.

Reason

Such a recommendation will promote a more appropriate standardised approach for all Judges to take in relation to the evidence of children which is more in keeping with their capacity to give reliable evidence.
RECOMMENDATION 95

That the environment in which children are interviewed or give their evidence should preferably be in a comfortable room with the least number of persons present and include a witness support person if the child wishes.

In the case of a child required to give evidence in a court room:

- children should be routinely offered a choice of vulnerable witness alternatives, including whether Judge or counsel should be robed or wigged
- the child may choose to have the presence of a support person who is not linked directly with the case and is not a member of the family.
- the child should not be required to walk past the dock when the accused is present
- the accused should not be physically present in the room in which the child gives evidence but instead may hear and view evidence through closed circuit television
- the child should not be exposed to the presence of the accused in any adjacent room.

Note also see Recommendation 101.

Reason

This recommendation is made to help alleviate the intimidating atmosphere of a courtroom may have to be gradually implemented because of the lack of purpose built or modified facilities, but in the mean-time any changes which can be made incrementally along similar lines will be an improvement.

RECOMMENDATION 96

That an appropriate, formal, judicial information/education program be devised for Judges, Crown Prosecutors and general members of the legal profession to assist them with a better appreciation of the special difficulties experienced by children when giving evidence and in particular the effect of cross-examination on children. (See Recommendation 154 in Chapter 21)

Reason

This recommendation will assist in minimising trauma suffered by children when giving evidence.
RECOMMENDATION 97

That the Evidence Act 1929 (SA) be amended to include a similar section to section 106 G Evidence Act (WA) which prevents an unrepresented defendant from directly cross-examining a child. Such amendment to be applicable to all children and not just those under 16 years of age.

Reason

This amendment should be utilised as a last resort and it would avoid compounding re-victimisation of the child victim by ensuring that the accused, who usually would have no legal training, from directly questioning and confronting the child. Fairness to the accused is also retained in a difficult situation as the accused may have the benefit of more effective cross-examination of the child than if left to his/her own devices.

RECOMMENDATION 98

That Recommendation 100 of the ALRC Report No. 84 be implemented by amendment of the Evidence Act 1929 (SA) to allow the court to permit expert opinion evidence to be given in any civil or criminal proceeding in which abuse or neglect of a child is alleged. The parameters of such legislation to include matters covered by the New Zealand legislation.

That such amendment specifically permit evidence to be given regarding any capacity or behavioural characteristics of a child with a mental disability or impairment. In addition, an amendment should permit generalised evidence to be given by an expert about patterns of children’s disclosure in abuse cases and the effects of abuse on children’s behaviour and demeanour in and out of court, without specific reference by that expert to the particular child.

Reason

Such a recommendation would ensure that both Judge and Jury are appropriately informed about the special features of child abuse cases so that the child may be better understood and credibility assessed from an informed base. It would also assist in the process of the way in which the child should be examined and the use of appropriate language and concepts in the Court process.

This recommendation has particular significance to children with a intellectual disability. These cases are rarely the subject of prosecution because of presumptions made about not only their competence but about reliability and behaviour. This recommendation is also related to the provisions of section 13 (3) of the Evidence Act 1929 (SA), recognising of course that there is a difference between issues related to the competence of a child and those related to the matters of credibility and evidence.
**RECOMMENDATION 99**

That the data system for the criminal justice system be substantially reviewed to enable an interlink across departments allowing the notifications from FAYS to be traced through to outcomes in the Courts.

Further that the data entry process be monitored for accuracy of input including using systems which require response to relevant cells of information.

**Reason**

Data is an important tool for monitoring and assessing the effectiveness or otherwise of the criminal justice system. It must, however, rely on accuracy and consistency of recording.

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**RECOMMENDATION 100**

That the Criminal Law Consolidation Act ,1935 (SA), be amended to include an additional offence of failure to perform a legal duty which thereby encourages or assists the commission of an offence by another . Such amendment to include as an element not only an intention to encourage but in the alternative recklessness as to whether an offence was likely to be encouraged by the failure to perform a legal duty. The precise wording and the parameters of the application of such an offence to other offences will require careful consideration.

**Reason**

The current legal limitations on the law of complicity have allowed persons to escape liability in circumstances involving the non-accidental death of an infant or young child in the care of caregivers. This gap should be closed so that in circumstances where it cannot be proved beyond reasonable doubt as to which caregiver caused the death or whether it was both, a caregiver can be charged for failure to perform a legal duty.
RECOMMENDATION 101

That the Evidence Act 1929 (SA) be amended to include the three models for taking of evidence in relation to a criminal trial involving sexual or violent offences against a child as provided in sections 106H to 106T of the Evidence Act (WA).

That the burden of proof remain on the prosecution to prove the charges beyond reasonable doubt.

That there is no requirement for a specialist court to sit on cases in which children are the alleged victims, instead the court must be comprised of Judges who have received special judicial training in respect of child development, victim responses and patterns of abusive behaviour.

That a court-based child witness support system similar to the Western Australian model be set up in South Australia.

That a committee(s) be set up to make recommendations as to the progressive implementation of strategically placed CCTV facilities and video rooms for courts using the Western Australian model as a basis. The design is to ensure the most cost effective manner of delivery of such services in South Australia.

Reason

This group of recommendations is in accordance with what is being increasingly regarded as best practice in relation to the conduct of criminal trials within a common law system. It has already been tried and assessed in an Australian context. The system combines concern for the welfare of the child victim and fairness to the accused and the public interest in an improved system of court procedures.

RECOMMENDATION 102

That the Government implement a court monitored diversionary treatment program modelled on similar approaches used in other States as discussed in Chapter 16.
RECOMMENDATION 103

That in respect of the prosecution of alleged adult offenders who deny the accusations made against them of abuse of a child or children, the prosecutor in the exercise of discretion may either:

▫ pursue prosecution of the alleged offender through the criminal justice system (criminal trial) or
▫ in lieu of proceeding with the criminal trial, instead institute civil proceedings (civil trial).

That in a civil trial, an application is made by the Crown seeking a Child Protection Order upon a court finding that on the balance of probabilities that the child (or other children) is/are at significant risk of harm as a consequence of the behaviour or actions of the defendant:

▫ If so found, the court to make a Child Protection Order, which would include that the defendant undergo treatment. In addition, the court may make other orders similar to those imposed for those undergoing diversionary treatment programs which may include matters such as prohibiting contact with the child, working with children or living near schools, etc.
▫ The breach of a Child Protection Order to be created as an offence in its own right for which a penalty of up to five years should be imposed.
▫ No imprisonment order should be made without a breach being proved on the criminal onus of beyond reasonable doubt.
▫ The penalty cannot be imposed without a court procedure, either a plea of guilty or a trial.
▫ A civil trial is to be heard before a specially trained magistrate who has received special judicial training in respect of child development, victim responses and patterns of abusive behaviour.
▫ That consistently with the current general law there is to be no criminal prosecution or conviction, arising out of the matters the subject of the proceedings.

That appropriate discussion and consultation be undertaken to develop the process for a civil trial.

Reason

These recommendations provide for a new approach to the poor conviction rates for child abuse. It gives an alternative to the current criminal prosecution process with its higher onus of beyond reasonable doubt. It has some general similarity with diversionary programs in other areas such as drug use. The creation of an offence also ensures that no imprisonment may occur unless there is a criminal trial process with the application of the criminal onus of proof.

It will enhance offender responsibility for conduct and provide appropriate treatment for them to change their future conduct.
RECOMMENDATION 104

That the Evidence Act 1929 (SA) be amended to include a section similar to section 106F of the Evidence Act 1929 (WA) to allow for appointment of a child communicator to assist as an interpreter for a child in appropriate circumstances. In addition, the section to be available to all children and not only those under the age of 16 years. Further, that Recommendation 118 of the ALRC Report be implemented by amendment of the Evidence Act 1929 (SA) to include that a court may permit other means of evidence being adduced in the particular case of children with disabilities.

Reason

This recommendation will enable those children with particular problems of communicating to ensure that they are not further disadvantaged by that factor. It is important that the person appointed be competent and suitable. This does not mean that the communicator must be a person who would otherwise fit the category of expert witness but instead must be capable and must not otherwise be a potential witness.

RECOMMENDATION 105

That the Evidence Act 1929 (SA) be amended to permit answers given by a disabled child in response to leading questions, to be received if the judge is otherwise satisfied that the nature of the questioning does not give rise to the answers being unreliable answers.

Reason

Whilst it is best if resort is not made to leading questions, evidence should not as a matter of course be excluded because it offends the evidentiary rule excluding leading questions and their answers. It should be left to the discretion of the Judge depending on the overall circumstances of the question in context, the qualities of the victim and any other relevant matters which touch on the reliability of the response.
RECOMMENDATION 106
That the State with or without the support of other States, investigate the feasibility of referring certain limited powers regarding child protection to the Commonwealth, which in turn may then confer those limited powers to be exercised by the Family Court in particular defined circumstances. Alternatively that the State confer State commissions to named Family Court Judges to exercise State child protection jurisdiction in particular defined situations.

Reason
The reposing of State jurisdiction in relation to child protection in either the Commonwealth or exercisable by individual Judges of the Family Court in limited circumstances has considerable appeal in logic, efficiency, cost effectiveness and it would avoid duplication of evidence and legal argument. In addition it would lessen trauma to the child who would not have to await the outcome of two applications in two jurisdictions. It may also deter ‘forum shopping’ by disgruntled parties in Youth Court proceedings because it would permit matters to be transferred to the Family Court, if appropriate, at an earlier point in time before a final decision is made by the Youth Court.

RECOMMENDATION 107
That an extension of the Magellan Project in the Family Court be developed in South Australia with the collaboration of FAYS and the Legal Services Commission.

Reason
This program has been evaluated as effective and cost efficient in expediting the court processes of dealing with cases in the Family Court involving allegations of child abuse. It is appropriate for implementation in South Australia with appropriate adjustment for local conditions. Such implementation will require training. See also Chapter 21.

RECOMMENDATION 108
That DHS review the 1998 Protocol as to the procedures and the threshold for intervention by FAYS in proceedings in the Family Court and instead respond more positively to notifications made to it by the Family Court. In particular, that FAYS take action to fully investigate and report regarding the allegation referred to it by the Family Court personnel pursuant to section 67ZA of the Family Law Act 1975 (Cth) based on the paramount interests of the child in order to assess whether there should be intervention in the proceedings.

Reason
FAYS appear to inappropriately abrogate responsibility to the Family Court to protect children who are the subject of mandatory notification or alleged abuse. This recommendation seeks to ensure that FAYS intervene and remain involved in cases were it is apposite.
## RECOMMENDATION 109

That in the event of FAYS identifying circumstances which suggest a child is at risk and there are family members who are viable carers of a child or children such as grandparents, it take appropriate action if necessary in the Youth Court, rather than leaving it to family members to take action in the Family Court.

### Reason

This recommendation is complementary with the above recommendations to encourage an improved collaborative approach about child protection in the cases before the Family Court. It will bring back the focus to the best interests of the child and ensure that the State does not absolve itself of responsibility for the protection of children within its jurisdiction.

## RECOMMENDATION 110

That in the course of implementing Recommendation 107 in relation to the Magellan Project consideration be given to ensuring that the role and training of child representatives is improved by developing and implementing appropriate protocols or guidelines.

### Reason

It is highly important for the protection of children in the Family Court system that they have a fully informed and trained legal representatives to act in their interest and that the Court is given the greatest assistance it can in its consideration of the appropriate orders to make in their interest.

## RECOMMENDATION 111

That the Family Court be encouraged to accept, where appropriate, the training and experience of senior social workers as a relevant area of expertise and include them in the recent Family Court guidelines as expert witnesses. This will then enable them to give evidence not only of their observations but also their opinions.

### Reason

Senior Social Workers have great experience in assessing child abuse and their evidence should be considered as expert, so that they may be permitted to give evidence not only of their observations but also their opinions. This of course does not mean that their opinions will necessarily be accepted, but they can be taken into account by the Court in making findings.
RECOMMENDATION 112

That the Youth Court and FAYS develop a means, in combination with other relevant agencies including the Justice Department, to liaise on a regular basis to discuss concerns about general process and ways to improve Court processes.

Reason

There are many examples in many courts and tribunals around Australia where either formal or informal mechanisms are used to improve justice systems and the circumstance of the operation of the Youth Court could benefit from such a dialogue with relevant parties.

RECOMMENDATION 113

That Youth Court Judges and Magistrates undergo a specific education program which includes topics such as children’s development, the signs and symptoms of child neglect and abuse and their impact on children’s behaviour, the effect of domestic violence on children and the purpose and effect of access in relation to the needs of children.

That expert evidence be admissible on these general subjects as well as specific evidence in relation to the child in a given case.

Reason

It is a general perception held by lawyers that having had children coupled with sensitivity to people and good communication skills, are sufficient for them to perform the complex and difficult task required in the Youth Court. However, lawyers have not been given training in this area as part of their professional study and need to acquire some of the knowledge and skills of other professionals who have studied and worked with children and their families, in order to be better equipped to perform their work.

Such training would also assist the Court in making more informed decisions as to whether the reunification process is likely to be successful or whether the energies, services and support for the needs of the child are better focused with long-term orders in alternative care. Also it will assist the Court to better inform itself as to the reason and value to the child of access orders, particularly intensive supervised access orders in respect of very young children who live some distance away.
### RECOMMENDATION 114

That the Act be amended to empower the Youth Court to inform itself with the assistance of professional opinion as to whether access arrangements are in the best interests of the child. The court to also have regard to matters which include:

- the practicalities of where and how any supervised access arrangements can be implemented
- the capacity of the parent to partake in a quality access period which is beneficial for the child
- a requirement that the parent undertake a parenting program to be arranged by FAYS.

**Reason**

Such an amendment will enable a court to ensure that the focus of any access arrangements is always on the child and to have the best information available to it so that only beneficial access orders are made by the Court.

### RECOMMENDATION 115

That the Youth Court continue to be presided over by a Judge or legally trained person and consideration be given to ways of encouraging a less adversarial and intimidating approach in the courtroom. Instead, the Court to cultivate a more interactive and child and youth friendly environment using, for example, an adaptation of the Nunga Court model. Further, that consideration be given to abandoning the use of gowns by Judges.

**Reason**

This recommendation is in keeping with adoption of a more approachable and engaging environment in which parties can be heard and decisions are made with regard to child protection which is more child and youth friendly but still commanding respect.

### RECOMMENDATION 116

That Recommendation 113 in relation to recognition of Senior Social Workers as expert witnesses, also apply in the Youth Court.

**Reason**

Such an approach will also assist in the social workers being treated in a more respectful manner in relation to their role and expertise. However it does not mean that their opinions will necessarily be accepted.
RECOMMENDATION 117

That Part 5 Division 1 of the Child Protection Act 1993 be amended so that it is not compulsory for the Minister to convene a Family Care Meeting prior to an application being made for custody or guardianship. The amendment should indicate that the holding of such meetings either before or after an application for custody or guardianship is made, is not an automatic expectation and instead may be convened by the Minister or at the discretion of the Judge on his or her own initiative or on the application of a party or interested person.

That consideration be given by the Minister or a Judge to the desirability of convening a Family Care Meeting at an early point of time rather than it being used as a “last resort” with the threat of litigation in Court if no agreement is reached.

That arrangements for the convening of a meeting need not be delayed awaiting the receipt of all reports.

That if a Family Care Meeting is convened:
- it should usually include foster carers, particularly if the foster carers have been involved for a significant period of time
- children should be invited to attend or be represented by a separate legal representative if the child is too young to participate
- data should be kept on the participation of children and the outcome of Family Care Meetings
- a culturally sensitive approach should be taken in the process for holding a Family Care Meeting in the case of Aboriginal people.
- any agreement reached between the parties at a Family Care Meeting in relation to a care and custody application be recorded in the Court in the form of orders.

Reason

As a consequence of Recommendation 40, the need for a Family Care Meeting should be reduced because of appropriate early assessment, casework management and services undertaken through FAYS.

It is important that the arrangements agreed at such a meeting be recorded formally which will allow a supervisory role of the court to operate in relation to the agreement to ensure that it is clearly expressed and capable of being enforced or amended by a subsequent application to the Court.

RECOMMENDATION 118

That pursuant to section 21 of the Child Protection Act 1993 the time for carrying out Investigation and Assessment Reports be increased from 28 to 35 days with a further extension of 21 days instead of 28 days. That there be monitoring of this reporting requirement in order to significantly reduce the number of extensions except for highly complex cases or special circumstances.

Reason

There are sound reasons for a minor extension to the period allowed for such reports, but that the time allowed for a further extension should remain the same as presently exists. The critical situation of children whose situations require investigation and assessment are such that early reports are highly desirable.
RECOMMENDATION 119

That statutory changes be made to Section 38 of the Children’s Protection Act 1993, to permit the Youth Court to extend the time for care and protection orders in appropriate cases. See Recommendation 180 in Chapter 23.

RECOMMENDATION 120

That the Child Protection Act 1993 be amended to empower the Youth Court to make orders in the interest of the child, notwithstanding the child’s absence, or at least make temporary orders on an adjournment. One way of achieving this is to have the discretion to dispense with compliance with section 48 in certain circumstances.

Reason

Such a provision will ensure that the jurisdiction of the Youth Court is not being thwarted simply by non-attendance of the child.

RECOMMENDATION 121

That the Act be amended to incorporate provisions similar to section 68L(2) and (3) of the Family Law Act 1975 (Cth) and thus empower the Youth Court to appoint a separate child representative and to make such orders as are necessary to secure separate representation. Such an order may be made by the Court on its own initiative or on the application of the child, a party to proceedings or any person seeking to make submissions under section 41.

Reason

Such a provision will clarify that the Youth Court has power to appoint a separate child representative to ensure that the voice of the child is heard. An amendment will also strengthen the right of the child to be heard on matters which concern him or her and in particular the terms and conditions of any order.

RECOMMENDATION 122

That the Youth Court issue guidelines which endorse the view that the child representative is able to speak on behalf of the child if the guidelines are fulfilled without the need for the child to be brought into Court unless the child desires such attendance.

Reason

This recommendation is to clarify that there is no need for the Court to personally ask the child whether he or she wishes to say anything and to minimise trauma to the child by requiring the child to appear in Court to so inform the Court personally.
**RECOMMENDATION 123**

That the Youth Court be empowered to make an order for separate representation of a child at the time when the application is lodged, or at any other time without the need for attendance or submissions.

**Reason**

This recommendation further enables the Youth Court to order separate representation for the child without the need for attendance or the need for hearing submissions on the matter. (See also recommendation 120 and 121.)

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**RECOMMENDATION 124**

The Youth Court liaise with the Legal Services Commission regarding the appointment of a specific lawyer. Further, if the attendance of such a lawyer cannot be organised in advance of the first return date, the Court to have power to dispense with the requirements of Section 48 during a period of the adjournment. (See also Recommendation 120 on page 57 regarding Section 48.)

**Reason**

This recommendation is complementary to recommendations on 120 and will improve the practical operation of the section.

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**RECOMMENDATION 125**

That except in a situation of emergency, no person shall separately represent a child unless they have undergone the national or other training program in relation to such representation. These requirements are to be contained in guidelines issued by the Court and to be developed after consultation with the Commissioner for Children.

**Reason**

This training will ensure consistent and quality standards for all lawyers who represent children in the Youth Court.
### RECOMMENDATION 126

That sections 21 and 38 of the *Children’s Protection Act 1993* be amended to include a power for the Youth Court to order that a parent or caregiver undergo assessment with an appropriate professional as to capacity to protect his/her child.

**Reason**

It is important for the court to have available all relevant information about vital aspects of a parent’s capacity to care for a child. Whilst professionals are reluctant to assess non-voluntary patients, there are many precedents for compulsory assessment reports being made in the workers’ compensation and insurance field which include mental health and physical conditions. The suggested amendment is not requiring compulsory treatment.

### RECOMMENDATION 127

There is no recommendation made to increase sentences in respect of sex offenders of children.

**Reason**

The emphasis should be on treatment of offenders to protect children.

### RECOMMENDATION 128

That a Court when sentencing for sex offenders of children, take into account that if treatment of offenders is not conducted within the prison, a period of less than two years on parole is insufficient. A three-year period is preferable.

**Reason**

SOTAP information as well as general information on sex offender treatment programs indicate that a period of two years is likely to be too short a period for the completion of sex offender programs and that a longer period of parole is required to encourage finalisation of treatment.
CHAPTER 16 - PROTECTING CHILDREN THROUGH SEX OFFENDER TREATMENT

RECOMMENDATION 129

That the South Australian Government:

- Develop a specialised prison based treatment program for sex offenders at Port Lincoln Correctional facility, based on the models currently used in NSW and UK. The program would feature:
  - a culturally appropriate model of treatment and engagement for offenders from Aboriginal and Torres Strait Islander communities
  - a cognitive/behavioural approach
  - and be properly evaluated by external evaluators.

Following favourable evaluation, consideration be given to extending the program to be available from one central metropolitan correction facility.

Further that the current community based treatment program (SOTAP) be extended to accommodate offenders who are deemed suitable by the Court for treatment in the community. That the model use a similar approach to that which is currently operating in other States, with the same safeguards in place to protect victims and other children in the community and be continually evaluated externally.

Further that the Mary Street Program for Adolescent Sex Offenders be extended to ensure that all young people who offend sexually against others be appropriately treated and counselled. That an external long-term follow-up evaluation of participants be conducted to determine the efficacy of the program.

Reason

The case for the extension of sex offender treatment programs in South Australia is strong and convincing. Not providing treatment programs in and out of prison will do little to change the behaviour of those who sexually offend against children. It is acknowledged that successful treatment for this type of behaviour is not without its difficulties as changing the highly self-reinforcing and compulsive behaviour of sexual abuse requires coordinated intervention by criminal justice and child protection agencies to ensure that children are protected and offenders made accountable for their actions. However, bearing in mind the untreated recidivist rates and the high numbers of acts per offender, many children will be spared exposure to sexual abuse and in turn are more likely in turn to spare other children. The treatment for adult sex offenders can most effectively be provided both in and out of prison by SOTAP.
# RECOMMENDATION 130

That a coordinated and comprehensive screening and monitoring system be developed in South Australia that is compatible with any National agreement or State/Territory system currently in operation.

## Reason

There has been considerable concern in the community that children and young people are not being effectively protected from people who prey on their vulnerability. Whilst many agencies have in place some mechanisms for protecting children (police checks, referee checks, policies guiding behaviour) there is no coordinated and enforceable requirement upon agencies to ensure these process are in place and adhered to. A coordinated and comprehensive screening and monitoring system is therefore required.
RECOMMENDATION 131

That a working group be formed – the “Screening and Monitoring Working Group” to determine the most appropriate:

- legislation
- policies, protocols and guidelines and
- declarations process for SA

taking into consideration the proposed National Paedophile Register to be developed.

That the working group consist of persons from the key agencies involved (SAPOL, Justice Department, DHS, Education sector, Non-Government, churches and Sport and Recreation, representatives of teachers’ unions and major unions covering employees including related employment and parent groups) and should involve the Commissioner for Children and Young Persons.

That specific legislation be developed to deem certain persons as described in the legislation to be unsuitable persons from working with children and young people and to be placed on an Unsuitable Persons Register. Such legislation could be known as the Child Protection (Unsuitable Persons) Act. Legislation to include

- specific provisions for the establishment and maintenance of an Unsuitable Persons Register,
- provide for the conditions upon which a person is placed on the register and is thereby deemed unsuitable for employment in child related circumstances
- provide for an independent process for a declaration from a District Court for removal of a person from the register
- provide the requirements of employers when employing persons in child-related activities and that the provisions are mandatory for employees but discretionary in respect of volunteers
- cover all Government agencies, non-Government agencies, church organisations, sporting and recreation clubs who provide employment in child-related activities
- create offences with penalties for non-compliance.

Such legislation may in a general sense be modelled on the NSW scheme with particular modifications to minimise complexity and discretionary decision-making as well as placing the role of establishing and maintaining the register with SAPOL.

Further, that the screening and monitoring working group consider the viability of providing persons screened and cleared a ‘portable’ photo card which can be used by employees.

Reason

The high level of vulnerability of children to abuse in circumstances where they are being provided with services such as tuition in education, sports, recreation or religious activities mostly in the absence of their carers, warrants a consistent and deterrent approach. Many sex offenders may gain access to children through organisations. It is imperative that proper mechanisms are developed to ensure that children are protected appropriately and with proper safeguards in place.
RECOMMENDATION 132

That all agencies who employ persons who work with or have access to children either in paid or a volunteer capacity should develop appropriate child protection policies and guidelines. All agencies funded by State Government agencies will be required to develop child protection policies and guidelines as a prerequisite to receiving Government funding.

Reason

Government has responsibility to ensure that funded agencies uphold appropriate work places practices. Whilst many agencies have in place appropriate mechanisms, many do not have adequate safeguards to protect children. The development of policies and procedures are critical to ensuring agencies have the most professional standards and could be viewed in the same way as Occupational Health and Safety Guidelines, that is, as essential requirements for ensuring a safe and productive workplace.
RECOMMENDATION 133

That a South Australian Child Death and Serious Injury Review Committee be established under specific legislation, modelled on the NSW Child Death Review Team, as a matter of high priority to carry out all future reviews of child deaths and serious injury to children.

- The functions of such a committee are to -
  - ascertain facts surrounding the deaths of or serious injuries to children
  - collate epidemiological and other data about all deaths and serious injuries to children and young people
  - devise preventive strategies
  - identify areas for improvement and advise the Ministers of Health, Social Justice and other relevant Ministers through intra-departmental structures (for example the Child Health Council of the DHS, and through the Child Protection Board)
- That the committee be administratively attached to the Commissioner for Children and Young People and underpinned by legislation.
- That the Commissioner for Children and Young Persons use these findings to educate the community and inform policy and procedures across Government and non-Government sectors to prevent future deaths of or serious injury to children.
- That the committee report annually to Parliament through the Minister for Social Justice.
- That the committee bring matters to the attention of relevant Ministers or Heads of Departments, as it considers appropriate.
- That the legislative powers of the committee include the right to access information required to fulfil its responsibilities including the transfer of relevant information from already existing child morbidity and mortality Committees within the State.

Reason

The Child Death and Serious Injury Review Committee provides the only effective whole-of-systems review mechanism across Government to monitor the adequacy of systems and services involved where a child has died or experienced serious injury, identify areas for improvement and use these findings to educate the community and inform policy and procedures across Government and non-Government sectors to prevent future deaths of or serious injury to children.
CHAPTER 19 CHILD PROTECTION AND EDUCATION

RECOMMENDATION 134

That the role and responsibilities of schooling and children’s services in relation to child protection be developed and specifically included in the Children’s Services Act (1985) (SA) and Education Act 1972 (SA).

Reason

There is a need to go beyond the general reference in the legislation to ‘safety’, to make specific reference to child protection in the Children’s Services Act 1985 (SA) and Education Act 1972 (SA) in order to provide an stronger focus on the role of education and children’s sectors in child protection. This approach will prevent confusion about the role of education and children’s services in child protection and support the development and integration of more comprehensive responses by education authorities, by schools and children’s services.

RECOMMENDATION 135

That DECS, schooling sectors and children’s services develop policies and guidelines which recognise and acknowledge their role in early intervention and prevention. In addition these sectors to develop programs, including staff education and training and service development initiatives, to expand knowledge and understanding of the role of these sectors.

Reason

There is a need to develop a specific focus on child protection through early intervention and prevention, within a school environment.

RECOMMENDATION 136

That DECS develop and implement a strategy to promote co-location of children’s services with primary schools in order to improve opportunities for the delivery of a range of services and programs from one site thereby assisting children’s and parents access to these programs.

Reason

Improved opportunities are required to provide access to early intervention and prevention programs for parents and children to reduce child maltreatment and increase the knowledge of parents about parenting and their protective skills. The current system of services is fragmented by virtue of the number of locations from which services are provided and there is a need to improve accessibility as well as continuity of relationships with children and parents and enable the delivery of parenting education programs in a sustainable manner in conjunction with other services.
RECOMMENDATION 137

That DECS update the personal safety/protective behaviour programs delivered in schools with regard to:

- recent evidence of best practice in their design and delivery to key age groups, for example, four to five years of age; six to ten years, 11 to 14 years and 15 years and older
- whether it is preferable to be included in core curriculum
- changes over the years in schools culture
- addressing the needs of children and young people from different cultures or with disabilities
- inclusion of internet safety
- including provision of information to parents/caregivers to extend understanding and reinforcement of the programs
- training and the support required to be provided to teachers to re-vitalise delivery of such programs.

That DECS undertake an audit to determine the extent to which personal safety/protective behaviour programs are conducted within schools and the quality of such programs.

Reason

Currently, personal safety and protective behaviours are implemented in varying ways and sometimes not at all and not necessarily made relevant to the age group nor with appropriate regard for ethnicity or disability. There is also a variation as to whether or not parents/caregivers are informed or involved.

RECOMMENDATION 138

That pending an Unsuitable Persons Register being set up as recommended in Chapter 17, the Teachers’ Registration Board in consultation with all education sectors, progressively seek relevant police checks through SAPOL on all registered teaching personnel and that these police checks are updated each time renewal of registration is required.

Reason

The Teacher Registration Board therefore provides for the review of teachers whose conduct may not be considered illegal but may contravene professional standards for conduct. There is therefore a proper role for the Teacher Registration Board to continue to seek such checks and updates as part of the streamlined process associated with registration.
RECOMMENDATION 139

That DECS review the role of school counsellors to provide greater clarity on their child protection and pastoral roles in schools, with particular regard to:

- educational welfare support to students and their families
- advice to the school and staff on child protection and children in need
- support for staff training and development on students’ family environments, social and welfare needs and their connection with educational attainment, especially as this relates to child protection and
- support for the development of whole school/community approaches to the prevention of child abuse and neglect.

That School counsellors, where these positions are available in schools, be designated as school child protection officers for the purposes of responding to a child at the time of disclosure. Part of their role would include working with FAYS and other agencies in the child protection network and supporting case management plans. In the absence of a school counsellor, such role to be performed by another designated person within the school.

That where schools do not have a school counsellor position due to school student numbers or low risk, DECS develop a plan to provide accessible school counsellor support to these schools.

Reason

Schools counsellors have a capacity to provide a number of services relevant to child protection and training of other staff. Teachers and children’s service providers struggle with fully understanding the role of FAYS and the tier system classification when a notification is made to FAYS. Improving the knowledge and skills and expanding the role of school counsellors in child protection will assist in improving role clarification for teachers and other education personnel as well as improving building cooperative relationships with FAYS in supporting children in need and children for whom there are protective concerns.

It is acknowledged that there are financial limitations to the provision of school counsellor positions to all schools. Other options for the provision of this service and support to schools should be explored by DECS to ensure students and teachers in some schools do not miss out.
<table>
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<th>RECOMMENDATION 140</th>
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<td>That non-Government schools investigate the feasibility of establishing school counsellor positions to provide child protection advice and support to children and their families, school personnel and whole school community.</td>
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**Reason**

Non-Government schools have an obligation to protect the welfare and safety of children in their care and respond to their protective needs. Presumptions cannot be made about the child protection needs of their school populations. Establishing school counsellor positions provides students with improved opportunity to disclose abuse, appropriate support within the school community and their family and improved liaison with FAYS to protect these children. The establishment of these positions also serves the wider public interest of children and their rights to protective services in non-Government schools.

<table>
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<th>RECOMMENDATION 141</th>
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<td>That the DECS consider the expansion of the numbers of social workers employed within the department on a regional basis rather than on an individual school basis to provide a social work service and liaison and support role in case management with FAYS, CAMHS, other relevant services and DECS/schools focused on the needs of children and young people at high risk or with protective concerns.</td>
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**Reason**

Many, though not all, children and young people who are subject to child protection concerns require significant support within their school to promote their integration in the school community and their opportunities for learning and educational attainment. This may both be provided in a cost efficient way through regional based social workers.
RECOMMENDATION 142

That DECS, schools and children's services work with FAYS and other service providers, identify and develop whole school community approaches to child abuse and neglect where there is evidence of high levels of child protection concerns. Such approaches may include, developing the school as a child and parenting centre offering a range of programs and services from the school site in partnership with parents and other local services such as:

- playgroups
- parenting education
- establishing after school care program and
- life skills programs.

Reason

Collaborative community development around the use of schools and school facilities is an ideal way of developing pastoral care in school in South Australia.

RECOMMENDATION 143

That DECS in collaboration with SAPOL, FAYS, DPP and the non-government school sector, establish a policy concerning student offenders and student victims and consider any legislative modification to the Education Act 1972 (SA) which may be required.

Further, that a model protocol be developed to promote appropriate and expeditious management which balances the needs of investigation and prosecution with the rights of the victim and their family not to suffer systems abuse.

Reason

This issue is a highly sensitive policy issue that requires resolution involving services with a clear understanding of children's rights, and the rights of victims and offenders as well as the need to provide a safe and secure environment for all students. Amendments to the Education Act 1972 may also be required to effectively support the policy position that is to be adopted.
RECOMMENDATION 144

That DECS in conjunction with FAYS, SAPOL, Crown Law Department and the proposed Commissioner for Children and Young Persons review:

▫ the legislation including Part 3 Division 5 of the Education Act 1972 (SA) and Division 8 of the Public Sector Management Act 1995 (SA)
▫ the Administrative Instructions and Guidelines (Schooling Sector) and any other relevant guidelines
▫ whether there are appropriate, articulated and enforceable provisions for investigations and/or disciplinary procedures which cover allegations of child abuse made against teaching and non-teaching staff including volunteers and contractors in the Government education sector.

That in addition, the provisions ensure that there is an independent process involved at the point of decision as to whether the matter requires any investigation, either local investigation or reporting to SAPOL, or mandatory reporting to FAYS.

That guidelines be developed which clearly identify the pathway to be taken at each level depending on whether the allegations amount to a criminal offence and whether it is a matter which should be subject of a mandatory notification to FAYS, or both.

Reason

It is important that the process of investigation of child abuse allegations in relation to teachers and non-teaching staff, volunteers and contractors working with children and young people within the Government education sector is clear, independent and accountable. See also the discussion on screening and monitoring in Chapter 17.

RECOMMENDATION 145

That representatives of non-Government education sectors including Independent Schools, Catholic Schools in conjunction with representatives of the Government education sector, FAYS, SAPOL and the proposed Commissioner for Children and Young Persons, develop guidelines which set out minimum standards to be applied across the schooling sector in relation to allegations of child sexual abuse by employees and volunteers.

Such guidelines to be in keeping with the processes undertaken in the Government schooling sectors and should include an independent process both within employer organisations as well as an external independent process. The guidelines should clearly articulate the interaction with FAYS and SAPOL and the processes to be followed in relation to notification and reporting.

Reason

It is important for the non-Government education sector to have similar processes to that of the Government education sector. These guidelines should provide essential minimum processes to be applied across the non-Government education sector. They should permit variability as to the manner of their delivery to take account of individual organisational needs. It would be ideal if agreement could be reached as to external appeal/review bodies to be used by all.
**RECOMMENDATION 146**

That all children under the Guardianship of the Minister have a negotiated curriculum plan throughout their schooling involving all key service providers as well as other key people in the child’s life such as foster parents using the same mechanism as for children with special needs.

That education plans be developed for all children who have been placed in alternative care for six months or more and that these plans be regularly monitored and updated by FAYS in consultation with school personnel, parents or guardians including foster carers and the child or young person. Such plans to include both formal and informal educational opportunities based on the child’s or young person’s interests and needs.

That DECS and the DHS/FAYS collaborate to develop an agreed performance reporting framework on the educational outcomes for children who have been in out-of-home care for a significant time.

That DECS review any policies dealing with suspension and exclusion from schools to take special account of children who have been or are in alternative care.

That any policies in relation to suspension and exclusion be used as an absolute last resort and only after other support measures such as counselling, additional classroom support for the child or young person, and family and child conferencing involving other key service providers have been put in place.

That school exclusions or suspensions involving children in alternative care be reported to FAYS and the alternative care provider.

**Reason**

This bracket of recommendations specifically seeks to improve the circumstances for children under the Guardianship of the Minister and/or in alternative care.

The research indicates that children in alternate care are significantly at risk of early school leaving and lower educational outcomes. The disadvantage experienced by children in alternate care arises from their social situation rather than from a physical or intellectual or other condition. It may be the case that significant resources may not be required for some children or young people whereas others will require more. The important issue underlying these recommendations is to provide some level of additional support to promote equitable educational outcomes for children under the care of the Minister and/or in alternate care given what is known about their educational outcomes as a population sub-group.

**RECOMMENDATION 147**

That mandatory notification training continue to be provided and regular refresher courses to be undertaken by staff which are recorded on their staff records.

**Reason**

This recommendation provides a mechanism for quality control of the training program.
CHAPTER 20 – COMMUNITY EDUCATION AND CHILD PROTECTION

**RECOMMENDATION 148**

That the proposed South Australian Child Protection Board develop a community education framework to provide appropriate and strategic community education programs which impact on child protection.

**Reason**

A strategic framework is needed so that a coordinated approach is achieved in the development of appropriate community education initiatives. Currently there is no systematic process in place and no one agency charged with responsibility for implementing community education objectives. A state framework in which objectives and targets are strategically developed and implemented across government and non-government will achieve the best use of resources.

CHAPTER 21 – EDUCATION AND TRAINING IN CHILD PROTECTION

**RECOMMENDATION 149**

That an across-agency, comprehensive review be undertaken by the proposed South Australian Child Protection Board on the education and training programs that are available in South Australia and elsewhere in Australia and the extent to which curriculum on child abuse and neglect is delivered in relevant professional undergraduate training in liaison with the higher education sector.

**Reason**

The extent to which child protection is incorporated in undergraduate professional training programs requires full investigation in relation to the content of the curriculum and extent to which it is taught by higher education institutions. Further, such investigation should include an assessment of the scope and adequacy of post-basic training programs on child protection to provide an accurate picture of quality and adequacy of training available for all practitioners working in child protection.

**RECOMMENDATION 150**

The proposed South Australian Child Protection Board investigate the potential for establishing a multi-disciplinary postgraduate education and training “centre of excellence” in child protection.

**Reason**

An improved focus for collaboration for research, training and education is required in South Australia. There is a need to examine how South Australia could establish better linkages on a multi-disciplinary basis that will enable it to improve and sustain quality post-basic training and education. This approach will also support inter-professional linkages and provide greater focus on the value of working together.
### RECOMMENDATION 151

That DHS examine the extension of the interagency training program to incorporate joint inter-agency training to support extension of Project Magellan in South Australia.

**Reason**

The implementation of Project Magellan will require significant training and support of staff to establish effective collaborative mechanisms. This training is best located in an education and training institution where there is ongoing commitment and capacity to review and update education and training requirements.

### RECOMMENDATION 152

That Government and non-Government agencies develop a clear policy on child protection education and training and ensure the provision of targeted child protection training for all staff and volunteers.

**Reason**

The implementation of such a recommendation will improve the quality of child protection responses.

### RECOMMENDATION 153

That DHS support the development of an education and training strategy for small specialised units which incorporates:

- appropriate funding for CAMHS, CPS and SOTAP reflecting the highly specialised education and training requirements of these services (such as participating in conferences on their service and practice issues)
- supporting staff exchanges in other similar services overseas or interstate
- undertaking advanced training.

**Reason**

The issue of investing in workforce development is critical for professionals working in highly specialised services. The State’s capacity to provide choices for clients is limited and so it is important to ensure that there is effective workforce development strategies in place that promote quality, evidence-based practices.
RECOMMENDATION 154

That the Child Protection Board and the Department of Justice set up a working party to discuss the best means of providing training programs for Judges, Magistrates, Court Staff, Police and Lawyers and to include the following areas:

- the special interests of child victims and witnesses in legal processes
- working with child victims and witnesses
- child development and its implications for concept and language development and a child’s physical capabilities and physical needs within the context of a courtroom and
- interviewing and representing children in legal processes.

Reason

The training of the judiciary, court staff and lawyers received significant comment in the report *Seen but not Heard* produced by the Australian Law Reform Commission. There has been some progress made but not to the extent recommended by the report. This situation requires urgent review and a clear process led by a partnership across key professional bodies and lead agencies.
**RECOMMENDATION 155**

That the Department of Human Services and FAYS initiate discussions to develop with the universities and the AASW

- an accreditation process for social workers in child protection
- specific competency based child protection training for FAYS staff
- processes for monitoring issues with regard to the training needs for new social workers in the workforce
- examination for options of a more systematic approach to the provision of continuing professional education.

That DHS pursue the potential for developing an across interagency training agenda for FAYS, C&YH, CAMHS, hospital and CPS staff on topics such as child protection, mandatory notification, child development, medical ethics and legal issues.

That DHS/FAYS develop an individually based training analysis to identify and prioritise training needs for FAYS staff which could be linked to the performance enhancement processes.

That DHS/FAYS develop specific training for non-Aboriginal staff to increase knowledge, skills and competency in working with Aboriginal families. Specialised training programs also need to be considered to meet the specific training needs of Aboriginal staff.

That DHS/FAYS develop specific volunteer training for volunteers involved in complex cases.

That FAYS staff be given training to develop a higher level of skill, in relation to:
- engaging reluctant and resistant families
- brief and longer term interventions with families
- supervising social work students on field placement
- managing and chairing complex interagency meetings.

That such training include coverage of essential topics such as working with culturally and linguistically diverse families, mental health, drug and alcohol and disability issues.

That appropriate training also be available for social work students on placements and volunteers.

**Reason**

Collaborative partnerships between the universities, AASW and DHS/FAYS are required to expand options in training for FAYS staff and for new workers in child protection and students.

Training both on recruitment and ongoing is essential for the maintenance of a skilled workforce. Unfortunately, when budgets are stretched, this is often the area which is either dropped or limited. Investment in workforce development is required to build an effective, capable and sustainable workforce in child protection practice.

Participation of FAYS staff in training is currently ad hoc with limited focus on meeting individual need or the needs of district centres and other service locations. Processes for identifying training needs for individuals should be encouraged within locations so that appropriate registration and delivery may occur.
**RECOMMENDATION 156**

That FAYS undertake a review of the roles and responsibilities of its volunteer staff and devise a training program that reflects these responsibilities.

**Reason**

Volunteers within FAYS have been increasingly utilised to meet the needs of children and families, especially in the area of court-ordered access and transport. Minimal training is available for volunteers to assist them in these roles and responsibilities, and to understand the associated occupational health, safety and welfare issues. Volunteers are used increasingly in the role of ‘social work aid’ which could be expanded with the implementation of this Review and therefore training for volunteers should reflect the complexity of their changing role.

**RECOMMENDATION 157**

That FAYS examine options for the delivery of training to country areas, taking into consideration the specific needs of individual locations.

**Reason**

Staff in rural and remote areas are disadvantaged by the focus on delivery of training only be made available in the metropolitan area. Further, the training needs to take account particular issues faced when working in rural and remote communities.

**RECOMMENDATION 158**

See Chapter 10 for specific education and training requirements for mandatory reporting.
### RECOMMENDATION 159

*That the State Government urge the Federal Government to release all children and their families currently in detention centres into the community as soon as possible, on a cost-sharing basis.*

**Reason**

The effects of detention in detention centres is so devastating to the wellbeing and development of children and will have such lasting consequences during their lifetimes, which may in fact be spent in Australia, the State Government has a responsibility to take a strong position on this issue.

### RECOMMENDATION 160

*That the State Government obtain a detailed legal opinion on the extent of the applicability of Children’s Protection Act 1993 to children and their families in detention, whether they be in detention centres or in detention outside such centres, having regard to the provisions of the Migration Act 1958 (Cth).*

**Reason**

The interaction and operation of the provisions of these Acts involves complex legal issues and need, to be clarified for the purposes of understanding how best the State is able to protect children, the subject of detention under the Migration Act 1958 (Cth).
RECOMMENDATION 161

In the event that the provisions of Child Protection Act 1993 (SA) do not apply as a matter of law in all respects to children in immigration detention and that the State Government has no jurisdiction to require complementary release of the parents or family of the children from detention centres, the State Government endeavour to either negotiate an agreement or legislative amendment with the Federal Government which:

- appropriately recognises the full jurisdiction of the State Government in relation to protection of children in immigration detention
- specifically accedes the jurisdiction to the State Government to protect unaccompanied minors in detention
- permits access on demand to detention centres
- permits an independent body to monitor the conditions in the detention centres and publicly report
- is predicated on a holistic, rigorous and frank evaluation of the need for and types of services which should be provided
- specifically gives power to intervene and remove children at risk and their families from detention centres if it is in the best interests of the child, subject to specific riders such as serious security and safety issues for the community.

Reason

Children in immigration detention are a highly vulnerable group of children and should not be denied their rights to protection merely because their parents or family have brought them to Australia to seek asylum. The State Government has a specific legislative mandate and administrative structures which are capable of providing protection to these children and their families whilst their applications for asylum are being processed. The State Government and not the Federal Government is the appropriate body to ensure the proper protection of children. The Federal Government should also share the costs of providing such assistance to the children and their families.

RECOMMENDATION 162

If the DHS makes recommendations under the MOU it should make them as if the children and their families were not in detention. In this way the Federal Government will be informed of what is regarded as being in the best interests of the child and will thereby remain at all times responsible if such recommendations are not activated. Any alternative lesser option recommended by the State Government as a secondary option should clearly be identified as such.

Reason

This will assist in the process of ensuring that the best possible recommendations in the best interests of the child are made by the State and also minimise the extent to which the Federal Government will be able to inappropriately shift blame to the State for its own deficiencies in protection of children in detention.
## CHAPTER 23 - LEGISLATION AFFECTING CHILD PROTECTION

### RECOMMENDATION 163

<table>
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<tr>
<td>That the short title of the <em>Children’s Protection Act 1993</em> in section 1 be amended to reflect that the Act is for the protection of “children including infants, young persons and adolescents.”</td>
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**Reason**

Submissions expressed concerns that “children” were sometimes not considered as including all ages from birth to the age of 18 years and that this should be made manifest in the Act.

### RECOMMENDATION 164

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<tr>
<td>That the two objects of the Section 3 of the <em>Children’s Protection Act 1993</em> be retained and a further object be considered for inclusion, namely, that when a child or young person’s need for physical and psychological safety and stability cannot be met within existing family arrangements, that the child or young person be provided with adequate and stable alternative care arrangements.</td>
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**Reason**

The competing interests of the first two objectives of the Act are noted however, both should remain, as it is through supporting and assisting a child’s family that in most cases a child’s best interests are met. For those situations when a child’s physical and psychological safety and protection cannot be guaranteed within their birth family, adequate and stable living arrangements must be made available.
RECOMMENDATION 165

That the principles outlined in Section 4 of the Children’s Protection Act 1993 be retained in their current form and further that five additional principles be considered for inclusion:

- That children and young people be supported in providing their views in proceedings and/or arrangements provided for under the Act.
- That permanency planning principles be used to offer children and young people stability and long-term security when removed from the care of parents.
- That in relation to Aboriginal children and young people, the Act be amended to ensure that within the principles of the Act it is stated that the best interests of an Aboriginal child are served by preserving and enhancing the child’s sense of Aboriginal social and cultural identity; and by making decisions that are consistent with Aboriginal traditions and cultural/religious values.
- That the Aboriginal child placement principle be specifically mentioned in the Act and that recommendations 51b through to 51e of the Bringing Them Home report be incorporated into the Act.
- That all powers conferred under the Act be exercised in a manner that is open, fair and respects the rights of people affected by their exercise.

Reason

The existing principles are sound and reflect the complex balance of competing interests within child protection work. They could be further strengthened to ensure a better balance of competing interests.

The current Act states if a child is able to express his/her own views these views must be sought. It does not provide any form of support or guidance about how these views should be sought. By stating explicitly that children and young people must be ‘supported’ in providing their views it effectively strengthens the principle of the right to be heard and the right to participate in decision making that directly affects their lives.

The current principles are silent in regard to securing a child’s long-term alternative care, for those children who do not have a parent able or willing to provide them with appropriate care and protection. The need for permanency care arrangements for children who cannot remain in the care of their birth family is critical for functional development, and a principle is required that will strengthen this fundamental right to stable, secure long-term care.

The need to ensure open, fair and accountable processes that respect the rights of all people affected by the administration of the Act is an essential principle. It strengthens the requirement to seek and consider the views of all affected, and to do so in a manner that values the integrity and worth of all those involved.
**RECOMMENDATION 166**

It is recommended that sub-sections 6(1) and 6(2) of the *Children’s Protection Act 1993* be amended and replaced by 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)* as a suitable guiding precedent.

**Reason**

Placing the focus on ‘significant harm’ and/or ‘risk of significant harm’ shifts the focus away from whether an ‘incident’ has said to have occurred to one that focuses on whether there has been any detrimental effect by the behaviour of persons towards a child.

It should lead to a broader assessment approach being undertaken that incorporates reviewing the protective capacity of the parents and the ability of the parents to meet the child’s needs.

It places the child at the centre of the process in that the focus is one in which the critical question is whether the child’s development is in jeopardy, not necessarily on how or why the harm was caused. Whilst the hows and the whys are important, it is a subtle shift in emphasis that will require considerable discussion and debate.

**RECOMMENDATION 167**

The current functions of the Minister contained in section 8 of the *Children’s Protection Act 1993* are generally viewed as comprehensive and appropriate save that, sub-section 8 (e) of the *Children’s Protection Act 1993* be amended to take into account the cultural diversity within the Aboriginal communities.

**Reason**

The functions are regarded as sufficient and that the only amendment relates to recognition of Indigenous cultural diversity.
RECOMMENDATION 168

That the qualification of “sufficient understanding of the consequences of a custody agreement” be added to sub section 9 (3) of the Children’s Protection Act 1993 to provide consistency with sub section 9 (4).

That the procedures in the Child Protection/Alternative Care Manual of Practice relating to Voluntary Custody Agreements, explicitly articulate that before obtaining the necessary consents of the guardians and a child over 16 years, they should be fully informed of all aspects of such an Agreement including:

- their rights either as guardians or as children
- the consequences of such an agreement
- the alternatives to entering such an agreement.

Reason

This recommendation will assist in clarifying some areas related to entering into a Voluntary Custody Agreement.

RECOMMENDATION 169

That consideration be given to amending the Children’s Protection Act 1993 to allow for ‘shared care agreements’ permitting custody of a child to be given to the Minister, or to other persons the Minister deems appropriate.

Such agreements would only be available in particular circumstances such as where the guardian/s by reason of:

- some disability or other impediment (of their own) or
- the disability or special needs of the child

are prevented from retaining full custody and care of the child.

Consideration should be given to a process in the Youth Court whereby documents including consent agreements, case plans and review mechanisms be registered, to simplify the Court procedures.

Consideration should also be given to applying provisions similar to those outlined in section 9 (1) (2) (3) (4) of the current Act, including any amendments proposed in Recommendation 168.

Reason

There is presently limited flexibility within the Children’s Protection Act 1993 to enable shared care long-term arrangements in particular for children and young people who have significant care needs and/or disabilities and who have family who are able and willing to remain their guardians. A ‘shared care agreement’ provides for a parent/s who wish to retain guardianship of their child to enter into a consensual agreement with the Minister, without having to relinquish guardianship. These amendments will enable greater options for the care of children and young people and reduce the necessity of parents relinquishing custody and guardianship of their child.
RECOMMENDATION 170

That Section 10 of the *Children's Protection Act 1993* be amended to reflect the suggested amendments to sub-sections 6 (1) and 6 (2) of the Act as set out in Recommendation 166. In particular, if the contents of sub-section 6 (2) (c) (d) and (e) (presently excluded from applying to mandatory notification), are still regarded as necessary to be articulated in the legislation, these circumstances should be relevant to mandatory notification. Further, subsection 6 (2) (e) of the Act should not be limited to children under 15 years, but to all children.

That the persons specified as mandated notifiers under Section 11 of the *Children's Protection Act 1993* be extended to include additional persons identified in Chapter 10, recommendation 54.

**Reason**

The amendment will provide continuity with the previous recommendation and extend the circumstances as to when, those mandated by law, are required to notify. It also removes the age discrimination which applies to children who are of no fixed address.

RECOMMENDATION 171

The current confidentiality provisions in section 13 of the *Children’s Protection Act 1993* are generally viewed as comprehensive and appropriate. No legislative changes are proposed.

**Reason**

While the issue of confidentiality of the identity of the notifier has been raised a serious issue, changes required are best dealt with, in procedures and guidelines, rather than in legislation. This is covered in detail in Chapter 10 and Chapter 7.

RECOMMENDATION 172

That consideration be given to repealing section 14 (b) of the *Children’s Protection Act 1993* in relation to the Chief Executive Officer not being obliged to take action in certain circumstances.

**Reason**

As this sub-section may be inappropriately used it is suggested that it be deleted and that sufficient protection is given by reason of the discretionary wording under section 19 of the *Children’s Protection Act 1993* regarding whether an investigation is warranted.
RECOMMENDATION 173

That Division 2 be amended so that:

- the title of Division 2 referring to “Removal of Children in Danger” be substituted by the phrase “Removal of Children from Situations of Serious Risk”
- the heading above section 16 of the Children’s Protection Act 1993 be amended to read “Power to remove children from situations of serious risk”
- the phrase “the child’s safety would be in serious danger” in sub-section 16 (1) (a) be substituted by the phrase “the child’s physical and/or psychological safety would be at serious risk”.

Reason

The initial intent of this section was to ensure the safety and protection of children and young people who may be in unsafe circumstances due to their behaviour, lifestyle or persons with whom they are associating, and who are not currently in the company of their parents/guardians.

It has not had the desired effect in its implementation, as there would appear to be significant disagreement as to what constitutes a child’s safety and ‘serious danger’. A broader definition is proposed which would provide those responsible for the administration of the Act, with greater capacity to intervene when a child or young person’s safety was at serious risk.

RECOMMENDATION 174

That the Act be amended to include permitting an application and order to be made for safe-keeping. (See also Chapter 13)

Reason

There are circumstances in which a child or young persons’ physical and/or psychological safety may be at serious risk by reason of circumstances, such as use of drugs, sexual exploitation or prostitution, and they may need to go to a place of safe-keeping to allow them to undergo a treatment program or obtain respite from their situation.
RECOMMENDATION 175

That section 17 be amended so that the wording sub-section 17 (1) (a) and (b) be substituted by the following: “that a child or young person who is in a situation such that if the child remains with or is returned to the company of his or her guardian, the child’s physical, psychological and emotional safety would be at serious risk”.

Reason

Many dilemmas in decision-making have arisen as a consequence of a child or young person not being in a situation which strictly fulfil the criteria for action of the Act, because at the time of notification, they are currently safe and the risk occurs if they return to the care of the guardian. This amendment is designed to overcome that problem, together with a consistency of the expansion of risks in both sections 16 and 17 as well as recognition that the risk is not limited to physical danger.

RECOMMENDATION 176

No change is recommended to the time in which an order for custody is required before removal of a child pursuant to Section 18 of the Children's Protection Act 1993. But the legislation be amended to ensure that when an Aboriginal child is removed under this section, consultation with designated Indigenous advisers or a gazetted agency takes place at the time of removal or as soon as possible thereafter or within a 24-hour limit.

Reason

Removal of a child from guardian/or situation of risk is a very serious action. If a child is not to be returned to the guardian the basis for that decision, and the authority for such an action, must be placed before the Youth Court as soon as possible.

Children must be protected and children who are in serious danger require immediate steps to ensure their protection, regardless of race or background. Aboriginal children with potential extended family and kin arrangements may well be able to be placed with family, until proper assessment of the situation can take place. Every effort must be made by SAPOL/FAYS to ensure proper consultation and placement within the child's Aboriginal community if at all possible. These steps, however, should not compromise the child's right to immediate protection.
### RECOMMENDATION 177

That sub-section 19(2) be broadened as to the information which may be requested by the chief executive so that it is not limited to situations in which the child has been “examined, assessed, carried out tests or treated the child”, but include situations in which a person or agency has had professional contact with a child, and to require a report on such contact.

That consideration be given to providing an immunity to persons or agencies who share information in relation to the protection of children in similar terms to that expressed in section 19(13).

**Reason**

This recommendation is consistent with the overall theme expressed in this Review of sharing of relevant information between organisations so that the decision-maker is in the best situation to assess the risk to the child and take appropriate steps to protect the child.

### RECOMMENDATION 178

That there be an amendment to section 21 of the *Children's Protection Act 1993* as suggested in Chapter 15 Recommendation 118 in relation to investigation and assessment orders.

### RECOMMENDATION 179

That there be an amendment to Division 1 of the *Children's Protection Act 1993* regarding Family Care Meetings as suggested Chapter 15, Recommendation 117.

### RECOMMENDATION 180

That the legislation be amended to permit the Court in the exercise of its discretion to increase the period of time for the initial order under section 38 to a period of up to 18 months in particular circumstances. Further, in exceptional circumstances, the Court have the power to allow a subsequent order to be made for a further period of 12 months.

**Reason**

This flexibility would assist in attaining settled and permanent living arrangements for children at the earliest possible time, whilst permitting adequate opportunity for reunification of children and young people to their family of origin, if it is in their best interests to do so.
### RECOMMENDATION 181

Further, that there be an amendment to section 21 and 38 of the *Children’s Protection Act 1993* to enable the Court to make an order that a parent or caregiver undergoing an assessment with an appropriate professional as set out in Chapter 15, Recommendation 126.

### RECOMMENDATION 182

That the terms custody and guardianship be clarified and consideration be given to using the definition as described in the *Children’s Protection Act 1999 (Qld)* but replacing the words ‘chief executive’ with the word ‘Minister’.

**Reason**

Delineating ‘custody’ and ‘guardianship’ in this manner provides greater clarity to the roles, responsibilities and functions carried out, and provided by the Minister, for children and young people under the custody or guardianship of the Minister. This is particularly relevant in relation to children with significant disabilities, whose parents want to retain long-term guardianship but cannot provide day to day care of the care.

### RECOMMENDATION 183

That the legislation be amended to take into account broader concepts of family and kinship within Aboriginal and Torres Strait Islander communities. Definitions of ‘family’ and ‘guardian’ for Aboriginal children need to include the wider circle of significant relationships.

**Reason**

Such amendments give appropriate statutory recognition of Indigenous cultural circumstances.

### RECOMMENDATION 184

That provisions along similar lines to those contained in sections 165-170 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* be incorporated into the *Children’s Protection Act 1993 (SA)* in relation to leaving care.

**Reason**

Additional assistance is required until the age of 25 for children and young persons under the custody or guardianship of the Minister, who leave care. Such assistance should be incorporated into the legislation as a statutory function of the Minister.
RECOMMENDATION 185

That the following interim arrangements be considered. The existing Children’s Protection Advisory Panel continue in its current role until such time as legislation is enacted to establish the Child Protection Board, at which time the panel will be formally disbanded and this section of the Act repealed.

Reason

A specific panel to oversee the administration and operation of the Act is not deemed necessary given the structural reforms being proposed. In particular the establishment of the South Australian Child Protection Board and the Commissioner for Children and Young Persons will take over many of the roles and functions currently being undertaken by the Advisory Panel.

RECOMMENDATION 186

No change to Section 58 of Children’s Protection Act 1993 pertaining to confidentiality is deemed necessary. (see Chapter 7)

RECOMMENDATION 187

A detailed review of the Family and Community Services Act 1972 is required, so that it is in keeping with current community standards, and expectations and meets required service and contractual arrangements.

Further, until the statutory bodies for advancing and protecting the interests of children as proposed by this Review are established, principally the Commissioner for Children and Young Persons and the Guardian for Children and Young Persons, the Children’s Interest Bureau continue in its current form.

Reason

This Act is significantly outdated and requires substantial amendment. While some of the broad objects and functions are compatible with the current social justice approach, the language and content is anachronistic and in some cases covered by other jurisdictions.

Significant structural reform is being proposed by this Review. The functions of the Children’s Interest Bureau as currently set out in the Act, will no longer be necessary once the statutory bodies recommended by this Review are established.
RECOMMENDATION 188

That the South Australian Health Commission Act 1976 be reviewed to ensure that the principles of integrated care, collaboration and coordination across different Government and non-Government authorities and service providers are incorporated to facilitate improved outcomes of care and treatment for children who have protective concerns.

Reason

The Act implies that the provision of health services for the purpose of providing health care is the primary mechanism for advancing the health of the community including sections of the community. The Act, therefore, does not facilitate integration, collaboration or coordination with services other than health services and may serve to limit the application of these principles for improving care outcomes for children and young people with protective needs and for addressing child abuse and neglect as a public health concern.

RECOMMENDATION 189

That consideration be given to incorporating recognition of responsibility to improve the health and welfare of children and young people who are subject to child abuse and neglect concerns within the South Australian Health Commission Act 1976.

Reason

Though there is some recognition that child abuse and neglect is a public health concern, explicit reference may be required to ensure that health services meet their obligations for child protection, including ensuring staff receive mandatory notification training and the development of appropriate service policies and protocols and generally supporting improved identification of and responses to children and young people who may be the subject of a child protection concern.

RECOMMENDATION 190

That Section 64D be amended to ensure that appropriate confidential information may be provided to the Child Death and Serious Injury Review Committee.

Reason

The effective operation through the provision of relevant and often confidential information of the Child Death and Serious Injury Review Committee will depend on amendment of S. 64D of the South Australian Health Commission Act. Whilst legislation is proposed for the establishment of the Child Death and Serious Injury Review Committee, it will be important to ensure any other legislative barriers to the free exchange of information are removed to ensure the appropriate exchange of required information so that this Committee can effectively carry out its proposed statutory role and responsibilities.
CHAPTER 24 – DOMESTIC VIOLENCE AND CHILD PROTECTION

RECOMMENDATION 191

That further development of the Interagency Child Protection Guidelines be undertaken to provide an expanded focus on interagency responses where women and children are experiencing domestic violence.

Reason

Further development of the guidelines will provide improved practice guidance across agencies.

RECOMMENDATION 192

That current guidelines across FAYS, SAPOL, health and domestic violence services for responding to child protection when women and children are experiencing domestic violence be reviewed to ensure they provide:

- clear and appropriate policy and practice guidance on identifying and responding to child protection concerns
- in particular, articulate that the risk of abuse to children through exposure to domestic violence warrants investigation, assessment of risk and coordinated services
- the development of inter-agency agreement on appropriate responses and agreement on responsibility for specific components of the response.

Reason

Child protection is well recognised as part of an appropriate response to domestic violence. However, there has been a lack of clarity about the requirement for a specific child protection response given the dilemmas that this currently involves for service providers because of their current service mandates.

RECOMMENDATION 193

That a specialised joint training program be developed that provides SAPOL, health, FAYS and other welfare workers with training on responding to domestic violence where child protection concerns may also exist. This joint training should incorporate identifying child protection concerns in domestic violence situations and ensuring appropriate interagency and specific agency responses.

Reason

Integrating domestic violence and child protection responses will require improved understanding of different issues underpinning domestic violence and child protection policy and practice and support the development of joint responses that ensure the integrity of each area whilst addressing issues using agreed approaches.
RECOMMENDATION 194

That the FAYS’ Manuals of Practice on Child Protection and Domestic Violence be redeveloped to ensure that child protection services more adequately reflect that witnessing and living with domestic violence constitutes a risk of harm to children and provide appropriate practice guidance. The update of the manuals should be undertaken with input from professionals with expertise in domestic violence.

Reason

FAYS has developed a Manual of Practice for responding to domestic violence. This manual requires updating to provide better guidance on how to respond to domestic violence and child protection concerns as interrelated issues and ensure appropriate practices.

RECOMMENDATION 195

FAYS Child Protection Workers undergo training in supporting women experiencing domestic violence that emphasises the protection of children and also support the rights, empowerment and wellbeing of non-abusive parents who have been subjected to domestic violence.

Reason

Specific training of FAYS’ workers will help to provide an effective and consistent approach to women who experience domestic violence which is witnessed by children.

RECOMMENDATION 196

That a review of demand for emergency accommodation including the availability of SAAP accommodation services for women and children escaping domestic violence be undertaken and appropriate strategies devised to improve access to a range of emergency accommodation options for women and children.

Reason

Emergency accommodation provides women and children a first point of contact with service providers. Improving access to support at this stage is critical to the provision of immediate relief and protection for women and children. It is also important to give respite and allow a temporary buffer to assist women’s decision-making about continuing in violent relationships.
CHAPTER 25 – CHILDREN AND YOUNG PEOPLE FROM CULTURALLY LINGUISTICALLY DIVERSE BACKGROUNDS

RECOMMENDATION 197

That all professionals working in child protection (including assessment, investigation or prosecution) or youth at risk service areas undertake specialised training on providing child protection and youth at risk services for children and young people and their families from culturally and linguistic backgrounds. Such training should incorporate an emphasis on appropriate practice in a cross-cultural context dealing and include appropriate use of bicultural workers.

Reason

Cultural awareness training programs provide an important basis for understanding the different values, norms and attitudes operating in different cultural contexts and ensuring that professionals are able to understand and incorporate these considerations into their practice. However, this type of training is broad and does not equip professionals with the knowledge and skill to effectively respond to child protection issues. A careful balance is required in child protection work with families and children and young people from culturally and linguistically diverse backgrounds to ensure both the child’s right to safety and the rights of parents to information about what is acceptable and unacceptable parenting practices. The safety of a child should not be compromised because of concerns or acceptance that families from different cultural backgrounds have different values.

RECOMMENDATION 198

That FAYS establish a senior social work position to:

- provide consultancy advice and support to FAYS staff on culturally appropriate service delivery for child protection on specific cases
- work with multicultural community services and agencies on child protection issues
- promote appropriate collaborative practice
- ensure mandated notifier and other professional training is appropriate for and accessed by professionals and workers working with culturally and linguistically diverse communities.

Reason

Generally, access for FAYS staff to training on cultural awareness and on some particular elements of culturally appropriate practice such as responding to cases where there is a protective concern for a child regarding female genital mutilation is generally excellent. The unit at Woodville FAYS which provides support to unaccompanied minors also provides a good specialist service. It has been further recommended that specialised advanced training program be developed for professionals working in child protection to ensure appropriate responses for these families. However, FAYS and other professionals still require access to enable them to facilitate culturally appropriate child protection interventions. Most ethno-specific services are located in the metropolitan area of Adelaide with few services located in other areas of the State. Most professionals will not have a direct relationship with service providers in ethno-specific services or may not be able to negotiate the support they need.
RECOMMENDATION 199

That a program of information and education be developed for specific ethnic community groups to include all new migrants with a separate focus on refugees.

This program to include provision of information concerning available services, laws on child protection, children’s and young people’s rights, child and youth health and well being and behavioural issues.

That the program be delivered in a manner which utilises:
- community discussion forums and ethnic media
- ethno-specific workers
- qualified interpreters when and where required.

That such a program be funded by the Department of Human Services and involve all key multicultural service providers (with an appropriate level of funding to support their participation in the program) and key mainstream services such as FAYS, Child and Youth Health, Child and Mental Health Services and adult mental health services.

Reason

There is currently no such coordinated program of information and education for families, children and young people from culturally and linguistically diverse backgrounds.

RECOMMENDATION 200

That FAYS ensure mandated notifier training is available and provided to all workers in ethno-specific services and to bicultural / bilingual workers employed by health and welfare services.

Such training should focus on making notifications in a cross-cultural context and the dilemmas that these workers face in making child protection notifications.

Reason

Special training is required for workers in ethno-specific services on mandated notification because of the particular issues which face such workers.
CHAPTER 26 Section A – CHILDREN AS CARERS

RECOMMENDATION 201

That a protocol for practice be developed for interagency coordination and collaboration between FAYS and other services such as the Intellectual Disability Services Council (IDSC), the Drug and Alcohol Services Council (DASC), Community Health, Hospitals and extension of the protocol with CAMHS to adult Mental Health Services to promote appropriate coordinated and collaborative practice between agencies. Such a protocol should provide a focus on addressing child, parent and family issues where a child or young person has taken on caring responsibilities.

Reason

Whilst it has been proposed that inter-agency case management process be established for children where there are protective concerns with FAYS as the lead agency, the development of protocols and further guidances will support linkages with adult systems that are providing services to parents of children with potential protective concerns. To date there is one protocol involving adult services, that is, the Protocol for Child Bearing Women who have Severe Mental Illness which ensures interagency collaboration where women who have either had severe mental illness in the past or where the birth of the child has resulted in severe postnatal depression resulting in implications for caring for and forming an attachment to their newborn baby. A similar interagency protocol with other adult services will establish clear parameters for providing a focus on the needs of children, parents and families, for ensuring access to preventative and early intervention services as well as improving continuity of responses thereby reducing family stress as a result of crisis driven responses.
RECOMMENDATION 202

That DHS examine options for identifying a package of services under family support program for children, parents and families where a parent has a mental or physical illness or physical or intellectual disability that incorporates the following components:

- practical home help and role modelling
- personal support to both children and parents
- education of children about the parent’s illness or
- education of children about their own needs
- additional education and recreational support for children
- facilitating ongoing peer support for children
- facilitating respite and support networks for children that may include relatives and school friends or other options such as camps, sporting clinics, etc
- parent education that enhances parenting confidence and skills
- parent support groups.

That such a package of services be developed across sectors of the Department of Human Services, that is, health services, disability services, FAYS and mental health services so that children and parents may access the same basic in-home support services such as domestic housework services, meal services, etc with the different sectors responsible for developing and implementing elements of the program eg education of child regarding the parent’s mental illness and provision of access to a peer support program would be the responsibility of mental health services.

Reason

Children who have parents with intellectual or physical disability, physical or mental illness or who misuse alcohol or other substances are at greater risk of not achieving educational and social outcomes equivalent to those of their peers. Children who are carers may also have interrupted school attendance because of their caring responsibilities. With a significant proportion of the population being vulnerable to experiencing a mental illness (one in five) at some time in their life and the greater likelihood of income insecurity for these families, these children represent an at risk population for social exclusion arising out of loss of opportunities as well as less opportunities.

Access to a range of family support services that focus on children’s and parent’s needs is critical for early intervention and prevention of less equitable health and other life outcomes. Such a program is not the sole responsibility of any one agency but requires input from all agencies in its design to ensure it can holistically meet the specific needs of children, parents as well as the circumstances of the whole family unit.
RECOMMENDATION 203

That consideration be given to the development of an additional foster care model which enables provision of foster care in the child’s home so that children may stay in their family home and community and continue with their normal routines and other arrangements when parents are hospitalised.

Reason

Children who have a parent with an intellectual, physical disability or illness (including mental illness) are often placed in the care of a relative, family friend or foster care if there are no other options when the parent is hospitalised. These children have often been responsible for family care and do not understand why they are required to go into foster care given the responsibility they have borne whilst their parent is at home. These children and young people should be provided with affirmation about their capabilities and skills. Extending the models of foster care provision to include care in the child’s home provides affirmation of both the temporary nature of such care, recognition of the attachment that exists between children and parent and recognition of the child’s rights to continue their life as before. Such an approach also provides for a non-stigmatising, non-discriminatory approach.

CHAPTER 26 Section B – CHILD EMPLOYMENT

RECOMMENDATION 204

That the Commissioner for Children and Young Persons, as outlined in Recommendation 1, as part of his or her duties, call an examination into the general area of child employment and child exploitation in South Australia. Further, that such an examination would take into consideration the following:

- the recommendations outlined in the “Review of the South Australian Industrial Relations System”
- the need for specific legislation within the Children’s Protection Act 1993 in relation to child employment
- the need for expansion of existing provisions within other state legislature
- developing necessary guidelines and information as required
- ensuring the voice of children and young people are represented through participation and consultation.

Reason

The issue of child employment, in particular relation to children under the age of 16, requires further examination and consideration over a range of issues. In relation to children’s’ rights, consideration of employment opportunities for children should not unacceptably restrict or jeopardising their right to seek employment and gain valuable experience in the workforce but must be balanced with regard to their appropriate development and capacity. Further, legislation and regulation must clarify the position in general, and in the specific and enable the appropriate investigation and prosecution of those that do not comply. It requires consideration of changes to legislation covering a variety of Acts including education, industrial relations and child protection.

Such legislation and regulation should consider the types of work children can suitably take up as well as the length of time children and young people may reasonably undertake employment, without it being physically or psychologically damaging to their welling with the aim of ensuring abusive and exploitative work practices do not occur.
CHAPTER 26 Section C – CHILDREN’S LITERATURE AND CHILD PROTECTION

RECOMMENDATION 205

That the Department of Justice seek, through the Standing Committee of Attorneys-General (SCAG), an expansion of the National Classification Code under the Classification (Publications, Films and Computer Games) Act 1995 to include:

- a requirement for consumer guidance and warnings similar to those that exist for film, video, computer games and commercial television be applied to children’s literature and
- any literature, film or videos that may be used for educational purposes for children and young people be subject to classification.

Reason

The changing and expanding nature of themes and issues now being explored in children’s literature and the expansion in the children’s literature market means that children and young people and their parents may be inadvertently exposed to material that may result in children and young people being harmed. Expanding the national classification system to cover children’s literature and other material that may be used in their education, is an important mechanism for providing consumer information and choice, as well as enabling parents, other organisations such as schools and libraries to be aware of the suitability of literature, film or video for children and young people. Such an approach is consistent with precedents already established in other areas.

CHAPTER 26 Section D – THE INTERNET AND INFORMATION TECHNOLOGY

RECOMMENDATION 206

That a Committee be set up by the State Government to consider all aspects of the Internet and information technology in relation to the protection of children from abuse. Such a committee to include the Department of Justice, SAPOL, Commissioner for Children and Young Persons, other relevant government agencies such as Young Media Australia. The mandate of the Committee to include consideration of:

- review the effectiveness of State legislation in the context of national legislation and strategies, including the effectiveness of penalties
- technical solutions
- means of monitoring the effectiveness of industry codes
- a strategy for professional education
- a strategy for community education and in particular of parents and caregivers.

Reason

The ever-increasing risk of exposure of children to abuse through the dynamic expansion of the Internet and information technology requires an overall strategy. It is a worldwide, national and State concern and calls for a strategic approach. The complexity of the issues involved, suggests a multi-agency and multi-disciplinary committee is necessary to encompass all aspects.
INTRODUCTION

This Chapter discusses:

- an overview of the broader context for children and young people and child protection
- the relationship between socio-economic disadvantage and child abuse and neglect
- the incidence and prevalence of abuse and neglect
- the financial cost of child abuse and neglect
- the social costs of maltreatment.
3.2 The Social Context of Child Protection

GENERAL DISCUSSION

Children must come first in social policies and the allocation of social resources, children must come first in the words and deeds of agencies that are entrusted with protecting them.¹

Compared with previous generations, children and young people in South Australia today have some of the best prospects for living healthier and longer lives. Children and young people are brighter and in some ways more capable and adaptable than children have perhaps been in the past. However, the social and economic context in which children and young people are growing up in South Australia poses important challenges for children's lifelong outcomes, for families, for Government and the community.

Children and young people are decreasing as a proportion of the population in South Australia. This changing demographic structure is the combined result of decreasing fertility rates and the ageing of the population.

From 1999-2019, the number of children (0-14 years) is forecast to decline by 60,000 (a decline of 20%) with the number of young people (15-24 years) to decline by almost 17,000 (or 8%). The ageing of the South Australian population will increasingly result in greater pressure for resource allocations weighted in favour of the elderly and there may be an unintentional effect of discounting the needs of children and young people.

Nationally and in South Australia there is evidence of an increasing trend in the number of child protection notifications of children and young people being made (though the rates of substantiated abuse remain reasonably steady). This paradox, in part, reflects the changing views of the community towards children and child protection and the important status given to the protection of children by the community as a whole.²

CHANGING SOCIAL CONDITIONS

The social conditions for families, children and young people have changed over the past two decades in a number of ways. There have been major changes in the areas of work and employment, resources for families and community supports.

In the area of work, there have been marked changes in the nature and amount of work engaged in by parents and in opportunities for work for young people. Balancing work and family responsibilities is emerging as a major issue for some families where both parents work outside the home, resulting in children placed for long periods in childcare or pre- or post-school care and fewer opportunities for children and parents to spend time together.

Conversely, many parents may not have engaged in paid work during their children's lifetime or may have intermittent work experiences. This may result in children not developing a concept of working as a significant aspect of community life.

Increasing numbers of families are experiencing significant social hardship that severely curtails their capacity to engage socially or take part in community, recreational and sporting activities.

Children also have reduced opportunities to independently explore or engage socially in their communities as a result of parental and societal concerns about their safety from threats such as increased motor vehicle traffic, violent crimes and paedophiles.

This changing environment influences shifts in thinking about the social place of children and young people and introduces new challenges for supporting the social inclusion of children and families, especially those experiencing socio-economic disadvantage, and for the protection of children and young people.

SOCIO-ECONOMIC DISADVANTAGE IN SOUTH AUSTRALIA AND ITS IMPACT ON CHILDREN

South Australia has the largest proportion of income earners reliant on Government transfers of any State or territory, with less than half (49.6%) of all households having wages and salaries as their main source of income, compared to 55.5% nationally in 1996.3

In South Australia, the most startling issue is the distribution of children and young people’s source of family income, that is, the proportion of children growing up in households that are reliant on social welfare payments compared with those that live in households with one or more incomes. The number of children living in households reliant on pensions and benefits has grown dramatically since 1989. In the metropolitan areas the number of welfare dependent children and young people has grown from 28.8% (64,241 children) in 1989 to 52.9% (114,360 children) in 2001. The latter figure represents a 78% increase in the numbers of children since 1989. It also means that over half of the children in metropolitan Adelaide live in families dependent on Government welfare payments. In rural and remote areas, the number of children living in families reliant on social welfare payments is almost 60%.

Table 1: Selected Socio-economic Indicators of Disadvantage for Children in South Australia

<table>
<thead>
<tr>
<th>Indicator</th>
<th>1991</th>
<th>1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children 0-14 years as a proportion of total population</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ Metropolitan</td>
<td>20.2% (207,790) children</td>
<td>18.9% (206,055) children</td>
</tr>
<tr>
<td>■ Non Metropolitan</td>
<td>24.1% (90,717) children</td>
<td>22.5% (89,023) children</td>
</tr>
<tr>
<td>Proportion of children 0-14 years living in single parent families (1996)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ Metropolitan</td>
<td>15.8% (32,830) children</td>
<td>18.4% (37,982) children</td>
</tr>
<tr>
<td>■ Non Metropolitan</td>
<td>13.0% (11,246) children</td>
<td>14.3% (12,799) children</td>
</tr>
<tr>
<td>Proportion of children 0-14 years in low income families (1996)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ Metropolitan</td>
<td>14.1% (28,082) children</td>
<td>18.1% (37,417) children</td>
</tr>
<tr>
<td>■ Non Metropolitan</td>
<td>19.7% (17,040) children</td>
<td>19.1% (17,154) children</td>
</tr>
<tr>
<td>Proportion of children 0-16 dependent on selected pensions and beneficiaries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ Metropolitan</td>
<td>38.9% (84,480) ((a) 1992 DSS data)</td>
<td>52.9% (114,360) ((c) 2001 DFACS data)</td>
</tr>
<tr>
<td>■ Non Metropolitan</td>
<td>50.3% (45,177) ((b) 1992 DSS data)</td>
<td>59.1% (53,055) ((d) 2001 DFACS data)</td>
</tr>
<tr>
<td>Proportion of Aboriginal children in total population children aged 0-14 years (1996)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ Metropolitan</td>
<td>1.3% (2,663)</td>
<td>1.8% (3,701)</td>
</tr>
<tr>
<td>■ Non Metropolitan</td>
<td>4.1% (3,681)</td>
<td>5.0% (4,496)</td>
</tr>
<tr>
<td>Proportion of children 0-14 years in households with no motor vehicle</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ Metropolitan</td>
<td>5.5% (11,419)</td>
<td>5.1% (10,604)</td>
</tr>
<tr>
<td>■ Non Metropolitan</td>
<td>4.9% (4,417)</td>
<td>4.3% (3,812)</td>
</tr>
<tr>
<td>Proportion of children residing in SA Housing Trust dwellings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>■ Metropolitan</td>
<td>11.5% (23,890)</td>
<td>9.6% (19,895)</td>
</tr>
<tr>
<td>■ Non Metropolitan</td>
<td>13.2% (11,941)</td>
<td>9.3% (8,314)</td>
</tr>
</tbody>
</table>

3 The Social Health Atlas of South Australia for Children and Young People highlights that over the 1992-97 period there was an increase of 11.6% in the number of income units reliant on Government transfers through aged pensioners, unemployment allowances, disability support and sole parent pensioners.
Increases in both the crude numbers and percentages are clearly evident for children aged 0-14 years living in sole parent households, in low income families and on social welfare payments despite the overall decrease in the number of children in South Australia. There has also been a marked decrease in the number of children living in SA Housing Trust dwellings since 1991.

One of the most recent and comprehensive reports on poverty was the study undertaken by the National Centre for Social and Economic Modelling. This study examined both the extent and depth of financial disadvantage in Australia taking account before and after housing poverty using data from the ABS 1997-98 Survey of Income and Households.

The study reported that about one in every seven Australians lived in poverty, amounting to just over 2.4 million people, with poverty risk slightly more severe among children than adults. Those most likely to be in poverty include people who are dependent on Government cash benefits, sole parents, unemployed, earning low wages, have low business income and/or have three or more children.

The study indicated that South Australia had the highest poverty rates of any State taking account of both before and after housing costs. Some 17.4% of children and 15.4% of adults in South Australia were estimated to be in poverty (before housing), compared to 14.9% and 12.8% nationally. These percentages represent some 68,000 children and 169,000 adults in before housing poverty. After housing, the NATSEM study estimated that approximately 23.2% of children and 17.4% of adults in South Australia were in poverty compared to 21.6% of children and 15.7% of adults nationally.

Dependency on Government cash benefits as the main source of income was the single key characteristic shared by those in poverty. Family status also had a large impact on poverty rates, with around half of all poor people in Australia living in families with children, with both sole parent families and larger families continuing to face high risks. Estimates of people in poverty by family type for both South Australia and Australia show that sole parents face the greatest poverty rates (23.1% nationally and 20.5% in South Australia).

The importance of social infrastructure in reducing the impacts of poverty has been noted by social researchers. An equalising effect can result from non-cash benefits such as health, housing services and education. Families with children gain the most benefit from these non-cash benefits.

DEFINING CHILD ABUSE AND NEGLECT

As pointed out in the report *Childhood Matters: Report of the National Inquiry into the Prevention of Child Abuse*, the definitional issues on child abuse and neglect are important for two reasons:

*The first is to establish a general framework within which policies designed to prevent child abuse can be developed and assessed. The second is to provide a set of technical definitions for identifying actions or circumstances which are taken to be abusive to children. The technical definitions are needed for statutory, legal, statistical, procedural and research purposes.*

The Review supports this approach to the definition of child abuse and neglect. The separation of a definition that provides the general framework within which policies can be designed and evaluated in terms of their success in preventing child abuse should be regarded as a separate exercise. It should be separated from technical or operational definitions which must form the basis for decision-making about intervening in a child’s life and his or her family privacy.

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5. Financial Disadvantage in Australia - 1999, undertaken by NATSEM for The Smith Family, NSW.
7. Harding & Szukalska note that poverty among Indigenous Australians is believed to be much higher than for other Australians, but that their study could not provide a detailed picture for this group because of the nature of the ABS data used for the study.
An adequate definition needs to deal with the following:

- an adequate conception of the care that children need for satisfactory development
- enhanced community awareness about the needs of children
- the duty of care of members of the community to protect children
- the need for members of the community to acknowledge the vulnerability of children developmentally and socially
- the forms of abuse and contexts within which abuse can occur in the wider community, by systems and within the family
- the different mandates and responsibilities that exist for child protection for different Government agencies, for the non-Government sector and the community.

For the purposes of developing a broad conceptual framework the following definition of child abuse and neglect appears apposite:

*Child abuse and neglect consist of anything that individuals, institutions or processes do or fail to do that directly or indirectly harms children or damages their prospects of safe and healthy development into adulthood.*

The difference between a technical definition to be used in legislation related to state intention, and a broad definition related to developing a framework, needs to be understood by the community and by child protection, teaching, legal, health and other professionals. A broad definition focuses on children’s rights and care and provides a basis for addressing all forms of child abuse. Technical definitions, on the other hand, facilitate the development of assessments, service and legal responses based on the particularity of abuse and neglect experienced by a child.

**RELATIONSHIP BETWEEN SOCIO-ECONOMIC DISADVANTAGE AND CHILD ABUSE AND NEGLECT**

A significant proportion of children and young people grow up in households experiencing significant socio-economic disadvantage. Studies on the impact of disadvantage and poverty on childhood indicate that there are serious short-term and long-term implications for the wellbeing of children and their families. Childhood disadvantage may impair a child’s physical growth, cognitive development and social and emotional functioning depending on the duration and chronicity of this disadvantage.

The relationship between poverty, economic and other forms of stress and child abuse and neglect has been well documented. This relationship, however, has not been reflected very well in national and State social policy despite efforts to create a focus in this area.

A number of submissions to the Review were concerned to see that there was acknowledgement of the correlation between social disadvantage and child abuse and neglect as well as the growing social disadvantage that is evident in South Australia:

*SACOSS considers the incidence of child abuse and neglect to be strongly correlated with social disadvantage in our society. Over the last two decades, social disadvantage has been increasing in South Australia with poverty levels doubling since 1981-82. Better outcomes for children, young people and families require a range of strategies to reverse this trend. This means government and community action to improve employment and training opportunities, provide affordable housing and adequate and accessible community services.*
Within this context, there was a strong view from submissions that there needed to be a shift in the way that the child protection system operated, that is, shifting from a primarily front-end statutory driven approach to a focus on better supports in the community to prevent child abuse and neglect or prevent it from reoccurring, for example:

*The child protection system is, perhaps inevitably, perceived as a system dominated by statutory functions and duties, intervening in sad and sometimes criminal family crises. The more the child protection system can be normalised within a broader family support service the better will be the outcomes.*

The Children’s Interest Bureau Advisory Committee also supported this view whilst recognising that child protection needs to remain a substantive concern for the State:

*The State and the community need to maintain an interest in the conditions that support positive care for all children and young people, building a ‘culture of positive concern and engagement’ for children and young people and a ‘culture of encouragement and support’ for those involved in their care, education, health and social wellbeing. The State greatly influences the outcomes for children through its structures and policies that affect the carers charged with these responsibilities. However, it is also recognised that when circumstances place children at risk or in unsafe circumstances, the State has responsibility to establish the service responses or alternate care arrangements that (sic) will ensure that the best interests of the child and their rights are protected.*

Therefore strategies for child protection must take into account a broader social framework.

Child abuse and neglect can be prevented, or the effects of abuse and neglect can be reduced, provided that there are a range of programs that acknowledge the relationships between socio-economic disadvantage and the risks of child abuse. A basic principle for preventing and ameliorating these effects is the development and implementation of multi-strategy approaches across the community and for particular communities.

### HIGH NEEDS OF CHILDREN AND FAMILIES WITHIN THE CHILD PROTECTION SYSTEM

FAYS undertake a risk assessment to determine which confirmed cases require further intervention and the intensity of the intervention. An analysis was provided to this Review of the risk assessments completed over the years 2000 and 2001 on a random sample of 300 families with 453 children and young people. This analysis highlighted the factors impacting on parental capacity in the following areas:

#### RISK ASSESSMENT

**Neglect and emotional abuse cases**

**Domestic violence**

Domestic violence features heavily in neglect and emotional abuse cases. Almost half the families (47%) were either currently experiencing or had a history of domestic violence. These numbers are worrying given the direct impact on children’s emotional wellbeing and development as well as modelling for their own future relationships.
**Parental skill deficits**
In 38% of families parenting skill deficits were evident and 21% of families were identified as having age-inappropriate expectations of their children.

**Substance/Alcohol abuse**
Substance abuse was found to contribute to neglect or an incident of emotional abuse in 15% of families and was either a past or current problem in a further 12% of these cases.

**Physical and sexual abuse cases**

**Domestic violence**
Domestic violence was also found to be either a current or historic feature of almost half of the families (47%) where sexual or physical abuse had been confirmed.

**Relationships that had a negative impact on the child**
In 21% of families, the caregiver was identified as having a relationship that had a negative impact on the child. The impact of negative relationships between caregivers and others, even if no violence present, cannot be discounted.

**Caregiver had experienced abuse or neglect as a child**
In 18% of families the caregiver had experienced abuse or neglect as a child. As a result, a proportion of these caregivers were less likely to have developed a supportive or positive relationship with their own parents.

**Using discipline which was either excessive or inappropriate**
In 17% of families caregivers were identified as using discipline which was either excessive or inappropriate. Although this analysis is not identifying causal factors, it is interesting to note that this number is similar to the number of caregivers who experienced abuse or neglect as a child, and who were less likely to have had positive role modelling about appropriate use of discipline.

**Caregiver arrested as a juvenile or adult**
In 12% of families, the caregiver had been arrested as either a juvenile or an adult.

**NEEDS AND STRENGTHS ASSESSMENT**
An analysis was also provided to this Review of the Needs & Strengths Assessment over the same years for the same cohort of families. The following areas were identified for families in which the primary caregiver is usually the mother and the secondary caregiver is usually the father/stepfather/defacto.

**Parenting difficulties**
In 58% of primary caregivers, parenting difficulties were identified as a priority need area and this rose to 99% for secondary caregivers, 25% of which were identified as demonstrating destructive/abusive parenting. These figures are high, especially when considering the importance of positive parenting practices on a child's development and emotional wellbeing and the capacity of positive parenting to act as a protective influence where other risk factors are present.  

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Limited social support system
For a large proportion of families - 46% of primary caregivers and nearly 70% of secondary caregivers - there was a limited social support system available or in place. Almost half of primary caregivers have few or no supports to provide them with a sense of connectedness to their community, or where they can go for practical assistance.

Domestic Violence
Domestic violence features as a high need area, indicated in 37% of families.

Emotional health problems
Emotional health problems were indicated in 43% of primary caregivers and rose to almost 70% for secondary caregivers. Mental health problems were present for 27% of primary caregivers and 44% for secondary caregivers. In nearly 30% of cases, intellectual capacity was identified as an issue for either the primary or secondary caregiver. Substance abuse was found to feature in 25% of families.

Financial difficulties
Financial difficulties were a problem for many families where abuse has been confirmed, for example, 30% of primary caregivers and 45% of secondary caregivers were experiencing either some difficulties or a financial crisis.

Child Characteristics
For 35% of families, factors such as child illness, disability or behaviour had an impact on family functioning, 8% experiencing chronic or severe problems in relation to the child.

Caregiver’s Health
To a lesser degree 13% of primary caregivers and 20% of secondary caregivers had a physical health issue.

Housing
For around 15% of families, problems with unsafe, unsanitary or uninhabitable housing (including homelessness) was an issue.

Caregiver suffered abuse or neglect as child
18% of primary caregivers had experienced abuse or neglect as a child and of secondary caregivers past abuse was an issue for 30%.21

This analysis indicates that FAYS clients clearly have high and complex needs and that children are growing up in family circumstances which put them at risk not just of abuse and neglect but also of very compromised outcomes in the future. Working with many of these families is a long-term requirement, not only to protect children, but also to reverse any adverse effects of abuse and neglect.

This analysis also suggests that strategies to increase parenting skills, minimise domestic violence, increase social support systems and increase services to improve emotional health, should be given a high priority in the strategies to protect children.

21 Submission 179 Family & Youth Services.
The actual extent of child abuse and neglect in the South Australian community is not known. It is
considered difficult to estimate the incidence of child abuse and neglect because the statistics reflect
only those cases that are reported to the authorities. There may be cases which are unknown in the
community. There are three sources of data on child abuse and neglect:

- the AIHW national reports on child abuse and neglect in Australia provides data on cases that
  are reported
- SAPOL statistics offer information on children as victims of assault but there are definitional and
  jurisdictional issues that results in discrepancies on a national and State basis and
- child homicide data.

This situation is common to most jurisdictions interstate and internationally which all rely on reports to
child protection authorities and substantiated cases of child abuse and neglect as proxy measures of
prevalence. Prevalence rates have been estimated by various researchers using various methodologies.
What is known is the number of reports made to child protection authorities in South Australia and the
number of these that are investigated and substantiated. In 2001-2002 there were 18,680 notifications
of which 2,230 were substantiated.\(^{22}\) Whilst the extent of child abuse cannot be pinpointed, there can
be no doubt that from an epidemiological perspective, child maltreatment is one of the most significant
issues facing the community. This is because of its immediate and long-term impact on the health and
wellbeing of the children and young people concerned, their families and the cost this represents to
individuals, families and the community.

The rate of substantiated child abuse cases in South Australia for children aged 0-16 years was 5 per 1000
children in 2000-2001. The average rate for the period 1996-1997 to 2000-2001 was 5.25 per 1000 children.\(^{23}\)

A survey of adults 18 or older conducted in 1999 which asked about people’s experience of child abuse
and neglect found that the State prevalence of child abuse and neglect was 9.5% (population survey
sample size 6004) with 4.4% reporting physical abuse, 4% reporting sexual abuse, 4.9% reporting
emotional abuse and 1.7% reporting neglect.\(^{24}\)

Although fatal assault is a rare event resulting in approximately 2% of all deaths,\(^{25}\) child deaths related
to child maltreatment bring child protection to public prominence and occupy far greater public attention
than the fate of the many children and young people who have survived significant abuse and neglect.

Within some communities, prevalence rates for child abuse and neglect are greater than others. *The Atlas
of Young South Australians* (publication pending) provides the distribution of confirmed reports of child
abuse and neglect, 0 to 19 years over 1996 to 1999 and indicates that for the metropolitan area:

- the distribution of substantiated cases of child abuse and neglect across the metropolitan area
closely follows the pattern of the distribution of socio-economic disadvantage in Adelaide
- the postcode areas with the highest ratios were concentrated in the north-western, northern and
  southern suburbs
- there were 14 postcode areas with more than twice the number of cases expected and six postcode
  areas with highly elevated ratios
- in terms of absolute numbers, the largest number of substantiated cases were recorded in the outer
  northern suburbs at Elizabeth North, Salisbury and Elizabeth and in the outer southern suburbs at
  Morphett Vale and Hackham.

\(^{22}\) Department of Human Services Data Warehouse.
For the non-metropolitan area the direct age-sex standardised rate for children aged zero to 14 years experiencing child abuse and neglect based on substantiated reports was 3,746.7 per 100,000 (based on 1993 population totals) over 1990-91 to 1996-97. The number of children who were subject to confirmed reports was 3,436 in total. Key features of the distribution pattern of child abuse and neglect in non-metropolitan areas were as follows:

- the areas with the highest recorded rates of child abuse and neglect were concentrated in urban centres (with the exception of those in the South East) and in the outer reaches of the State to the north and east
- the highest rates were recorded in the unincorporated areas of West Coast, Unincorporated Whyalla, Unincorporated Pirie and Unincorporated Riverland and in the urban centres of Port Augusta, Murray Bridge, Hallett and Port Pirie
- the lowest rates were generally recorded in the Statistical Local Areas (SLA) on the outskirts of the metropolitan area and in the South East.
- the highest absolute numbers occurred in rural towns of Port Augusta, Whyalla, Port Pirie, Port Lincoln and Mount Gambier.

Aboriginal children are clearly over-represented in the child protection system. The rate of substantiation for Indigenous children was more than seven times the rate for other children in South Australia in 2000-2001.

The distinct spatial relationship and correlation between child abuse and neglect, low income and other indicators of social disadvantage, point to the need for specifically designed local/regional approaches to the prevention of child abuse and neglect and early intervention that take these various factors and local needs into account.

THE FINANCIAL COST OF CHILD ABUSE AND NEGLECT

A number of studies have been commissioned over recent years to determine the cost to individuals and society of the impact of child abuse and neglect. A number of approaches have been developed in an effort to assess the economic and social costs of child abuse and neglect in order to convey the seriousness of the long-term financial and social impact of child abuse and neglect to the community as a whole.

The costs of child abuse and neglect is currently viewed in two ways.

The first involves examining the immediate costs involved in responding to child abuse and neglect through child welfare systems, the criminal justice system, education and health. These costs are relatively easy to identify and include:

- the costs of investigating reports of child abuse and neglect and protecting children from further harm
- expenditures related to apprehending and prosecuting offenders
- costs associated with foster care
- costs to the education system of dealing with disruptive children or children with learning problems.
The second involves the long-term costs of the effects of child abuse and neglect. These costs are harder to identify and are increasingly a concern internationally for all jurisdictions. There is a view that these costs are emerging as unfunded future liabilities of major proportions and will have a major impact on future generations unless adequate attention is paid to early intervention and prevention to break the cycle of abuse.

Costs that have been identified include both direct and indirect costs, that is:

- **Direct** costs are those that can be more clearly attributed to child maltreatment at the time of abuse and neglect being investigated. Costs that fall into this category include:
  - child welfare, health and SAPOL services associated with investigations,
  - court hearings and procedural requirements
  - compliance with court orders
  - alternative care services and other services to children and families.

The cost components for treatment, health care, for policing, adult court costs, corrections and provision of non-government services is less easily ascertained except on an individual case basis. Direct costs need to be identified for both victims and perpetrators of child maltreatment.

- **Indirect** costs are those associated with the long-term consequences to individuals who were maltreated as children and to the wider community as a result of the impact of maltreatment on the individual’s life course. These indirect costs can occur across a range of public and non-government services such as:
  - health care
  - policing, courts, social security and welfare payments
  - corrections
  - homelessness
  - substance abuse
  - dependency
  - domestic violence
  - criminal activity.

In addition there are other indirect costs such as losses in productivity and costs associated with intangibles such as pain and suffering.

The few studies commissioned on costs are concerned primarily with assessing the direct costs of child abuse. Some examine components of direct costs and others examine total costs that can be ascertained over the person’s life course. A few studies also examine the costs of dealing with a child after the event of child protection compared with the cost of prevention. These studies focus on the immediate costs associated with a child that has come before child protection authorities or has been injured as a result of child abuse and compare these costs with those of prevention.

Studies into the long-term costs of child abuse are problematic because they involve estimating the number of children and young people who have been abused, identifying proportions that are likely to be affected by particular outcomes such as health conditions or imprisonment, and on this basis attributing a proportionate cost from national or State expenditures in the particular area concerned. This approach is often conservative in its estimates and focuses on proportioning only part of gross expenditures in areas where estimates can be made.
A Michigan study used rates of per capita income and average lifetime participation in the labour force to generate average lifetime earnings of, and calculate lost tax revenue from, those children who died as a result of child abuse or preventable infant mortality. The study concluded that, in addition to the devastating personal losses experienced by the families of the infants and children who died, the State lost an estimated $46 million in tax revenue which could be interpreted as both the loss of tax revenue over a lifetime and the per year loss to the State if the rates of tax, abuse, and mortality remain relatively stable.

The 1995 Colorado Study undertook an analysis of cost of failure to prevent child abuse, comparing total cost of direct and indirect expenditures with expenditures required for child abuse prevention programs in order to highlight the value of prevention.

The South Australian report published in March 1998 by the Office for Families and Children and the Australian Institute of Family Studies conservatively estimated that the combined economic and fiscal expenditure incurred as a consequence of child abuse and neglect in South Australia during 1995/96 was $354.92 million (1998 $ value). The report suggested that South Australia was spending more on the consequences of child abuse and neglect than it was earning from its export of wine or of wool and sheepskin products based on 1997 ABS figures. Further that there were considerable economic savings potentially available to the State from an effective program designed to reduce the incidence and prevalence of child abuse and neglect in the State and that additional investment should be made.

The 2001 study by Suzette Fromm for Prevent Child Abuse America was the first comprehensive report on the direct (immediate intervention) and indirect (long-term) costs of child abuse and neglect in the United States. It involved making a broader calculation of costs incorporating child protective services costs (including child protection investigation and care, foster care, in-home services, health care and counselling), current costs associated with juvenile crime based on the proportion of young people within the juvenile justice system who had been the subject of substantiation, and short term and long term physical and mental health costs. The analysis highlighted these areas as indicative of a likely life course for victims of child abuse and neglect and attributed average costs per family or individual in each of these situations.

The estimation of total expenditure did not include proportions of all indirect and direct cost areas. The report estimated that a conservative US$94 billion (or $1,462 per US family per year) was spent annually in response to child abuse. It further estimated that of the total costs:

- approximately 26% was spent on direct effects of child abuse ie: the child welfare system; hospitalisation/treatment; chronic health problems; mental health care; justice interventions and judicial proceedings
- approximately 75% was spent annually on treating all the long-term, indirect effects of child abuse, including special education, mental and physical health care, juvenile justice, lost productivity and adult criminality. The most costly long-term effects, according to this analysis, were those associated with responding to adults who, because of earlier abuse, were involved in criminal activity.

31 McGurk, H & Hazel, V (1998) ‘The Economic Cost of Child Abuse & Neglect in South Australia’ Australian Institute of Family Studies and South Australian Office of Families and Children states this economic and fiscal costing was developed on the following basis:
- Only expenditure incurred or likely to be incurred during the fiscal year was entered into the calculation of the total cost
- the exception to this was the costs associated with the intergenerational transmission of child abuse and neglect
- expenditure on services to adults as a result of their childhood experience of abuse was not included in the final calculation
- where relevant data were unavailable or could not be extracted from agency records, then estimates of expenditure on child abuse and neglect were made
- earnings foregone due to impact of abuse on life chances were not included and
- estimates were based on incidence that incorporated both detected and undetected cases.
This study provides some guidance on potential apportionment of direct and indirect costs as well as total costs.

A number of studies aim to highlight that the funding of child abuse prevention should be seen as an investment that will yield benefits in the future. Current investments in child protection that deal with child abuse after the fact do not have the same level of benefit as investments in prevention before the fact.

None of these studies incorporate the costs of human suffering and consequences suffered by children and young people nor the life time costs associated with child abuse and neglect.

A further particular aspect of costs is related to sex offender treatment programs.

A study by Donato, Shanahan and Higgins\textsuperscript{34} involved a cost-benefit analysis of child sex offender treatment programs for male offenders in correctional services. The results of this study revealed that within a plausible set of parameter estimates, in-prison intensive child sex offender treatment programs could result in substantial net economic benefits to the community. It estimated that potential economic savings could range from around $60,000 to over one million dollars (in 1998) per 100 treated prisoners.

Finally the burden of child abuse and neglect is far greater in a smaller population and economy. For a small State such as South Australia that has an ageing population, the long-term cost of child abuse and neglect may potentially result in a far greater burden on the community socially and economically. There is a need to strike a better balance in child protection, and the prevention of the short and the long-term effects of child abuse and neglect on children and young people. At the moment the South Australian child protection system is weighted towards protection based on defined incidents of abuse and ensuring short term protective measures and interventions in families through family support programs but not the short and long term prevention of abuse and neglect of children and young people in the community.

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<th>SOCIAL AND OTHER IMPACTS OF CHILD ABUSE AND NEGLECT AND COSTS ASSOCIATED WITH THESE IMPACTS</th>
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Child abuse and neglect is devastating for children and young people who experience it. The health and social consequences of child maltreatment are now well known and described in much of the literature. There is a significant body of literature which provides the stories of children and young people who have been abused and how this experience has affected their lives. One of the common outcomes that emerges from these life stories is that a significant proportion of the children and young people grow up to experience long-term social, mental health and other health problems. The files of state child welfare departments reveal that parents who had abused their children were often themselves the subject of child protection concerns.

However, one of the important messages from the research is that a significant proportion of children and young people survive their experiences and go onto become strong, resilient, caring and productive people. In other words, the damage inflicted by child abuse and neglect can be ameliorated provided that there is the right balance in policy, services and support in place.

The Social Context of Child Protection

The following links found in the research have been summarised by Mrazek & Haggerty:

- Being the victim of child maltreatment carries with it a heavy risk for subsequent mental disorder including depression, leading to suicide attempts and self-mutilation.
- Dysfunctional parenting practices, especially harsh, erratic, and abusive forms of discipline predispose the development of conduct disorder.
- Studies show that there is a strong association between child maltreatment and delinquency and adult crime in later years.
- Children respond differently to child abuse. Symptoms have been identified in children by the age of six when there had been physical abuse in infancy, boys tending to show externalising symptoms and girls internalising symptoms. Physical aggression, anti-social behaviour and poor performance at school are consistently established as consequences of child abuse and neglect. The long-term effects of physical abuse and neglect seem to be greatest among those who have aggressive parents and became aggressive themselves.
- Studies show that the child’s experience of witnessing violence may be as harmful as the experience of victimisation.
- When maltreatment including neglect occurred in infancy, children in all maltreatment groups functioned poorly and their functioning deteriorated over time.
- The long-term consequences of neglect, particularly when there is maternal detachment in the early stages of development, are particularly severe.
- Research identifies that child maltreatment, neglect and traumatic stress has a profound effect on the brain development of very young children and can alter the potential of a child.

Research has demonstrated links between parent-child attachment disorders and problems for children in their schooling and adult relationships.

The experience of child abuse and neglect is also strongly associated with threats to safety and security. Interpersonal violence (such as child abuse, domestic violence, sexual violence, bullying, female genital mutilation), drugs and alcohol, homelessness, experiences of the care and protection system, experiences of alternative care, contact with the juvenile justice system have all been identified as major risks to children and young people’s health and wellbeing.

In relation to education outcomes, classroom behavioural problems and poor educational outcomes have also been documented as being strongly associated with child abuse and neglect. Many children and young people show signs of language and cognitive disability, exhibit learning disorders and require special education services at some time.

In relation to health outcomes, child abuse and neglect is strongly associated with a range of immediate and long-term health problems for children and their parents. The recent WHO World Report on Violence and Health indicated that ill health caused by child abuse forms a significant portion of the global burden of disease. While some of the health consequences have been researched, others have only recently been given attention, including psychiatric disorders and suicidal behaviour. Importantly, there is now evidence that major adult forms of illness - including ischaemic heart disease, cancer, chronic lung disease, irritable bowel syndrome and fibromyalgia - are related to experiences of abuse in childhood. These increased poor health outcomes are associated with the greater adoption of behavioural risk factors such as smoking, alcohol and drug abuse, poor diet and lack of exercise possibly as a result of the long-term psychological impact of child abuse and neglect.
CONCLUSION

A State Plan for child protection must incorporate the social and economic features of this State as well as the trends indicated in research. The research suggests that the best investment for our State is to be smarter and more targeted in our approach to child protection and emphasise the preventative effects of services.
INTRODUCTION

This chapter provides:

- a brief overview of some of the historical events and critical reviews in the area of child protection in South Australia and, in doing so, provides a context for the current child protection review.
GENERAL DISCUSSION

Over the past 20 or so years there have been a number of significant reviews into child protection legislation, policies and procedures in South Australia. Many have been driven by a need to ensure that the laws and practices which protect children and young people, keep pace with an increasing awareness of deleterious effects of abuse and neglect on children and young people. Other broader societal factors have impacted on the children, young people and their families such as changes in family composition, high levels of unemployment and increasing usage of drugs and alcohol to name a few. This, coupled with demands for a higher level of public sector accountability and scrutiny, has required a continual review of the policies and processes in place to ensure that they keep pace with these changes and remain effective for the protection of children in our community.

THE EMERGENCE OF GOVERNMENT INTERVENTION IN THE LIVES OF CHILDREN

The following comments are taken from David Archard’s work on Children and Children’s Rights. Prior to the Industrial Revolution, children in poorer families were expected to contribute to the family income either through working or by undertaking childcare or home duties. When families had met their survival needs, children were excused from the workforce and encouraged to attend school and enjoy recreational activities.

With the introduction of compulsory school attendance, children became consumers of, rather than contributors to, family income, and thus more dependent on their parents. Their health and welfare needs became more visible, and concern for their broader care and protection emerged, initially by charitable institutions and subsequently government.

Over time, broader government intervention for children focused on the health and development of children through a range of services including health services, education services, and childcare services. These services are subject to a number of complex arrangements between Government and family in relation to both direct service provision and/or subsidised services from voluntary/private/for profit sectors. The political ideology of the day determines the extent to which these services address inequalities and disadvantage.

Family Law developed as a Government strategy of minimal intervention into the lives of families and parents, and as a last resort for parents who could not reach agreement about their responsibilities following marital separation.

A BRIEF OVERVIEW OF THE HISTORIC SHIFTS OF WELFARE IN SOUTH AUSTRALIA

A historical perspective is important, as it indicates signposts as well as the emergence and re-emergence of foundational ideas on which legislation, policies and service responses are based. Some of the main areas include:

- Welfare responses for all South Australian citizens were first delivered through the Emigration Agent, thus connecting the very experience of migration (and, consequently, refuge seeking) with the need for at least temporary supports.
- The strong and enduring expectation that families will ‘look after their own’ and not become dependent on the State, illustrated by Government support both to assist families and to recoup some financial expenses.

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1 These next five sections of this chapter are largely a reproduction from the helpful information provided in the Justice Advisory Group Submission, Attachment 4.
The identification and treatment of children as a distinct population group from 1848, and from 1968 increased consideration of children’s interests, at times over and above parents’ interests.

The enduring and extensive roles of police and magistrates in not only administering the law but also the direct provision of welfare services. This is most obviously illustrated by the Women’s Police Unit formed in 1916 and which remained in existence until 1970s. The interdependent functions of police and the Department of Family and Youth Services continues to the present day, even though the extensive roles and responsibilities of the police are less publicised.

The threshold for Government intervention in relation to protecting children considered to be in danger, or at risk of harm, has increased remarkably with the emergence of definitions of physical abuse (then known as the battered baby syndrome) in the 1960s and sexual abuse in the 1980s (largely driven by the women’s movement). As such, child abuse is now recognised as a key social issue and community expectations are that Government will take appropriate action. Public attention in this area tends to be primarily focused on child welfare agencies.

There is considerable ambivalence in the community regarding community responsibility to keep children safe from harm. Rather than take direct action, in the past 40 years there has been increased emphasis on ensuring confidential access to emergency telephone lines to refer concerns. This option is also used more by some, for example, immediate family members, teachers and child care workers, than others. In South Australia, mandatory reporting was introduced in 1969, and would appear to be very strongly supported by the community.

The collection of available data over a considerable period of time has consistently revealed that a far greater proportion of children are more likely to suffer from neglect than from any other form of abuse. Despite this, public investment in this area is considerably less intensive than for physical or sexual abuse. One reason for this could be the increasing focus on ‘proof’ and ‘quick fix’ responses. It is also important to note that parental inability, rather than parental abuse, remains the most common reason for removing a child from their family into the care of the Minister.

While various reports have repeatedly mentioned the importance of interagency collaboration (the lack of which has been a key feature of the majority of public enquiries into child deaths) and various strategies, manuals and protocols have been set in place, a lack of common understanding of responsibilities and sharing of information continues.

Training and development opportunities have also been repeatedly identified as essential for all workers involved in protecting children and there remains a lack of investment in this area.

In the past decade, there has been considerable reduction to the extent of internal and external scrutiny of child protection and welfare systems. In the near past, policies to actively discourage community involvement have been in place.

**ORIGINS OF WELFARE**

The Emigration Agent was the first welfare service in the convict-free colony of South Australia, providing temporary shelter and rations for immigrants requiring assistance (including destitute, sick, widows and orphans).

These activities were guided by the *Destitute Persons Relief Act 1842-43* and the *Maintenance Bill 1842*. These frameworks sought to provide relief to only the most needy and to claim maintenance from other relatives.

At this time, the Destitute Asylum was established in Kintore Avenue, overseen by a Board for the Relief of the Destitute Poor. Magistrates and police acted as welfare agents in country areas.
The Apprenticeship of Orphans Act was introduced in 1848. It required destitute children to learn a trade and therefore contribute productively to the community. The Destitute Persons Relief Act 1866-67 provided for children to be separated from destitute adults through boarding out (fostering) and the establishment of industrial schools, as well as subsidies paid to non-Government welfare agencies.

Concerns regarding the standards of care and the health of the children led to the creation of the State Children’s Council, comprising 12 members of different religious denominations, under the State Children’s Department to control boarding out arrangements, licensing, apprenticing, reformatories and industrial schools. The intention of the Children’s Council was to train the children to “become virtuous, honest and useful citizens”. This Council sought to have juvenile court cases heard separately from adult cases.

The ‘Women’s Police Unit’ in the Police Department was formed in 1916 under the Direction of the State Children’s Council. As well as its role in neighbourhood safety and the safety of young women, this Unit also took on a welfare service role. The Unit continued until the 1970s.

With the introduction of the Maintenance Act 1926, the Children’s Welfare and Public Relief Board was established and maintained for 40 years. The functions of the agency included the provision of homes, maintenance collection, financial relief, medical officers, and boarding out. A strong emphasis was placed on preventative work with families. The concept of prisoner rehabilitation was introduced in 1951. Welfare services extended to budgeting, medical/dental and psychological services, rent assistance, matrimonial and domestic resolution, counselling for juvenile offenders, and investigation of neglected and ill-treated children. By the end of 1965, 20 homes and institutions were under the control of the Board, and four district offices had been established.

In 1965, the first Minister for Social Welfare (The Honourable DA Dunstan who later became Premier) was appointed, and the Department for Social Welfare established. In 1970, this Department was amalgamated with the Department of Aboriginal Affairs. In 1972, the Social Welfare Act and the Aboriginal Affairs Act were replaced by the Community Welfare Act and under this Act the Department became the Department for Community Welfare. Once again, one of the key premises for the Department was to provide services that did not perpetuate dependence on the system. At this time there was a particular focus on community development and preventative services.

STRENGTHENING THE FOCUS ON PHYSICALLY ABUSED YOUNGER CHILDREN

From the mid 1960s, child abuse (initially referred to as non-accidental injury to children or the battered child syndrome) became increasingly more prominent. A report written by the Social Welfare Advisory Council ³ explored definitions of neglect and the ‘battered baby syndrome’.

At this time, reported cases of physically abused children were not high in South Australia. While maltreatment could occur at any age, the Council considered that physical abuse occurred mainly to babies and pre-school children. The number of children charged as neglected for the year ending 30th June 1968 was 171, of which 136 were committed to Departmental homes, or placed under the control of the Minister for supervision by the Department. The Adelaide Children’s Hospital had identified three cases of battered baby syndrome in both 1966 and 1967.

Parents’ living circumstances and personality problems were seen to be the cause of this physical abuse, and thus attempts to ‘reform or rehabilitate’ the parents were required, through the consistent casework provided by a Welfare or Probation Officer. Continued cooperation between police and the Department of Social Welfare was recommended. Members of the public were to be encouraged to make telephone reports for a trial period, and then the option of introducing mandatory reporting could be considered. The Council also recommended training of professionals involved with children, and the establishment of a central registry of all cases of maltreatment. The report’s recommendations were not accepted in the case of reporting, with compulsory reporting introduced in 1969.

**NEED FOR INTERAGENCY COLLABORATION AND CONSIDERATION OF CHILDREN IN LEGAL PROCESSES**

In 1976, the Social Welfare Advisory Council was asked to prepare a report on the extent of non-accidental physical injury to children and make appropriate recommendations. At this time, the *Community Welfare Act 1972* defined children as under 15 years. As well as a discussion of the causative factors involved in child abuse (encompassing community attitudes, deficits within the family, parents and child), the Committee undertook a survey across services for children. The survey revealed that hospitals recognised many more children as non-accidentally injured than numbers reported to the Department of Community Welfare. Concern was expressed about the low numbers of reports from medical practitioners.

The Council highlighted the lack of appropriate support services, professional education and coordination of services. To this end, the Council recommended the establishment of Regional Panels in legislation to consider all cases of maltreatment, with membership from Community Welfare, Police, a medical practitioner, and child psychiatric services, including those children where charges of ‘in need of care’ and ‘guardianship’ were to be laid. The report recommended that police consult with the Panel in all cases where prosecution of a perpetrator of abuse was considered.

In addition to articulating the roles and responsibilities of the various agencies, the establishment of a 24-hour telephone service was identified for those in crisis situations. The report also recommended evaluation of services and research, particularly uniform data collection.

Other recommendations included:

- closed hearings in the Juvenile Court (until then it had been discretionary)
- judicial powers to appoint counsel for the child whenever it was deemed necessary
- waiving the necessity for the child to be present at proceedings
- the appointment of a guardian ad litem (one who acts on behalf of a child in a lawsuit) for the child when this would further the best interests of the child
- the guardian ad litem was seen as providing a “more personal guardianship” for the child than would be possible from an official agency
- a broader range of orders for those children being in need of care or protection, including transfer of guardianship to a relative or other suitable person; and committal to the care of the Minister with the option of parents retaining some responsibilities.

Many of these recommendations were considered apposite. Some were incorporated in the existing *Community Welfare Act 1972* or the new *Children’s Protection and Young Offenders Act 1979.*
**TASK FORCE ON CHILD SEXUAL ABUSE**

In October 1984 at the request of then Minister for Health, Dr John Cornwall, in the Bannon Labour Government, Cabinet approved the establishment of a Task Force on Child Sexual Abuse to identify problems associated with existing law and methods of service delivery to sexually abused children and their families. Its task was to make recommendations on the development of integrated and coordinated policies and services across the relevant sectors – health, education and law.

At this time legislatively there were two principal Acts covering child protection and child welfare laws in SA. These were the *Children’s Protection and Young Offenders Act 1979* and *Community Welfare Act 1972*.

The Task Force had wide terms of reference and included investigating and making recommendations on strategies to prevent or alleviate the incidence of child sexual abuse. Its members included Rebecca Bailey Harris, who was then Senior Lecturer in Law at University of Adelaide, as well as other prominent experts in field. The Task Force was given 18 months to publish its report and in October 1986 the report was provided to Government detailing over 100 recommendations.

The principal recommendation was that the Government establish a State Council of Child Protection, to take responsibility for the coordination, monitoring and evaluation of child protection programs in SA, with priority being given in the first three years, to the implementation of the “Program for the Alleviation and Prevention of Child Sexual Abuse”.

Many of the major recommendations have been implemented whilst some of the more controversial aspects of the report such as the establishment of a diversionary program for child sex offenders have not been taken up.

Others have forever shaped child protection practice in SA and are integral to the system that operates today. These include:

- the continuation of the mandatory reporting of suspected cases of child sexual abuse and the expansion of the class of people identified as mandated notifiers
- special training in recognising abuse and neglect
- training in child protection laws for those mandated to report and
- the establishment of a hospital based Child Protection Service for the assessment of suspected child sexual abuse.

**REVIEW OF PROCEDURES FOR CHILDREN IN NEED OF CARE (THE BIDMEADE REPORT) 1986**

In November 1985, the then Minister of Community Welfare, Greg Crafter, requested that a prominent lawyer, Ian Bidmeade, undertake a review of Part 111 of the *Children’s Protection and Young Offenders Act 1979* which specifically dealt with the procedures used to protect children “in need of care” and to report any inconsistencies which might exist between the provisions and intentions of the Part 111 and the administration of its provisions and departmental procedures and practices.
Bidmeade stated:

…This review arose out of a debate between lawyers acting for parents, concerned that procedures for intervention by a State authority should ensure their clients have every right to argue against intervention, and Community Welfare Workers concerned that the interests of the child should come first and that procedures for intervention should not be so cumbersome as to increase risk to the child.4

The criminal law relating to young offenders and civil aspects relating to children in need of care and protection were encapsulated together in the one act – Children’s Protection and Young Offenders Act 1979.

Bidmeade points out that whilst there had been several reviews, it was the first time that the civil procedures to protect children in need of care had been reviewed in detail since 1970. Bidmeade noted serious conceptual difficulties within the system and stated the following:

It seems to me to be a system designed for lawyers and social workers, but not necessarily for children, and it is arguable that Child Protection in this State may work not because of legislation and the structures and procedures established by the legislation, but despite them.5

Looking back on this report today many of the recommendations were quite bold and in his findings he urged the Government of the day not to shy away from the recommended changes.

He particularly stressed the following:

☐ that the interests of child be the paramount consideration in any ‘in need of care’ matters
☐ that the court be obliged in proceedings to respect the cultural identity and needs of the child, the child’s parents and other family members
☐ that a magistrate be permitted to make short-term orders in situations of serious danger, to secure the protection of the child
☐ that the Act require a planning conference and child advocate who is independent of the Department to be present
☐ that the Children’s Interest Bureau become a Commissioner for Children
☐ that separate legal representation for the child be mandatory
☐ that the child’s right to be heard should be made clear and the wishes of the child considered and if necessary receive evidence from a child in-camera, and
☐ the court must be empowered to order access and to terminate access as well as review children under the guardianship rather than the department on an annual basis.

Probably the most ‘controversial’ recommendation of all was that the Court should have a different composition - an inquisitorial approach - and the Court should comprise a judge, a behavioural scientist and another suitable person with clear powers of inquiry to make its own assessment of the case.

Many of these recommendations have been taken up but some were not. His recommendations remain robust to this day.

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5 Ibid p2.
SOUTH AUSTRALIAN CHILD PROTECTION COUNCIL

As stated before one of the major recommendations of the Child Sexual Abuse Task Force was the establishment of the South Australian Child Protection Council.

As a result, the Council’s establishment was approved by Cabinet in November 1986 and held its first meeting in July 1987.

The objects of Council were to ensure the coordination and evaluation of child protection, encourage cooperation between various State and Commonwealth agencies, encourage research, ensure coordination of community education and training and encourage the development of programs within Government and non-Government agencies.

It was to have an independent chair (Dame Roma Mitchell followed by Mrs Diana Medlin) and representation from all Government agencies involved in child protection, as well as non-Government representatives such as Catholic and Independent Schools.

The Council was in operation from 1987 till March 1995 when it was formally disbanded. It was generally acknowledged that Council was instrumental in overseeing the implementation of the Child Sexual Abuse Task Force recommendations and developing considerable goodwill within the child protection area. During that time its achievements through its subcommittees included:

**Interagency Committee**
- Development of Interagency Guidelines which set the scene for Government agencies represented on the committee to develop their own policy and procedures.

**Education and Training Committee**
- Instrumental in the developing of the Mandated Notifiers Training Program.

**Legal Committee**
- Instrumental in ‘pushing’ for children giving evidence in criminal matters by closed circuit TV. It also made a number of recommendations on proposed legislation and reports.

REPORT ON THE SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL ON CHILD PROTECTION POLICIES, PRACTICES AND PROCEDURES IN SOUTH AUSTRALIA

In April 1989 the Legislative Council of South Australia appointed a Select Committee to examine a variety of questions relating to child protection in South Australia. The terms of reference included inquiry into and reporting on child protection policies and practices and procedures with particular reference to:

- mandatory notification
- assessment procedures and services
- practices and procedures for interviewing alleged victims
- evidence of children
- treatment and counselling programs for victims, offenders and non-offending parents
- programs to reunite the child with its family and
- policies, practices and procedures of the then Department of Family and Community Services.

The Select Committee met on 49 occasions and received evidence from a wide cross section of the community.
Many of recommendations were based on similar findings in other reviews but included some new areas for attention such as:

- All SA legislation dealing with various aspects of law relating to children be brought together under one Act in order to simplify it and to remove injustices caused by the present fragmented and complex system of legislation.
- In conjunction with bringing all the legislation on children under one Act, that the Government set up an inquiry into alternative approaches to the adversarial system, with the aim of making the law more effective in achieving justice for children.
- In relation to adolescent sex offenders, where they admit guilt, accept responsibility for the crime, agree to treatment and are judged not to endanger to society, they could be sent to an appropriate treatment program, which would be set up as a diversion from the normal juvenile justice system.
- That the subject of child abuse and protection be incorporated into the core syllabuses in law in SA universities and that in-service training seminars presented by experts be provided for all solicitors, barristers and judges working the field of child abuse.

**CHILDREN’S PROTECTION ACT 1993**

In 1992 a Select Committee Inquiry into the juvenile justice system recommended that justice and welfare parts of the *Children’s Protection and Young Offenders Act 1979* be separated. The Select Committee Inquiry required sections of the *Community Welfare Act 1972-75* to be repealed, and incorporate those sections that related to the care and protection of children from the *Children’s Protection and Young Offenders Act 1979* into a new Children’s Protection Bill. This introduced not only considerable changes to both the philosophy and structure of juvenile justice in SA but also required that the legislation governing the welfare aspects be reviewed and re-written.

The new Children’s Protection Bill was disseminated for comment.

Comments were received from a variety of stakeholders. Whilst many aspects of the new Bill were considered positive – such as clarity around investigations of child abuse and neglect; the establishment in legislation of a family care meeting conference; and the establishment of a Children’s Protection Advisory Panel with roles to oversee the administration of the Act - there were considerable objections to many of the new clauses.

Principally, serious objections were raised concerning the philosophical shift in the Bill from the previous Act. The Bill emphasised the reunification of children with their families, and conferred a major priority on family preservation. It did not contain a mandatory requirement to seek the views of children and removed the paramountcy principle. Through public consultation and feedback and often-heated parliamentary debate, some of the more controversial aspects were resolved.

Today the current child protection legislation incorporates within its principles:

- The safety of the child is the paramount consideration, and the powers must always be exercised in the best interests of the child.

This ensured that the legislation was not only in keeping with previous legislation but also in keeping with United Nations Convention on the Rights of Children.

The Act came in operation on 1 January 1994 at the same time as the *Young Offenders Act 1993*. Both Acts remain currently in operation today.
4.10 Historical Context of Child Protection in South Australia

REVIEW OF THE SOUTH AUSTRALIAN CHILD PROTECTION COUNCIL

The South Australian Child Protection Council was given the task of overseeing the implementation of the Report of the Child Sexual Abuse Task Force and to develop interagency cooperation and collaboration on child protection. A review was called in 1994 by the then Minister for Family and Community Services, David Wotton, to evaluate the effectiveness of the Council in meeting its key objectives and to examine the structure and the context in which it was operating.

In March 1995 the final report on the review was released, which recommended the Council be disbanded. The review concluded that many of the roles of State Council would be taken up by the Children’s Protection Advisory Panel which was a legislative requirement of the new Children’s Protection Act 1993.

SOUTH AUSTRALIAN CHILD ABUSE PREVENTION STRATEGY

In 1995 the then Minister of Family and Community Services, David Wotton, also announced a need to develop a Child Abuse Prevention Strategy for SA. A joint working group with representatives from Government and non-Government agencies was formed in July of that year and undertook consultations, public meetings, agency surveys, calls for submissions, a Parent/Carer’s Survey in the Sunday Mail, an audit of current research, and provided a contact line through the Parent Help Line of Child and Youth Health to enable people who wished to make comment but were unable to participate in other consultations.

The working group presented its report to the Minister in April 1996 outlining 19 recommendations. Some of the critical recommendations included the establishment of a Child Death Review Committee and a review mechanism to examine each serious child abuse and neglect case, a diversionary system for sex offenders and treatment programs for convicted offenders in prisons and universal home visiting. Many of these recommendations have still not been implemented.

THE CHILD PROTECTION REFORM 1997

A new approach was devised to deal with the increase number of reports of child abuse by targeting resources to children and young people in danger and at greatest risk in order to minimise re-notification and re-abuse. The new system differentiated notifications at intake and rated them on the initial safety of the child and the level of risk to child.

A three tier system of notifications was developed:

- Tier 1 – Children in Danger
- Tier 2 – Children at Serious Risk
- Tier 3 – Children in Need.

Those ranked Tier 1 and 2 were to receive an investigation and those ranked Tier 3 were to receive a ‘non-investigatory response’ – that is an intervention based on looking at the needs of family and child rather than on any defined ‘incident’ of abuse. The reform also established a central intake system to improve consistency of decision-making across the State. This system is what is operation today.

There is a 24-hour central intake – the Child Abuse Report Line – 13 14 78 that mandated notifiers and the general community can ring to discuss suspected child abuse and neglect.

The next review chronologically is this Child Protection Review 2002.
Chapter 5
Statutory Bodies Protecting Child and Youth Interests

INTRODUCTION

This chapter discusses:

- the required statutory mechanisms by which children and youth can be assured that their rights and interests are protected
- statutory means of protecting children and young people when in out-of-home care including the Charter of Rights of Children in Care
- ensuring that the UN Convention on the Rights of the Child ratified by Australia is implemented in practice.
GENERAL DISCUSSION

The UN Convention contains two important Articles which are relevant:

**Article 3**
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

**Article 12**
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

For many years organisations and individuals have called for the establishment of a specialist office or offices to be dedicated to public advocacy and ensuring the protection of children's human rights. There have been recommendations for a national office of Commissioner for Children to be set up. There have also been suggestions for a State Commissioner for Children and/or an Ombudsman for Children.

The public debate about the effect of the promotion of children’s rights on the relationship between children and their parents has increasingly led to acceptance that whilst for many children parents may be their best advocates, it is not true for all. The general acceptance includes the need for a specialist body or bodies dedicated to the interests of children and young people, as demonstrated by the range of such bodies in States around Australia with various functions and roles.

It is also true that many of the human rights of children and young people cannot in fact be achieved by parents alone, and there is a need for Government commitment and societal action. An example of this is where poverty impacts on the health and wellbeing of children such as in the case of Aboriginal children, but it may also occur as a consequence of mental and physical ill health of parents, drug addiction or death of parents.

The means by which children’s rights and interests should be protected is extremely complex and multi-faceted. This is due to philosophical, political, legal and bureaucratic considerations. This is best demonstrated by the recent public debate which has occurred in New South Wales about the jurisdictions, overlapping functions and resource implications of its child protection bodies, discussed hereafter.

The submissions which the Review received on this topic were very simply expressed, which unfortunately belie the real issues which the New South Wales debate has revealed.

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1 Submission 169 Action for Children SA Inc.
2 Around Australia there are a variety of bodies with functions related to the care and protection of children. They include Commissioners for Children in New South Wales, Queensland and Tasmania, an Office of the Community Advocate in the Australian Capital Territory in addition to Ombudsman offices in all States and Territories.
3 Submission 169 Action for Children SA Inc.
Those submissions indicated:

- considerable support for an office of Commissioner for Children which was expressed in many submissions and it was a common theme in the course of the consultations
- support for a return of a Child Death Review Committee
- the need for an independent review of complaints and grievances about administrative actions and services related to children and
- concern about the lack of protections for children in alternative care.

**CURRENT STATUTORY BODIES IN SOUTH AUSTRALIA**

In South Australia there are currently four prime bodies which have functions which impact on or are related to the rights and interest of children and young people:

- Children’s Interest Bureau Advisory Committee
- Children’s Protection Advisory Panel
- Office of Ombudsman
- Office of Public Advocate.

In addition, at the time of preparation of this report there is a Bill before Parliament to set up a Health and Community Service Ombudsman to provide an independent health and human services complaints and grievances body ("HCS Ombudsman").

Concerns were expressed in submissions and in consultations that the Children’s Interest Bureau Advisory Panel was very effective when it was first set up but in spite of the dedication of the present members, its decreasing resources, powers and advisory function has progressively eroded its impact so that it was no longer able to perform its previously broad protective role for children.

Concerns of a similar nature were expressed about the Children’s Protection Advisory Panel regarding its role being limited to advisory functions which are too easily ignored and under-resourced.

In relation to the manner of responding to complaints within the Department of Human Services (DHS), regarding for example the services and actions of Family and Youth Services (FAYS), this has largely been dealt with by internal processes and sometimes involves the Ombudsman. The criticism of this process is that there is no independent review process to deal with such complaints and grievances of services and actions. This has led to a proposed HCS Ombudsman related to the provision of services. However, the Health and Community Services Bill is limited to complaints about services in the health and human services sections. It does not include complaints and grievances related to administrative actions such as actions of FAYS officers in their child protective role for similar reasons discussed in New South Wales.

The Ombudsman in South Australia has a broad function of reviewing complaints across the whole of Government in South Australia and making recommendations. The concerns have been that it does not have specialist functions with respect to child protection issues.

The Office of Public Advocate is focused on guardianship issues generally, but mostly in the mental health area and does not have a particular child protection focus.

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4 They included Submissions 44, 53, 67, 68, 95, 103, 104, 111, 114, 133, 134, 138, 143, 169, 180, 183, and 185 (see Submissions Received Appendix for names).
5 Submission 181 Aboriginal Services Division; Submission 169 Action for Children SA Inc; Submission 174 Women’s & Children’s Hospital Investigatory Advisory Group.
6 Submission 130 Anne Nicoiaou; Submission 30 Mr Michael Lucieer; Submission 125 The Richard Hillman Foundation Inc; Submission 183 DHS Strategic Planning & Population Health.
7 For example Submission 133 The Youth Affairs Council of SA; Submission 186 National Children’s & Youth Law Centre, Uni of NSW.
8 See discussion in Chapter 9A.
RIGHTS AND INTERESTS OF CHILDREN AND YOUNG PERSONS

In considering the way in which children’s rights and interest may best be protected in South Australia, the starting point is asking what the nature of the rights and interests to be protected are, and what are the functions required of a body to protect them.

The UN Convention minimum standards may be summarised as follows:

▫ ensuring that the best interests of the child is a primary consideration in all actions of public and private institutions, including courts and legislative bodies
▫ requiring that appropriate legislative and administrative measures are taken to ensure child protection and care
▫ requiring that institutions, services and facilities for the care or protection of children conform with established standards
▫ ensuring that a child’s view is given appropriate weight according to age and maturity
▫ providing the opportunity to be heard in any judicial and administrative proceedings through a representative or appropriate body.

FUNCTIONS TO FULFIL OBLIGATIONS

In broad terms the functions which should be performed to fulfil these obligations include:

▫ Taking administrative measures to ensure child protection across whole of Government.
▫ Establishing a body or bodies to protect children which are independent of Government.
▫ Researching, assessing and advising on legislative requirements or amendments including the operation of policies, practices and services which affect children and young people
▫ Promotion of the interests of children and young people.
▫ Monitoring compliance with legislation, policies, practice and service standards in relation to the welfare of children and young people including complaints mechanisms.
▫ General community advocacy on behalf of children and young people.
▫ Individual advocacy for children and young people before courts or administrative bodies or children and young people in care.
▫ Initiating investigations in relation to general and particular child welfare issues.

MODELS FOR PROTECTING CHILD AND YOUTH INTERESTS

There are various models which have been established in other places including overseas models in Sweden, the United States and New Zealand. The number of specialised bodies and their functions will vary according to the demographic features of a community. New South Wales has chosen to have five separate bodies where others have only one or two.

Most of the submissions have suggested a Commissioner for Children but there have been different views as to the functions which should be performed. Suggestions include that the office should:

▫ provide a complaints or grievance procedure⁹
▫ provide general advocacy¹⁰ and promote varied and targeted education campaigns¹¹
▫ provide individual advocacy as well as general advocacy¹²

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⁹ For example, Submission 103 South Australian Law Society – Children & The Law Committee; Submission 133 The Youth Affairs Council of SA; Submission 183 Department of Human Services Strategic Planning & Population Health.
¹⁰ For example, Submission 114 Ministerial Council of Young South Australians; Submission 133 The Youth Affairs Council of SA, p. 7; Submission 169 Action for Children SA Inc.
¹¹ Submission 169 Action for Children SA Inc.
¹² For example, Submission 114 Ministerial Council of Young South Australians; Submission 133 The Youth Affairs Council of SA.
- perform a research function
- perform an investigatory function
- monitor and review legislation, polices and practices relating to children and young people
- consult with children and young people about matters related to child protection
- encourage peer advocacy with children and young people acting as effective advocates for each other and developing structures to further this objective (one example being the appointment of children’s rights officers to regions)
- provide a screening mechanism for adults who work with children.

However, not all of these functions could be performed by a single body as they may result in potential conflict and dilute effective focus because of the different specific areas.

Frameworks exist in all States and Territories, but the greatest assistance is to be gained from closer scrutiny of the most recent legislative frameworks in New South Wales and Queensland.

**NEW SOUTH WALES FRAMEWORK**

The bodies in New South Wales which have particular functions related to child and youth rights, welfare and protection concerns are the:

- Commissioner for Children and Young People
- Children’s Guardian
- Child Death Review Team
- Community Services Commission
- NSW Ombudsman.

The dilemmas which exist in relation to the operation of these bodies have been comprehensively articulated in a Briefing Paper 16/2001 by Gareth Griffith. This article addresses in a clear fashion the problems associated with rationalising the various roles functions and powers of those bodies in order to provide for a cohesive and effective system.

In New South Wales the recent history begins with the Wood Royal Commission paedophile inquiry ("the Wood Report") which reported in August 1997. The Wood Report recommended the creation of a Children’s Commission which was to have multi functions performed under one powerful umbrella which was a “one stop shop”. These functions were advocacy, research, investigation of complaints and monitoring, special guardian of children in care and also administering the child-related employment screening scheme. In particular it was to take over the functions performed by the Community Services Commission and the Child Protection Council.

The Community Services Commission had been widely recognised as an effective organisation, which since October 1994 had, among other tasks, undertaken the investigation of complaints about access to and provision of community services including child protection services. The Child Protection Council had specific functions in relation to the safety and welfare of children.

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13 For example Submission 133 The Youth Affairs Council of SA.
14 Ibid.
15 For example Submission 134 NAPCAN; Annexeure to Submission 169 Action for Children SA Inc; Submission 183 Department of Human Services Strategic Planning & Population Health; Submission 185 National Children’s & Youth Law Centre, Uni of NSW.
16 Submission 134 NAPCAN.
17 Submission 169 Action for Children SA Inc.
18 Submission 185 National Children’s & Youth Law Centre, Uni of NSW.
19 For example, Submission 134 NAPCAN.
Subsequently, there was public debate about the Wood recommendations and an area of particular controversy was where the function of investigation of complaints should lie. Should there be a merger of that function which was performed by the Community Services Commission into the role of Commissioner?

The Green Paper released in 1997 suggested that there were some potential problems with the proposed Commissioner’s role including review and investigation functions, due to potential conflict with its advocacy role. It was argued that there was need for impartiality of the complaints handler, which did not sit easily with the role of an advocate which promotes the needs and interests of a particular group.

The New South Wales Government therefore concluded that the function of investigation should not lie with the Children’s Commissioner and subsequently legislated accordingly. Instead the Government postulated that the function of investigation should be merged with the Ombudsman’s office. In the meantime, to further complicate matters, the Crown Solicitor’s Office provided advice that the jurisdiction of the Community Services Commission did not extend to the functions or possible statutory breaches of the Department of Community Services (DOCS) or other service providers. This was because of the definitional limitations of “community service”.

There was also debate as to whether the Children’s Commissioner should have the role of Special Guardian of children in care as recommended by the Wood Report. Instead, the Government after receiving responses to its Green Paper, decided that this function should be performed by a separate body, namely, a Children’s Guardian proclaimed under Section 178 of the Children and Young Persons (Care and Protection) Act 1998.

Essentially, the separation of this role into a specialist and accountable unit was as a result of an earlier report in 1992 known as the Usher Report which referred to “an inherent conflict” between the Minister being the legal guardian and the Department being the service provider together with later recommendations made in the Parkinson Report. However, it should be noted that the reasons for having a discrete guardianship role removed from the Minister and the Department do not prevent the Children’s Guardian role being performed by the Children’s Commissioner. The Parkinson Report, for example, recommended that it was appropriate for a guardianship role to be undertaken by the Commissioner.

In the course of the debate it was suggested that if the functions of Children’s Guardian were to be performed by the Children’s Commissioner, it could be best achieved by providing that the Commissioner hold the position of Children’s Guardian with one of the divisions of the Commission being an Office of the Children’s Guardian. As against this suggestion, it was pointed out that the Children’s Guardian would be the provider of a service and thus it would be difficult for it to be part of a Children’s Commission which had a monitoring role. Hence the suggestion was made that instead of the Children’s Commissioner being also the Children’s Guardian, a separate person could be appointed to that position, but that it be an attached office and not part of the Commission.

These matters have been elaborated at some length to demonstrate the complexity of the situation and to predicate some of the pitfalls to be avoided in South Australia. The clear message is that it is vital in developing a structure to ensure independence, avoid conflict and clearly articulate the functions of each body to eliminate overlap and confusion. Further, it is also important to provide an efficient process with minimum bureaucracy suitable to the circumstances of South Australia being a smaller population than New South Wales.

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22 There may be conflict if the best interest obligations of the child in care are not met by the Department acting as the agent of the Minister who has legal obligations as guardian.
25 Reference to the submission made by the Community Services Commission to the Green Paper in Briefing Paper 16/2001 see footnote no 24.
QUEENSLAND FRAMEWORK

The Queensland Government has substantially rationalised and amended its framework for bodies protecting children’s rights and interests with the passage of a number of complementary Acts. In 1999 the Children’s Court jurisdiction in relation to child protection orders was changed,26 the new Commission for Children and Young People was established in 2000,27 the Children Services Tribunal was also established in 2000;28 then the repeal of legislation related to the Office of Ombudsman and the passing of a new Act.29

This package of legislation has a number of innovative features which include:

- Articulation of a Charter of Rights for a child in care.30
- Provision for “community visitors” to attend visitable sites31 regularly and frequently and reporting to the Commissioner for Children and Young People.32
- Establishing a specialist multi-disciplinary tribunal to review a reviewable decision under the Children’s Services Act, on the merits.33 This is an expanded notion of services and includes decision such as placement and removal of children in foster care and refusal to approve a person as a foster parent.34
- Articulation of principles and the ambience to be achieved in the Children Services Tribunal which is child friendly and child focused.35
- Statutorily providing for bodies to seek and obtain independent and or expert advice to assist with the functions.36
- Screening of the employment function for child related work to be performed by the Commissioner.37

The overall flavour of these recent legislative measures in Queensland provides for and reinforces the rights of children and young people in an informed and flexible manner, and clarifies the different statutory roles of each of the bodies.

The major differences between the Queensland and the New South Wales legislation is that there is comparative streamlining of the number of bodies in Queensland with multi-functions being performed by the Commissioner instead of, for example, the separate Office of Guardian in New South Wales. There is a broadened role of the review of “services” by the Children Services Tribunal in comparison with the limited interpretation given to “services” considered by the Community Services Commission. However, the Commissioner in both States has been given the role of employment screening.

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26 Child Protection Act 1999 (Qld).
27 Commission for Children and Young People Act 2000 (Qld).
28 Children Services Tribunal Act 2000 (Qld).
29 Ombudsman Act 2001 (Qld).
30 Section 74 and Schedule 1 of the Child Protection Act 1999 (Qld).
31 Defined in section 64 Commission for Children and Young People Act 2000 (Qld).
32 Part 4 Commission for Children and Young People Act 2000 (Qld).
33 Children Services Tribunal Act 2000 (Qld).
34 See Schedule 98 of Children Services Act 2000 (Qld) for a list of reviewable decisions.
35 Section 7 Children Services Tribunal Act 2000 (Qld). Examples are (c) treating a child with dignity and privacy, (d) decisions as quickly as possible in the child’s interest, (e) providing information and enabling child to participate in review, (f) taking into account Aboriginal custom, (g) taking into account cultural practices. Also procedures modified in sections 47 and 52.
36 For example, independent inquirers to inform the Tribunal in section 117 of the Children Services Tribunal Act 2000 (Qld), using expert advisors including youth advisors by the Commissioner under sections 19, 90 and 92 Commission for Children and Young People Act 2000 (Qld).
37 Part 6 Commission for Children and Young People Act 2000 (Qld).
5.8 Statutory Bodies Protecting Child and Youth Interests

SOUTH AUSTRALIAN OPTIONS AND RECOMMENDATIONS

Returning to a consideration of the functions set out under the heading ‘Functions to fulfil Obligations’ in this chapter, there are four functions which are not presently being performed by any body in South Australia, namely, promotion and advocacy for children and young people, an independent complaints and grievance procedure for services, employment screening, and the role of Children’s Guardian.

PROMOTION AND ADVOCACY

The prime functions of promotion and general advocacy can appropriately be performed by a Commissioner. In addition there is an aspect of general monitoring of protocols, guidelines, practices and legislation in relation to the interest of children in general which is appropriately with such a statutory function. At present some of these functions are being performed by the combination of the Children’s Interest Bureau Advisory Panel and the Children’s Protection Advisory Panel. The concern is that these bodies do not have sufficient legislative power, profile or resources to do what is required to give appropriate focus and protection of children’s rights and interests.

Having reviewed the legislative models of Commissioners this Review suggests that the best fit for fulfilling the needs of South Australia is to create a statutory function of South Australian Commissioner for Children and Young Persons. The functions for such an office are as expressed in the Commission for Children and Young People Act (Qld) combined with some of the aspects of the New South Wales model.

The functions recommended are those set out in section 15 of the Commission for Children and Young People Act (Qld) such as:

- Sub-sections 15(c) (g) and (h) advocating for children
- Sub-section 15(d), promoting the establishment of appropriate and accessible mechanisms for service providers
- Sub-sections 15(e) and (f) promoting, monitoring and reviewing laws, policies and practices
- Sub-section 15(i) public information and discussion
- Sub-section 15(j) promote and undertake research
- Sub-sections 15(l) and (m) as to screening
- Sub-section 15(n) make recommendations as to functions
- Sub-section 15(o) other functions
- Section 19, 90 and 92 regarding use of expert and youth advisory committees.

In addition, other sections of relevance in the Commission for Children and Young People Act 1998 (NSW) which are recommended with appropriate modifications are:

- Section 14 which refers to co-operation with other agencies
- Section 15 concerning referrals to police (which should include Crisis Response and Child Abuse Service)
- Section 16 which specifically provides that the Commission does not have the function of dealing directly with complaints or concerns of particular children
- Section 17 which allows the Minister to require the Commission to conduct a special inquiry
- Section 23 which provides for annual reports to Parliament
- Section 24 which allows the Minister to require the Commission to make a special report on any particular issue

38 There is also a function of reviewing and monitoring legislation, policies, practices and services regarding child protection in particular, which is a specific function suggested for the South Australian Child Protection Board.
39 There is also a function of research and analysis regarding child protection in particular which is a specific function suggested for the South Australian Child Protection Board.
Section 27 which provides for a Parliamentary Joint Committee of members of Parliament to be set up with an accompanying schedule.

In recognition of the special Indigenous issues and the over-representation of Aboriginal children and youth in some of the most serious concerns about children and young persons, it is also recommended that there be a Deputy Commissioner who is to be an Aboriginal person. This person’s function would not be limited to dealing with Indigenous issues, although that would be a prime focus.

It is also important that the Commissioner report to Parliament and not simply to a Department. In particular, the provision for a Parliamentary Joint Committee as is provided for in the New South Wales legislation is highly recommended to ensure that not only is there a cross-government focus on child protection through the South Australian Child Protection Board as referred to in Recommendation 27 but also a cross-party commitment to focus on child protection.

RECOMMENDATION 1

That a statutory Office of Commissioner for Children and Young Persons be created to:

- include the functions of advocacy, promotion, public information, research, develop screening processes for work with children and young persons
- be based largely on the model in the Children and Young People Act (Qld) 2000 as contained in sections 15 (c) to (j) and (l) to (o), 19, 90, 92 and Part 6, combined with the Commission for Children and Young People Act 1998 (NSW) sections 11 (a) to (h), 14, 15, 16, 17, 23, and 24
- include sitting as a member of the South Australian Child Protection Board
- be independent of Government
- report to Parliament.

That a statutory position of Deputy Commissioner of Young Persons be created and to be occupied by an Indigenous person.

That a Joint Parliamentary Committee on child protection be created and statutorily mandated in a way similar to section 27 of Commission for Children and Young People Act 1998 (NSW).

Reason

A Commissioner is needed to give the voice of the child. This model includes the best features of the Commissions in Queensland and New South Wales. It specifically does not include the function of deciding complaints and grievances. It is part of an overall framework of protection of the interest of children and young people. It incorporates recognition of the special concerns of Aboriginal children. It also incorporates commitment by all political parties to protecting children.
COMPLAINTS AND GRIEVANCES

Whilst grievances and complaints about health and welfare services involving children may be dealt with though the HSC Ombudsman, there would still, however, be a role to be performed with regard to independent review of grievances and complaints which relate to administrative actions other than those related to services. Such a role does not sit well with an office of Commissioner for the reasons discussed above in relation to New South Wales.

Options with regard to providing a complaints and grievances process could include:

- expanding the role of the proposed HSC Ombudsman
- enhancing the present functions of the Ombudsman
- setting up a specific child focused complaints and grievances body.

As to the last suggested option of a child complaints body, this would be adding an extra layer of bureaucracy as the other two bodies would still be needed to perform their present general tasks.

As to the first option of expanding the role of the proposed HSC Ombudsman, this will require expansion of the grounds for review beyond services to include broader areas of review in one area only, namely, those involved with children and young people. Further, as the complaints mechanism is only limited to health and human services it would not capture other departments which impact on child protection such as education, SAPOL, housing, etc.

As to the second suggestion of enhancing the present functions of the Ombudsman, this would generally cover all Government departments whose actions affect children and youth. It would have to specifically exclude those complaints or grievances which fall within the jurisdiction of the proposed HSC Ombudsman. This option appears to provide the best solution; however, it is essential that there be dedicated trained staff allocated to this work.

A precedent for the use of specialist units already exists within the Office of Ombudsman; for example, in the area of complaints made in relation to health where three staff have developed particular expertise.

A detailed discussion of a three-tier complaints and grievances mechanism is contained in Chapter 9 (the FAYS Chapter).

RECOMMENDATION 2

That a complaints and grievance process relating to administrative actions decisions (but excluding services) include review by the Ombudsman. See Recommendation 43.

Reason

Whilst the system of merits review in Queensland through the Children Services Tribunal appears to be an excellent precedent for a review of administrative decisions, it would be significantly more costly than extending the role of the Ombudsman by a dedicated service. The essential function could also be effectively and efficiently performed by the Ombudsman using well-trained staff who become familiar with the complex area of child protection.
RECOMMENDATION 3

That a special unit be created within the proposed office of the Health and Community Services Ombudsman, to investigate complaints and grievances in relation to services concerning children and young persons.

Reason

Due to the special complex issues related to child protection a specially trained unit should deal with such complaints, which would come within the proposed jurisdiction of the Health and Community Services Ombudsman.

MECHANISMS FOR MONITORING COMPLIANCE

Several bodies are required to share aspects of this function.

Children's Guardian

The role of children’s guardian could be performed by the separate Office of Children and Young Persons' Guardian attached to the Office of the Commissioner for Children and Young Persons. It is not essential that this role be the same as that presently undertaken by the Office of Children's Guardian in New South Wales, namely, that it exercise the parental responsibilities of the Minister for a child. Instead it is suggested that the Minister should retain that responsibility of legal guardian but the role of the Children’s Guardian include the other functions set out in section 181 of the Children and Young Persons (Care and Protection) Act 1998 (NSW). In particular, the role of the guardian should include:

□ Ensuring that children under the Guardianship of the Minister are cared for in accordance with agreed guidelines and standards as developed by the Commissioner in a charter such as that contained in the Charter for Children & Young People in Care.40

□ Performing some of the functions which have been given to the Commissioner in Queensland, namely to provide inspection of visitable sites of children who are in out-of-home-care. These include children under the Guardianship of the Minister and young offenders in secure care. There is also provision made for the use of community visitors under Part 4 of the Commission for Children and Young People Act 2000 (Qld).

□ Enabling, arranging or ensuring that individual advocacy for children in care is available for children in Court or before administrative bodies.

RECOMMENDATION 4

That a statutory Office of Children and Young Persons’ Guardian be created and placed in the Office of the Commissioner, having a separate function namely:

☐ to ensure that children and young people under the Guardianship of the Minister are cared for in accordance with guidelines set out in a Charter of Rights of Children in Care to be developed consultatively and enshrined in legislation in similar fashion to section 74 and Schedule 1 of the Child Protection Act 1999 (Qld)

☐ include functions similar to the “community visitors” set out in Part 4 of the Commission for Children and Young People Act 2000 (Qld).

That in addition, the functions of the guardian should include:

☐ monitoring the annual reviews of children and young people in long term care as discussed in Chapter 9

☐ receiving information from DHS/FAYS.

That FAYS have responsibility to inform the Children and Young Persons’ Guardian on matters of significant concern regarding a child or young person in care. Such matters would include repeated placement breakdown, serious abuse in care, criminal conduct, chronic truancy, homelessness and major health problems.

Reason

There is a need to ensure that those children who are most vulnerable and who are under the statutory Guardianship of the Minister or otherwise in care away from their parents have their rights articulated and safeguarded. This should be a specific statutory position although the office can administratively be sited with the Commissioner. The Guardian should report to Parliament and have the report included as part of the report of the Commissioner. The Guardian should proactively check on such children and young persons to ensure their welfare. This to be done through persons similar to the community visitors described in the Queensland legislation. This is similar to the functions which are performed in the United Kingdom by the very successful Children's Rights Officers. This model is deliberately suggested to have some parity with the approach of another State in Australia rather than develop yet another model.

Employment screening

The new function of implementing employment screening would best lie with South Australian Police Department (SAPOL) which would in any event be required, for its own purposes, to maintain records of persons who have been convicted of offences or who may be the current subject of surveillance.

It is appropriate that the development of guidelines and procedures for under-taking screening and monitoring in relation to current and future employees be developed by the Office of Commissioner. Employment screening is discussed in detail in Chapter 17.
Investigation of child death and serious injury

An important aspect of child protection is the investigation of death and serious injury to children including the monitoring of the adequacy of systems and services. There is a need to have a body which monitors epidemiological factors in order to detect any deficiencies and to develop strategic approaches to protect children. An independent body should perform this role. Chapter 18 considers in detail the need for a South Australian Child Death and Serious Injury Review Committee to be established as a matter of high priority.

RECOMMENDATION 5

That a South Australian Child Death & Serious Injury Review Committee be established.
(See Chapter 18)

ADMINISTRATIVE MEASURES ACROSS WHOLE OF GOVERNMENT

Chapter 7 on Interagency Coordination and Relationships provides the basis for the whole-of-Government statutory approach to child protection. It is a plan to promote improved coordination and collaboration across all sectors of Government as well as the whole of community, including non-Government agencies to focus on child protection. The approach recommended is to establish complementary statutorily mandated central and regional bodies.

A three-level process is recommended; the first two levels of which are to be provided in statute, with the third at a case-by-case practice level, to enable interagency collaboration and coordination, which therefore does not require a statutory basis.

The first level is the creation in legislation of the South Australian Child Protection Board. This high level board is recommended to be composed of the chief executive officers of each of the primary departments and non-Government representatives and is to be mandated by statute.

The second level is the establishment in legislation of Regional Child Protection Committees which are regarded as an important basis for creating a focus on inter-agency collaboration at this level, and on improving the development of community responses to local variations on child protection.

Detailed discussion on these recommended statutory bodies is contained in chapter 7.
INTRODUCTION

This chapter contains the following:

- current theoretical and research foundations about early intervention and prevention and their effectiveness
- an overview of selected international and national strategies and models
- the current South Australian situation
- key requirements for a framework for effective protection
- recommendations for services required.
Debate often occurs about the meaning of ‘early intervention’ and ‘prevention’. Discussion includes consideration about when prevention ends and when early intervention begins. There are also differing views on what constitutes early intervention, and some may differ as to whether a particular intervention is ‘too late’. It has also been said that the term ‘child abuse prevention’ may tend to focus attention on the problems of individuals without recognition of the connection with and influence by a wider social context. Further, that any models framed around prevention without promotion may be considered a somewhat restrictive means to address social ills.

A robust approach is taken on the definitional aspects of early intervention and prevention. Early intervention refers to action that is taken before a particular indicated problem has arisen to prevent the emergence or ameliorate the effects of a potential but known problem. Prevention refers to action or strategies put in place prior to any early intervention or, alternatively, to prevent the re-emerging of an earlier problem.

The focus of the chapter is on what strategies and action are already occurring in South Australia and what can be undertaken to forge a strong, sound and effective framework for the future. The Review strongly supports the development of an early intervention and prevention framework across Government (as illustrated in Diagram 2 Conceptual Relationship between the Child Protection and Services for Children and Families and discussed later in this chapter under the heading Child Protection Strategy and other cross-Government strategies) for improving outcomes for children and young people. The service models required for improving outcomes require a coordinated approach. Viewing child protection initiatives from a narrow perspective of ‘child abuse and neglect’ will not result in improved outcomes for children and young people as a population group.

Within this overarching early intervention and prevention framework, a package or suite of services needs to be available that can provide a variety of responses at particular points or events in time in the life of a family. Some of the service structures are well developed and generally widely available such as child care services; others require significant funds to be committed; for example, nurse home visiting and therapeutic treatment services.

All families need assistance at some point so it is critical that there be a mix of services which are universally available, as well as particular selected services for families where there are greater needs (secondary) and indicated (tertiary) services where families have identified and significant problems.

The importance of early intervention and prevention in relation child protection is elegantly and powerfully expressed by James Heckman, the 2000 winner of the Noble Prize in economics.

We cannot afford to postpone investing in children until they become adults, nor can we wait until they reach school age – a time when it may be too late to intervene. Learning is a dynamic process and is most effective when it begins at a young age and continues through adulthood. The role of the family is crucial to the formation of learning skills, and government interventions at an early age that mend the harm done by dysfunctional families have proven to be highly effective.

The returns to human capital investments are greatest for the young for two reasons: (a) younger persons have a longer horizon over which to recoup the fruits of their investments and (b) skill begets skill. Skill remediation programs for adults with severe educational disadvantages are much less efficient compared to early intervention programs. So are training programs for more mature displaced workers… At certain levels of investment, marginal returns are highest for the young.
WHAT RESEARCH REVEALS ABOUT EFFECTIVE EARLY INTERVENTION AND PREVENTION

Much of the research has been undertaken in the United Kingdom and the United States. In the United Kingdom this research was undertaken particularly prior to the passing of the Children’s Act 1989 (United Kingdom). That Act itself was based on a series of some 26 research studies. In the US, the body of research conducted notably by Perry, Olds and Scarborough, through the use of systematic well-conducted trials have also contributed to furthering understanding of the role of early intervention programs in mitigating the effects of social disadvantage.6

There are a number of common themes with the research which in summary reveal the following:

- The early years of a child, particularly the first three years become the life-long foundation for social competence, coping skills, learning behaviour and health. Early abuse is extremely damaging to a child’s developing brain.7
- A wide range of factors influence child development, family functioning and include the environment and the larger socio-economic community.8
- Failure to properly nourish a child, inflicting physical pain and injury, emotional injury or ignoring emotional needs of a small child can result in developmental delays across the broad spectrum including cognitive, language, motor skills and socialisation skills.9
- Chronic and severe neglect is associated with major impairment of growth and failure to thrive with long term intergenerational effects.10
- Emotional abuse and neglect are less apparent and one of the hardest forms of maltreatment upon which to effect positive changes.11
- The need to take a lifespan approach and not neglecting other critical development stages.12
- The intergenerational nature of child abuse and neglect is such that the abused in turn are at risk of becoming the abusers.13
- Abused or neglected children are at additional risk of drug and alcohol dependence, delinquent behaviour, criminal behaviour and recurring health problems, mental and physical.14
- Child abuse and neglect are products of poor parent/carer relationships with a child.15
- Prevention needs to be placed in a broad concept of promoting child health and wellbeing rather than being focused on problem solving.16
- There is a need for a holistic prevention strategy with a focus on whole community17
- There is a need to monitor strategies to evaluate effectiveness.18

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**SOCIO-ECONOMIC FACTORS**

A major factor that influences and contributes to the level of child abuse and neglect is socio-economic disadvantage. The Australian Bureau of Statistics measures relative socio-economic disadvantage of a population in an area in comparison with the average for Australia as a whole, described as the Index of Relative Socio-Economic Disadvantage (IRSD).19 In the 1996 Census, South Australia is indicated as having the third lowest IRSD, that is, the greatest socio-economic disadvantage as well as Adelaide having the lowest score of any Australian capital city.20 This is reflected in the low household incomes, high levels of pensioners and those on benefits and high rates of poverty. In South Australia one in five children lives in a single parent household and 15% of children and young people living in households with two parents/carers are living in poverty.21

The growth in sole-parent families has increased steadily over the past decade, and has particular significance for children and young people. Many sole-parent families comprise a notable percentage of persons experiencing poverty and hardship.22

*Table 2: Dependent children under the age of 16 years of selected pensioners and beneficiaries, Adelaide (1989 to 2001)*

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Number</td>
<td>64,241</td>
<td>84,480</td>
<td>99,880</td>
<td>114,360</td>
</tr>
<tr>
<td>Percent</td>
<td>28.8</td>
<td>37.6</td>
<td>45.6</td>
<td>52.9</td>
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Table 2 illustrates the significance of the problem for children in Adelaide. It demonstrates the marked increase in children living in households where the families are in receipt of some kind of income support (around $23,000 a year for families with two children) and indicates that at least one in every two children under the age of 16 years is living in a family reliant on Government income support:23

*Many of these families have below average levels of employment, tertiary education and income (69 per cent of metropolitan sole-parent families have incomes below $20,000).*24

It should not be assumed that poor people necessarily abuse or neglect their children because they are poor, however, connections between the existence of poverty and abuse and neglect are indicated. It is not surprising that persons who are stressed by disadvantage will be less likely to be able to cope with their own lives as well as those of their children across all life domains including health, education and employment. This is particularly apparent in Indigenous communities where the level of poverty and disadvantage is greatest. While poverty and disadvantage are highly associated with child abuse and neglect notifications in South Australia (see Chapter 9) one of the major ‘protective’ factors for children and young people living in disadvantaged communities is the level of social connectedness of families with the broader community. This can prove to be a significant ameliorative factor.25

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19 The SEIFA Index of Relative Socio-Economic Disadvantage.
21 Department of Human Services, Statistical Profile of Children and Young People, DHS 2001.
24 Ibid.
Aside from tackling overall socio-economic conditions, developing community cohesiveness, creating employment and community participation, developing sustainable and functional communities – in effect ‘strengthening communities’ - are broad, long-term strategies that aim to support families and enhance child wellbeing.

**FRAMEWORK FOR EARLY INTERVENTION AND PREVENTION**

The overall framework that would appear to be universally accepted as conceptualising an appropriate prevention strategy features a three level approach.

**Universal or Primary Services**

The best outcomes and value for money are not necessarily programs or initiatives that are generally associated with ‘preventing child abuse and neglect’ per se but are broad programs such as home visiting or child care that may have a number of objectives focused on improving outcomes in a range of areas such as participation in education and training or improved health outcomes for children and families. These service models are not seen as stigmatised services for ‘abusing families’ but are services offered to a whole population group.

These strategies are aimed at the general population (for example, all families, all new mothers, etc) and are delivered to the whole targeted population in a non-stigmatising and accessible manner. An implicit or explicit aim of the services is to prevent child abuse or neglect occurring in the first place by improving parenting skills and knowledge and ensuring access to appropriate supports and services.

**Selective or Secondary Services**

These strategies target either individuals, groups or communities in which the risk of abuse or need is higher than in the general population. The secondary services are directed to the clients who have a particular issue or concern and require assistance to resolve this. As with universal prevention, the aim of the secondary services is to prevent child abuse or neglect occurring in the first place.

**Indicated or Tertiary Services**

These strategies are more individually tailored strategies in response to high risk children and their families. Tertiary services are often intensive and ongoing. The aim of these services is to prevent or reduce the risk of child abuse and neglect from recurring and are usually required as a result of statutory intervention.

It can be argued that the aim of intervention and ‘treatment’ after abuse or neglect has been identified is prevention and that tertiary services could be regarded as part of a prevention strategy. This is on the basis that effective treatment may in fact prevent recurrence or alleviate the level of risk.26

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26 Submission 173 Department of Human Services Early Intervention Advisory Group.
INTERNATIONAL STRATEGIES

Programs overseas and in Australia that currently reflect service delivery outcomes that support the broad elements of an early intervention and framework include some of the following.

UNITED KINGDOM

Sure Start

This is an early intervention program for children under four years of age and their families, who live in areas of high social and economic hardship.27 The program has specific targets (for example, a 5% reduction in the proportion of low birth babies) which then become the focus of a variety of services directed towards that outcome. The core services of the program include outreach, home visiting, support for quality play, learning and childcare experiences, advice about child health and development, and support for children and families with special needs. It is supported by a substantial budget and other Government initiatives.28 Sure Start forms one of the central program initiatives in the UK Social Exclusion policy framework and integrates early childhood development and early intervention strategies. This program is being progressively rolled out across the UK with current targets set at covering 20% of the most disadvantaged neighbourhoods and universal pre-school availability for all three to four year olds.29

UNITED STATES OF AMERICA

Head Start and Early Head Start

This program provides services before a child is born and continues to support families during the first three years following birth.30 The key elements of the program include an intensive focus on the whole of childhood development, family relationships and community development. It includes home visiting, parent education support and childcare.31

The Parent/Early Infancy Project

One of the most widely known and acclaimed program models is that of “The Parent/Early Infancy Project” developed by David Olds and colleagues in the United States. This model of intervention is widely recognised as being highly effective and has been rigorously evaluated. The program consists of home visiting by a health nurse beginning ante-natally and continuing for a period of up to two years. The program targets mothers with risk factors such as economic deprivation, antenatal health damaging behaviours and poor family management practices.

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27 Ibid citing the Sure Start website www.surestart.gov.uk.
28 Ibid.
29 Submission 173 Department of Human Services Early Intervention Advisory Group.
30 Ibid citing the Head Start website www2.acf.dhhs.gov/programs/hsb/.
31 The evaluation of the program suggests that its effectiveness varies depending on the different client groups involved.
Positive outcomes from the program include:

- improved maternal diet
- reduced smoking
- fewer pre-term deliveries
- higher birth weights
- less child abuse and neglect (in the first two years)
- mothers more likely to continue their education
- higher rates of employment
- delaying future pregnancies.\(^{32}\)

A variety of Australian programs are similar such as Queensland FamilyCARE, Western Australia Best Beginnings and New South Wales Families First.

**CANADA**

**Healthy Babies, Healthy Children**

This is a prevention and early intervention strategy for children aged from birth to six years. The organisations and agencies involved in providing services to children and families in the target age group are required to identify through a screening process ‘high risk families’ and link them with appropriate services. It is supported by a range of other Government initiatives, including home visiting, speech and language services and other programs targeted to particular ‘at risk’ communities specifically rural remote areas and targeting Indigenous children.\(^{33}\)

**NEW ZEALAND**

**Strengthening Families**

This is an intervention program which provides coordinated services to improve the wellbeing of the ‘most at risk’ children, young people and families.\(^{34}\) The strategy takes a multi-sector approach and covers the broad spectrum of welfare, education and health. Under the umbrella of that strategy there are new programs being developed such as Family Start, an early intervention program for newborns and social workers in schools, aimed at identifying risk among support for older children.

It can be seen from the above description of some major strategies overseas that there are common factors of a holistic approach, focusing on the early years and relying on the collaboration and partnership with persons and bodies apart from Government.

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33 Submission 173 Department of Human Services Early Intervention Advisory Group citing the Ontario Government website www.gov.on.ca.
NATIONAL STRATEGIES

There are a number of national strategies that have informed the current arrangements between the Commonwealth and the States including South Australia.

NATIONAL STRATEGY TO PREVENT CHILD ABUSE (1993)

This strategy, developed by the Commonwealth in 1993, was an attempt to take a national perspective on child abuse and to promote high level, long-term cross-Government and inter-Government commitment and collaboration supported by funding from all Governments. Over time, there were a series of changes to structures and policy at Commonwealth and State levels including the disbanding of the National Child Protection Council and that has effectively impacted on the implementation of that plan.

FAMILY SUPPORT SERVICES

The general categories of prevention services around Australia include a broad range of family support services which cover a wide spectrum of service delivery types, ranging from large-scale media campaigns for the general public to volunteer help for families in their own homes.35

The major categories of family support services across Australia are:

- information and referral
- education, skills development
- counselling, mediation or therapy
- residential and in-home support
- advocacy
- other family support services.36

Many similarities in aims and approaches to family support services by each of the States and Territories have been identified in Family Support Services in Australia 2000. For example:

- Family support services are becoming more publicly visible and are increasingly complemented by services which build on the strengths in families rather than focusing on the dysfunctional aspects of family life.
- Building and strengthening the capacity of families and communities to manage their own needs is seen as critical.
- Local perspectives are becoming more important. Generic, whole of jurisdiction service delivery models are being complemented by innovative, locally designed and delivered services to meet the needs of families and communities for whom the services are provided.
- Integration of ‘seamlessness’ of service delivery is a key aim through actively fostering partnerships between the Government departments, local Government and non-Government agencies and in assisting with coordination of services and sharing of resources.
- Professionalism in providing family support services is increasing, with resourcing, training and support for both professional staff and volunteers receiving greater attention and funding.
- Clients are seen in the context of their family, and the family in the context of their community. Strengthening families and communities is a prime driver for many of the services.

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36 Ibid.
Early childhood services are seen as crucial if stronger, self-reliant families and communities are to thrive. Early support and intervention are clearly seen as highly effective in preventing or reducing the level of more intrusive interventions at later stages.

Services designed to meet the specific needs of the people they are seeking to assist – whether these are recent migrants, families with young children, Aboriginal and Torres Strait Islander peoples, or isolated families.

Understanding and measuring outcomes are essential factors in delivering effective services, with a sustained move towards identifying outcomes for individuals, families and communities. Knowing and understanding ‘what works’ is a major issue for all jurisdictions.

Clearer objectives in funding services in the local Government and non-Government sector with funding arrangements which are formalised and specify the outcome and performance measures expected.

Commitment to good, consistent information about services being delivered is evident, with enhancements to existing data collections or plans for new data collections on the agenda for many jurisdictions.

It can be seen from this overview that the principles of effective prevention are well understood and there is an endeavor to reflect these principles in practice. The challenge is in the implementation and to ensure that the delivery of services is accessible and effective.

PROPOSED PLAN OF ACTION FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT IN ABORIGINAL COMMUNITIES (1996)

This strategy was developed by the secretariat of the National Aboriginal and Islander Child Care Agencies. The plan was based on extensive consultation and literature review. The plan, funded by the Federal Government, was developed independent of Government and recommendations provided to the current Federal Government. To date this plan has not been implemented.

STRONGER FAMILIES AND COMMUNITIES STRATEGIES

Federal funding has recently been rolled out for a range of complementary and interacting initiatives that fulfil a number of key principles that include: working in partnerships; encouraging a preventative and early intervention approach; and supporting people through life transitions.

There are two particular funding sources available under that strategy.

- **The Stronger Families Fund** which encourages coordination and integration of local services to assist communities to find new approaches to strengthening family functioning, with a focus on early childhood development and effective parenting.

- **Early Intervention and Family Relationships Support**
  This funding encourages communities to provide innovative services and activities in parenting support and playgroups, marriage and relationship, education and family counselling.
OUR CHILDREN, OUR FUTURE, EVERYONE’S BUSINESS - TOWARDS A NATIONAL INDIGENOUS “CHILD SAFETY AND FAMILY WELL-BEING FRAMEWORK” (2001)

This framework was developed under the Community Services Ministers Advisory Council (CSMAC) and as at the date of preparation of this report, has not yet been signed off.

The document articulates four principal recommendations to progress the framework within each State and Territory. As with the Stronger Families and Communities Strategy, it also focuses on improved partnerships and better communication across and within jurisdictions. It supports Indigenous child safety and wellbeing as a national priority and 16 principles have been developed for best practice in working with Aboriginal families. There is a focus on maternal, infant child health, family support services, education and youth development, in particular. (See also Chapter 8 Indigenous Children and Young Persons.)

NATIONAL CRIME PREVENTION STRATEGY

The Commonwealth acknowledges the importance of adopting an ‘early intervention’ approach to crime prevention. Accordingly, early intervention is a priority for the Government’s National Crime Prevention Program. The program undertakes work aimed at early intervention in a number of areas related to young people who are at risk of becoming involved in crime or anti-social behaviour, and their families. The key program areas include:

- preventing bullying in the pre-school and the early primary years
- a focus on partnerships with communities to identify local solutions to local crime problems
- juvenile diversion strategies
- working with grass roots Indigenous organisations to develop innovative solutions and promote effective communication among Aboriginal and Torres Strait Islander communities
- mentoring programs for young offenders, parenting programs for prisoners and truancy.

Some aspects of this program integrate with State crime prevention strategies but a significant funding component is managed at a national level. The research report38 provides an overview of the research and incorporates significant discussion on strategies dealing with the prevention of child abuse and neglect.

PARTNERSHIPS AGAINST DOMESTIC VIOLENCE

Partnerships Against Domestic Violence is concerned with finding better ways of preventing and responding to domestic violence by working with the community and the States and Territories. The Partnerships Against Domestic Violence initiative is funding Commonwealth, State and Territory projects under the initiative’s six priority themes:

- helping children and young people who may have experienced or witnessed domestic violence to break the cycle of violence and develop healthy relationships
- helping adults to break the pattern of violence – working with victims and perpetrators to prevent and reduce domestic violence
- protecting people at risk – reforming legislation and improving responses by police and courts
- working with the community – educating the community against violence

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information and good practice – finding out what works; researching areas where new information is needed to support violence prevention
• helping people in regional Australia – overcoming barriers to receiving assistance.

A series of projects have been funded at the national and State level that focus on the impact of domestic violence on children and its prevention.

STATES AND TERRITORIES STRATEGIES

NEW SOUTH WALES

New South Wales has developed the Families First strategy across Government. This program was developed using existing resources in one region and is being rolled out progressively across NSW augmented with significant additional funding. This is a coordinated strategy to increase the effectiveness of early intervention and prevention services to help families raise healthy and well adjusted children. Its focus is on the antenatal/postnatal and early childhood continuum aiming to support families through a system of universal and targeted supports. It aims to overcome problems of fragmentation by providing a structure for the coordination of programs for children and families and for collaborative planning at State, regional and local level.

This strategy explicitly focuses on evidence-based programs which fund sustained home visiting programs. The strategy design and implementation is focused on joint responsibility and accountability across a number of Government agencies.

The strategy has four service development fields:

• supporting parents who are expecting or caring for a new born providing accessible healthcare, support and information about parenting and linking parents to other services where additional support is required
• providing antenatal support and providing services in the home and in other community settings for women, particularly Aboriginal and young women who have difficulty accessing antenatal support and care
• increased home visiting by nurses to reach families that may not access clinic-based services
• supporting parents caring for infants and young children through expansion or establishment of services such as: parenting information; supported playgroups and volunteer home visiting for selected families.

The program aims to establish links between antenatal, early childhood health and the full spectrum of Government and non-Government services that support families. A range of other initiatives have also been developed and these include family workers who provide intensive support to families, “transition to school” programs, “linking in” with community renewal and community development initiatives and schools as community centres.
QUEENSLAND

Queensland has developed a *Putting Families First* policy which involves a suite of strategies that include child protection and prevention. The prevention program involves increasing investment in:

- prevention and early intervention services, and
- trialing (small group) prevention and early intervention trials focusing on changing the way that Government and non-Government community sectors achieve results for families.

The child protection component involves increased investment in the following areas:

- strengthening child protection particularly addressing the high levels of over-representation of Aboriginal and Torres Strait Islander children and young people, children with complex needs and children in rural and remote areas
- First Years Prevention program which includes projects such as placing youth workers in selected high schools to divert young people from homelessness and early school leaving.

One of the key early intervention and prevention programs is the Family CARE (Community-based Assistance Resourcing and Education) home visiting service which operates at a number of sites and aims to redress unequal health outcomes of more vulnerable families with newborns by providing supportive, professional home visiting services using a multidisciplinary teamwork approach to case management and family support. The team may include other workers from various agencies depending on the family’s needs to ensure a coordinated and supportive response by all service providers across the team.

WESTERN AUSTRALIA

Western Australia has invested in an early intervention strategy entitled *Family Strength* which is an interagency collaborative approach to early support to promote healthier parents and children, greater participation of parents in education and training and reductions in the problems that lead to child abuse and neglect.

The strategy involves engagement through participation of local communities, active partnerships between all levels of Government and the corporate sector and capacity building by focusing on strengths of communities.

A range of early intervention and support services are funded or have been incorporated under the umbrella structure of this strategy, namely:

- universal nurse home visiting services health services
- proposed child and family centres modeled on the ‘Sure Start’ and ‘Canadian Early Years’ model
- trained volunteer community mothers who are parents providing parenting support and advice in homes and linking families to other services
- the targeted ‘Good Beginnings’ home visiting service modeled on the Queensland Family CARE program providing longer term in-home assistance for parents of children who may be at risk of poor life outcomes; and men’s resource services to promote their role as parents.
VICTORIA

The Victorian Department of Human Services Best Start Strategy is for children 0 to eight years and aims to improve the range, accessibility, responsiveness and quality of services at a local level. The core elements for the strategy include:

- support for parents
- opportunities for good quality play, learning and childcare for children
- primary and community services providing advice, care, monitoring and promotion of family health and wellbeing
- support for parents with special needs
- outreach and home-based services for those requiring high level support
- community strengthening and health promotion and housing support.

There is flexibility to vary the design and content within local areas around these core areas. The strategy is underpinned by service development principles that require active engagement of local communities.

SOUTH AUSTRALIA

South Australia, as with other States and Territories, is a party to most of the major prevention strategies and programs funded through the Commonwealth, mentioned previously in this chapter. The approach to prevention of child abuse or neglect in South Australia is informed and influenced by the programs and approaches developed internationally, by the Commonwealth and other States.

Within South Australia two initiatives have been:

- **South Australian Child Abuse Prevention Strategy (1996)**
  A working group, established by the then Minister for Family & Community Services, developed strategies for the prevention of child abuse and neglect. Nineteen recommendations of a broad nature were made which included that Government departments and agencies accept child abuse and prevention as a core part of business. There were also specific recommendations including the child death review committee. There was, however, very limited implementation of that strategy.

- **Healthy Start (2000)**
  Healthy Start was a strategy developed by the Department of Human Services to provide a broad framework for the provision of quality services to women and their families in the areas of birthing, parenting, sexual health and women’s health and related issues. The strategy sets out broad directions for services arranging from primary care, early intervention, health promotion, clinical services and community support.
SERVICES AND PROGRAMS AVAILABLE IN SOUTH AUSTRALIA

The following are some of the major services as well as some examples of minor services currently available in South Australia.39

UNIVERSAL/PRIMARY SERVICES

- **Child and Youth Health (CYH)** is an independent State Government health unit funded primarily by the DHS. It provides a range of primary health care programs for children and young people in over 250 locations, in metropolitan Adelaide, main towns, rural communities and remote areas and the Parent Help Line – a 24 hour phone service staffed mainly by volunteers. The Second Storey is also a part of CYH.
- **Childcare Centres and Family Day Care** provide early childhood care services for children 0 to five years of age.
- **Play groups** provide settings for parents and children to learn responding to a child’s need for play and develop attachment through play.
- **Education**: Department of Education and Children’s Services (DECS) provides universal education services to all children and young people. Independent and Catholic School sectors also providing schooling services.
- **Hospitals** provide a wide range of health care and support services to children and families including some outreach services. Significant antenatal, child health care and safety and parenting education and information services are provided as a primary health care service from hospitals.
- **Parenting SA** produces a series of publications on a range of parenting topics in Parent Easy Guides and includes specific guides for Aboriginal communities. They run community education messages through a variety of media as well as distributing small grants to non-Government services to assist with parenting programs.
- **SA Police Department (SAPOL)** provides universal community protection through general policing services and also a variety of community safety programs such as Neighbourhood Watch and Blue Light Discos across SA.

SECONDARY/SELECTIVE SERVICES

- **Community Health Centres** provide community health services and primary care services. They target particular groups such as young parents, sole parents, Indigenous families and specific cultural groups. Community Health services provide a range of services including domestic violence and mental health counselling, as well as a number of community development activities.
- **DHS funds non-Government organisations through the Family and Community Development Fund.** These organisations provide a broad range of support to individuals and families on a project basis. DHS provides funding to 126 projects through the Fund. Included in this is the Family support programs dispensed by DHS to 46 programs in community agencies.
- **Community Benefit SA** provides about $3 million in one-off funding for up to 250 projects annually. Some of this funding is targeted toward community service projects to assist families and individuals suffering poverty or hardship, at risk of breakdown and the most disadvantaged in the community. In addition to the one off funding, additional funding is also provided to a series of charitable organisations over three years to assist in the development of service responses.

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39 While every effort has been made to mention the major services, it is possible that some have been omitted.
- **Urban renewal projects.** These projects are aimed at renewing degraded areas by Housing Trust development and other community building projects, for example, Playford Partnership and Salisbury North.

- **Child and Youth Health and hospitals** run some specific groups and programs which identify at risk groups such as teenage parents, new mothers, Aboriginal children and families.

- **Intellectual Disability Services Council (IDSC)** provides early intervention programs for children with developmental difficulties or disabilities.

- **Crippled Children’s Association (CCA)** provide early intervention programs for children with developmental difficulties or disabilities.

- **DECS** provides additional targeted support to children whose learning outcomes may be delayed as a result of learning disorders, developmental delays, behavioural and other needs.

- **The Department of Justice** funds crime prevention programs in partnership with other Government agencies, local Government and community groups. These programs may focus on crime prevention in localities where there are higher rates of crime, domestic violence prevention programs, amongst others.

- **The North West Integration Project** consists of three service types which provide a range of service responses to families and children – two could be considered secondary or selected programs and include:
  - **The Parenting Network** is an intensive home-based program for vulnerable or overburdened “first time parents” in the Port Adelaide and Enfield Local Government Area. Contact is made to all first-time parents and, if they wish to participate, they are provided family support and levels of service designed in accordance with their needs. Workers commence working with families in the antenatal period and generally visits are weekly at the commencement and then later fortnightly and then monthly on a flexible basis. The duration of the service is three years.
  - **Kids’ n’ You** provides support to women and children up to five years old in the Playford area. It provides drop in, workshops, counselling, health and parenting information, groups and peer support for women. It is run by the Northern Metropolitan Community Health Service.

- **Post-partum Household Assistants Project** which is based at the Lyell McEwin Health Service and provides home support to families for a week following discharge within 24 hours after delivery.

- **Aboriginal child health screenings** are a joint initiative of the Nunkuwarrin Yunti and Child and Youth Health. A ‘wellness’ check is conducted for primary aged Aboriginal children in State and Catholic schools. The checks which include certain screenings are conducted in year 1 and year 6.

- **The Homeless and Parenting Program Initiative (HAPPI)** is a pilot program run by Centacare and jointly funded by the Commonwealth and the State to assist families who are homeless or at risk of homelessness. There are outreach services as well as training and consultation to work with families on parenting issues.

- **Supported Accommodation Assistance Programs (SAAP)** provide a range of emergency and short term supported housing accommodation including young people at risk of homeless, women and children fleeing domestic violence and other homeless families.
- **Domestic Violence Outreach Services** provide support to women and children experiencing domestic violence.

- Intensive family counselling and intervention services through **CAMHS, Centacare and Adelaide Central Mission**.

- **The Second Story** provides primary health care to young persons in three metropolitan areas. Upon entry, the program offers a range of holistic programs which vary according to regional needs.

- **DHS funds 38 neighbourhood development programs** through local community supports such as neighbourhood houses and community centres. These programs provide elements of family support and funding is available for coordinators and services linking families with family support services.

### TERTIARY OR INDICATIVE SERVICES

- **Family and Youth Services** – provides statutory child protection services to children and services to adolescents at risk. It undertakes investigation and assessments and provides access to family support services. Where there are serious ongoing protective concerns for a child, FAYS is responsible for ensuring the ongoing care and protection and guardianship under the Minister for Social Justice.

- The **Tier 3** diversionary program in the northern suburbs is specifically for families and children who have been notified to Family and Youth Services. The service targets families in need and provides outreach intervention.

- **Child Protection Services** at Flinders Medical Centre and the Women’s and Children’s Hospital provide assessment and treatment to children and their families where there are suspicions of child abuse or neglect. The CPS services work with SAPOL and FAYS which are the primary referring agencies for the majority of children and families accessing CPS services.

- **Child and Adolescent Mental Health Services (CAHMS – [North and South])** provide mental health services including therapy and counselling for children and young people. Outreach services are provided in many country regions but not all. CAMHS (North) also provides hospital services at the **Boylan Ward** in the Women’s and Children’s Hospital and Brentwood Unit at the Glenside Hospital. The Boylan Ward is a 15 bed inpatient unit which provides specialised care and support to children and young people aged between three and 17 with severe mental health problems. The **Brentwood Unit** provides for psychiatric intensive care service and, although used by adolescents in crisis, it is not regarded as appropriate but is the only facility available for adolescents in need of more secure care.

- **Anglicare Family Support Program** – Parenting/family support programs targeted at families in crisis or where children are at high risk.

- **Hindmarsh Centre** – provides a sobering-up service for young people affected by drugs and alcohol as well as case management and support.

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40 Adelaide, Elizabeth and Christies Beach between 12 and 25 years of age.
The Sexual Offender Treatment and Assessment Program (SOTAP) – provides psychologically based assessment and treatment services for adults who offend sexually against children and adolescents in the community. Clients may be voluntary or mandated to attend, by order of a court or Parole Board. Services are also provided at Port Augusta and Murray Bridge.

Mary Street – a therapeutic prevention program for young sexual offenders that promotes safety in families and communities by helping young people to stop sexual abuse and harassment of others. The service provides counselling and help for adolescents and their families or caregivers to assist young people to take responsibility to stop sexual abuse and sexual harassment. It also provides assessments for the Youth Court and FAYS to plan for safe family contact.

SAPOL – Child and Family Investigation Teams – which undertake investigations of alleged offences related to children and families (this includes domestic violence).

Victims Support Service of SA Inc – is a non-profit, non-Government organisation that provides support services to people who suffer as a result of a criminal act. It also works in the community to advocate for victims’ rights and interests and endeavours to achieve a crime free society.

Victims of Crime Service – provides assistance to people who have been the victim of a crime including family and friends through: professional counselling and support; information about victims’ rights and criminal injuries’ compensation; support groups; Court Companion service; courses that prepare victims for giving evidence in court and community talks and training seminars.

DECS – Provides intensive behavioural management intervention to children and young people whose behaviour is disruptive and interrupts their educational outcomes.

Department for Correctional Services has statutory responsibilities for the establishment and management of prisons and other correctional institutions and for community corrections. DCS currently delivers programs that deal with the most frequently identified offence-specific needs in six key areas: alcohol and other drugs, anger management, cognitive skills, domestic violence (perpetrators and victims), numeracy and literacy and victim awareness.

Offender Aid and Rehabilitation Service (OARS) – is a non-Government organisation providing a community service of crime prevention through the support and rehabilitation of people who have offended and the support and care of their families. OARS provides a range of services that include: rehabilitation, financial and drug counselling, case management, counselling of family members, drug counselling, support for partners of prisoners, accommodation support services, prison visiting and parent support.

As can be seen from the above, there are already a large number of services and programs operating in South Australia that would be regarded as having a focus on early intervention and prevention effect through the range of universal, secondary and tertiary services.
A number of the submissions made criticisms as to either the overall approach or alternatively some of the individual program themselves. In general terms, the criticisms included:

- it is almost impossible to know the existence of some of the myriads of services that may be available – some of which are funded directly and continuously by the Commonwealth and some by the State Government. Some services may only be grant funded for a defined period of time by the Commonwealth or State
- many services have extensive waiting lists, or limited entry criteria or are geographically limited by service catchment
- many services are for the metropolitan areas only and very few services are readily available in the rural areas
- the services provided are sometimes limited as the program has time-limited funds
- most if not all of the services are not properly evaluated for the quality of services or outcomes
- the coverage of services are random and patchy with little consideration of the overall or holistic needs of individuals, families or communities
- there is not a continuum of services provided over a long-term basis
- there are too few partnership collaborations with non-Government agencies and in many instances there is an unhealthy rivalry or reluctant cooperation between agencies
- a number of services are not adequately resourced to provide timely assistance to children and families and
- an absence of holistic approaches to family support and treatment.

Whilst the research indicates that there is a need for a broad spectrum of services to be made available and that one service does not fit all; there is a need to have an overall coherent service provision strategy that has a foundation in research and ensures appropriate coverage to meet community service needs. The nature of the delivery of the services may differ in order to target specific groups, but the underlying philosophy and purpose for the services should remain the same.

It is useful that a number of important departments involved in child protection come under the same umbrella as the Department of Human Services such as welfare, health and housing. This means that at least across those services there is no reason why there cannot be greater communication and collaboration with a common goal. It is of course more difficult to engage with other departments in which the philosophy, cultures, services and focus are not necessarily the same. (This problem is further adverted to in Chapter 7).

**EFFECTIVE EARLY INTERVENTION AND PREVENTION STRATEGY FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT**

Extrapolating from the research foundations for early intervention and prevention, it is clear that in order to implement effective strategies, it is necessary for an early intervention and prevention strategy to have the following:

- a strong commitment from Government
- a systematic and properly based theoretical framework
- long-term commitment, sustainability and a strategic approach

For example, many services tend to focus on the adult only and fail to take into account that the adult with an alcohol, drug addiction, mental health problem may also be a parent whose children need support or may be at risk. Service providers in adult services may therefore not properly take into account the protective or support needs of children.
a commitment that child protection is given specific focus across all areas of Government, such as health, welfare, education and criminal justice sectors where children and their families intersect with Government policies

excellent and highly effective inter-agency collaboration across all Government sectors with clear goals for child protection and business plans to achieve them together

a commitment by Government, the community and non-Government organisations to work together to support overall Government strategy and

adequate resourcing of the strategy including transparency as to what can be provided with short and long-term goals.42

It is essential to acknowledge in any prevention and early intervention strategy, as one submission put it, that:

…we should not define abuse in such a way that prevention is synonymous with all children and families living happily ever after, otherwise we will set ourselves up to fail.43

Instead the outcomes of effective prevention and early intervention should be expressed and assessed by proper evaluation of improved quality of life features, such as:

- reduced and preferably no deaths of children from abuse or neglect
- reduced and preferably no renotifications of abuse and neglect
- more confident young people who know how to help protect themselves
- improved relationships between parents/carers and children
- greater community awareness of the importance of child protection and involvement to help promote and achieve it
- greater understanding by the general community of the causes of child abuse and neglect
- improved mental health, physical health and nutrition for children
- improved parenting and carer skills
- reduced numbers of children and young people with drug and alcohol addictions
- better school attendance and longer participation in education programs
- fewer children and young people involved in the criminal justice system
- less dependency on welfare benefits
- greater participation in employment and work-related activities and
- less need for tertiary treatment.

It is also essential to recognise that almost every potential intervention will have limits on the use of resources.44 Thus, resources must be used efficiently, effectively and transparently so that their limitations are well understood. This is important for a number of reasons which include general political accountability, client awareness and provider comfort.

THE MODEL FOR EARLY INTERVENTION AND PREVENTION

The general common thread of the effective programs that have been suggested include:

- early identification of the known risk factors which suggest intervention is needed
- providing a continuum of intervention from prevention to treatment and then maintenance45
- recognising the moveable threshold between prevention and treatment
- operating by promoting strength and wellness rather than being problem focused on preventing illness

42 Submission 173 Department of Human Services Early Intervention Advisory Group.
43 Ibid.
6.20 Early Intervention and Prevention Framework and Services

- encouraging families to proactively seek assistance before serious problems develop
- strategies developed around known risk factors and targeted to key child developmental stages
- acknowledging the three major types of prevention, namely, universal, selective and indicated
- ensuring both intensive and long-term programs are available
- programs that are multi-faceted and holistic and use a range of approaches and
- programs that are sustainable over time and become known to the communities.

The specific means of implementing the programs have been summarised:

- Early intensive contacts with families
- Using expert or trained staff or volunteers
- Using a combination of home and center-based activities
- Providing support for parents to meet their own needs
- integrating with other services and
- Targeting high needs clients where the potential for improvement is greatest.

A CHILD PROTECTION STRATEGY AND OTHER CROSS-GOVERNMENT STRATEGIES

The conceptual relationship between a child protection strategy and other major cross-government initiatives is represented visually by Diagram 2. Community safety/crime prevention; social inclusion; early intervention and prevention and child protection all have common elements for their effective achievement as strategies, such as:

- reliance on evidence-based research including, for example, epidemiological analyses and robust research trials of what works for communities, including specific communities and localities
- developing and implementing programs based on research and analysis
- appropriate problem identification and analysis at Statewide, regional and local levels
- the prevention of a particular problem (or set of problems) or ameliorating adverse effects before it is too late
- strategies addressing social connectedness and inclusion, as well as community development
- cross-Government and community coordination and collaboration
- recognition of the relationship of different agencies in the community to the strategy and
- high level commitment.

Diagram 2 highlights the interrelatedness and connectivity between each part of the system. It attempts to show where child protection fits, in conjunction with other major Government initiatives. The concepts of social inclusion, early intervention, crime prevention and community safety are each broad-based strategies and form a major part of the priority areas for Government.

A common overarching goal is the improvement of outcomes for children and young people.

Level A shows the major Government directions that set the framework for service provision which includes child protection, social inclusion, early intervention and prevention and community safety and crime prevention.

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Level B shows the service supports required by each of the major Government initiatives. Child protection is not the only Government initiative which requires the services of Level B. All the major initiatives require similar services at various points in order to achieve their own goal. It is not the intention of the Review to articulate each area, but rather articulate the concept of the broad overarching services that affect the life outcomes for all children and young people in the community and to show they are all essentially required for each of the four initiatives.

*Diagram 2: Conceptual Relationship between the Child Protection and Services for Children and Families*
OVERALL SERVICES STRATEGY

SERVICES

There are a number of recommendations made in various chapters as to the development or improvement of services which relate to child protection. It is impossible to articulate the services which currently exist across even one departmental sector, let alone across the whole sector. Further there is no overall strategy in place for the assessment of the effectiveness of existing programs.

What is apparent to this Review is that there is no overall strategy of Government which:

- examines services
- determines whether services are effectively meeting their target
- assesses the need for services
- identifies gaps in service provision and
- assesses how services should be delivered.

RECOMMENDATION 6

That an overall strategy for service provision across all Government departments and non-Government agencies be developed in relation to child protection. Such a strategy is to focus firstly on the needs of the child and secondly on the indirect services which will ensure protection for the child including services for parents, carers and other persons affecting children and young peoples protection.

Reason

The development of an overall service strategy is recommended. Such a strategy must commence with placing the best interests of the child as the prime focus. The cross sectorial nature of the services requires an holistic approach to service delivery and a proper assessment of the current service framework. It is essential to ensure Government is provided with relevant and up-to-date information about the effectiveness of current services and to ensure that funding is strategically applied throughout the service sector. Further it is necessary to identify future trends and existing gaps in services.

Pending this overall strategy there are a number of priorities areas where services are clearly required now. These include services which could be provided by Government and non-Government agencies, as well as volunteers supervised by such agencies. The Review is aware of a pending Community Services Review which will examine services provided by or required of, non-Government agencies. This Community Services Review as indicated, does not include an examination of overall Government services.

Some of the recommendations made by this Review for development or improvement of services may be categorised either as a primary/universal service, a secondary/selected service or a tertiary/indicated service, depending on the circumstances and manner in which the service is delivered. This Review will not endeavour to differentiate between categories of services to avoid necessary repetition as well as confusion. Services will therefore be described without such categorisation.
IMPROVING OUTCOMES FOR CHILDREN AND YOUNG PEOPLE

In considering a service framework for child protection, it is essential that the service focus is on improving outcomes for children and young people. A number of factors come into play. These include the child’s developmental needs, parent and carer capacity and child safety and environmental factors. These 3 major areas form the basis for a number of service recommendations proposed.

This is graphically represented below:

Diagram 3: Overall Services Framework

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52 Adapted from Department of Health (UK) (2000) Framework for the Assessment of Children in Need and Their Families - Assessment Framework diagram page 17
**RECOMMENDATION 7**

That a Statewide Nurse Home Visiting Service be implemented which has a number of key elements:

- A universal service for all mothers providing a minimum plan of home visits (five) the first being antenatally with the second within two months of birth, the third six months later then followed by a further visit at the two year milestone and a fifth visit at the three-year milestone.
- A process whereby all families are assessed and those presenting with higher risk factors are offered further services (risk factors such as economic deprivation, antenatal health damaging behaviours and poor family management practices would qualify the family for further services). Staff would need to be trained to undertake assessment processes and to refer families to other programs/services to provide higher levels of intervention which may include trained volunteers, (featuring two to three visits per week in first months of service and then tapering off depending on need).

**Reason**

This recommendation is made as part of a universal non-stigmatising strategy for providing home-based visits for a twofold process:

- firstly, to directly assist the mother in the early stages of child development through to various milestones up until three years and
- secondly, at the same time to assess whether there are any other factors which suggest that the child is potentially at risk and to then refer the family for services. This will require the nurse to be appropriately trained to recognise risk factors. The above represents a minimum standard which should be provided.

**RECOMMENDATION 8**

That there be increased and improved counselling and therapeutic services for children and young people who:

- have suffered abuse and neglect
- have special needs including
- children and young people with disabilities
- at risk adolescents
- children and young people with significant emotional or behavioural problems
- are Indigenous children and young people in need.

**Reason**

Currently children and young people who have suffered abuse or have severe emotional or behavioural problems receive services principally the Child Adolescent and Mental Health Services (CAMHS). It is often very difficult for CAMHS to provide services due significant demand pressures on that agency. Further, there are also limited types of counselling and therapeutic services appropriate for adolescents at risk, children and young people with disabilities, Indigenous children and young people. In addition, those children who have less significant problems may not fit the criteria for current service provision under CAMHS. Greater expansion of these types of services is warranted.
RECOMMENDATION 9

That there be increased and improved Personal Safety and Protective Behaviours programs in schools with particular emphasis on Indigenous children and young people and those with special needs. See Chapter 19, Recommendation 137.

Reason

Personal safety and protection behaviour programs are required to equip children and young people with skills and knowledge vital for safety and protection. This is dealt with in Recommendation 137.

RECOMMENDATION 10

That there be further development and enhancement of partnerships, community and education services for children and young people. Such programs could include:

- school breakfast programs
- after school care and vacation care
- programs for special groups, for instance, pregnant teenagers, children with disabilities
- Volunteer support workers for children with high needs, where such services are required.
  See also Chapter 19 and Recommendation 142.

Reason

There are many initiatives which could be explored by the education sector in conjunction with community, which would enhance child protection.

RECOMMENDATION 11

That adolescents at risk be entitled to a package of services to be grouped together as ‘Youth Help’ and developed by the Child Protection Board and to include the following:

- drug and alcohol education and treatment services
- counselling, psychological and psychiatrist assessment and mental health services
- school based counselling programs and other supports to assist adolescents continue their education
- drop in centres designed to attract young people at risk
- therapeutic services for children and young people under short term safe keeping arrangements.
  See also Chapter 13.

Reason

Young people and their parents have reported significant difficulty in accessing timely, appropriate and professional services for adolescents at risk. This is dealt with in detail in Chapter 13.
RECOMMENDATION 12

That in addition to the services described in Recommendation 11 above being provided in a culturally appropriate manner, special areas are highlighted for Indigenous children and young people:

- specific attention to the provision of services for children and young people living in remote communities and in particular, the AP Lands as indicated in the AP Lands Agreement
- the need for Indigenous youth clubs and sporting facilities
- personal safety and protection behaviours programs to be provided by Indigenous workers.

See also Chapter 8.

Reason

Culturally appropriate service provision to Indigenous children and young people is needed to restore wellbeing and assist with healing. Many Indigenous children and young people require services, programs or facilities that are specifically developed with Aboriginal leaders and elders, so that the most culturally appropriate approach is ensured.

RECOMMENDATION 13

That a service agreement be developed by leading hospitals, Drug and Alcohol Services, FAYS and Child and Youth Health to ensure the coordination of the provision of services and case management of babies and infants affected by substance abuse and their parents/carers.

Reason

This Review was informed that a number of babies are being affected in-utero by drug or alcohol consumption by their mothers and as such, there are significant child protection issues. These circumstances require a highly managed and coordinated approach of all the relevant agencies involved. Many women need high level support to reduce alcohol or drug abuse, and to care for babies that may be born with difficulties or in severe cases, with significant disabilities as a result of the mother’s drug or alcohol abuse. Hospital based services are limited and many women need significant home based care and support. It is therefore critical that services develop clear plans jointly for intervention with the family, in order to prevent families ‘falling through the gaps’ and/or to avoid duplication.
### RECOMMENDATION 14

That a range of flexible care options be developed for children and young people who cannot remain within the care of their birth family. Placement services must include specialised professional care options particularly for children and young people who have significant needs. See also Chapters 11, 12 and 14.

**Reason**

Currently South Australia’s alternative care system relies predominantly on home based foster care with majority of children and young people living in a family based placement. There needs to be greater variety and flexibility as to the types of alternative care placements available. Placement types must be matched with the assessed needs of the child or young person. Specialist placement options such as small residential centres, cottage homes, and individual professional carers are recommended.

### PARENT AND CARER CAPACITY

There are already a number of elements of programs currently available which supply many services to improve parental capacity, but not in a strategic manner nor appropriately assessed for effectiveness. These programs should be evaluated as part of an overall strategy but in the meantime it is important to ensure further improvements and enhancements of services across a number of areas.

### RECOMMENDATION 15

That parenting skills and parental capacity be increased through a variety programs and delivery methods and a particular focus on high risk or high need groups. Such programs are to be identified, so that an appropriate service is known, with further development of programs if there are gaps in coverage for parents, particularly for high risk or high need families.

**Reason**

A number of agencies are currently delivering services which aim to improve parenting skills and parenting capacity. These include agencies such as Child and Youth Health, hospitals, the Play Group Association of SA Inc; a variety of non-government agencies etc. Methods of delivery include in-hospital and community based ante-natal and post-natal education, targeted programs for new parents, parents of toddlers for instance, and other groups including multi-cultural, Indigenous and high risk families. There are also a variety of other activities and courses that may address parenting issues peripherally. Greater emphasis on parenting skills and parenting capacity is required to ensure that parents have the skills and knowledge required to enable them to successfully parent through out all the developmental phases and transitions points of childhood and adolescence.
RECOMMENDATION 16

Pending an overall strategy, further improvements are required to ensure that families, particularly those with high needs, are informed about and have a least a basic access to range of services that support them at particular times. That these services be delivered in culturally appropriate and where possible in an holistic manner.

Reason

Currently there are a number of services supporting families which are delivered through range of agencies such as Community Health Centres, Child and Youth Health and Hospitals, and non-government agencies such as those funded under the DHS Family and Community Development Fund and the Commonwealth Stronger Families initiative. It is difficult for many families to have knowledge of and access to, the range and types of services they require, as there are often strict eligibility criteria, long waiting times, or services not available where families are located.

RECOMMENDATION 17

That urgent consideration be given to extending the current family preservation/reunification program to ensure that where possible, every effort is made to enable families to remain together and for children and young people to be returned home as soon as possible. Further that this program be made available to families who are outside of the FAYS system, who may benefit from such home based, intensive counselling and intervention.

Reason

Currently Family Preservation/Reunification Services are provided by nine non-government agencies located in both metropolitan and country regions and include four Aboriginal specific services. These services are available only through referral from FAYS and are usually provided when family or placement breakdown is imminent or when children and young people are being ‘reunified’ with their family of origin. They are intensive services which aim to keep families together. In 2001-2002, 175 children and young people received an intensive family support service, with 80 of those children or young people being in an alternative care placement. Further expansion of this service type is seen as highly desirable and would be beneficial for many families at an early stage and may prevent them from entering the FAYS system.
RECOMMENDATION 18

That further extension of respite and emergency care services is required particularly for at risk families, families in general need and for carers of children with disabilities. Further, that the recommendation in the Semple Review regarding respite care for foster carers is endorsed by this Review, namely that the current system of 52 days carer respite be replaced by a system which allocates eligibility based on the needs of the child and young person and their family/carer.

Reason

Respite Care/Emergency Care Services are currently available for families who are clients of FAYS or foster carers, families with children who have disabilities and families who require short term care (up to a week) in an emergency situation. The Review has heard about families, particularly single parent families and families with children who have disabilities who require or could benefit from access to planned respite services or greater access to emergency care services. Families who are at risk would also benefit from planned respite care, which can be viewed as a preventative measure, to enable parents to have a break, and for their children to have an opportunity to meet other children and families.

RECOMMENDATION 19

That practical in-home support be available to families in need, families identified as having significant risk factors and families with children who have significant disabilities, as required.

Reason

Many families require very practical assistance in caring for their child. Practical in-home support such as assistance with cleaning, shopping, budgeting and cooking can be vitally important for families in need as well as families who are experiencing high care needs with children who have disabilities or significant health problems. Indigenous families who are caring for extended family, have spoken of the need to have very practical assistance. Greater attention to this area of support is needed, as it is can be undertaken by volunteers and can be a cost effective way to provide much needed support, as well as involving community participation.
### RECOMMENDATION 20

That there be a further expansion of vacation and after-school care services particularly for young people in Year 8 to Year 10 and especially for older children with disabilities.

**Reason**

Many families require after-school and vacation care programs for children and young people which are easily accessible. There are currently no after-school or vacation care programs for young people in high school and in particular older children with disabilities. While an extension of the age eligibility is available for children with disabilities, for instance, they are able to attend up until age 15 years, these services are usually only supplied from locations providing care for primary age children. Facilities for young people in the Year 8 to 10 levels could be made available through secondary schools and could be funded through community partnerships.

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### RECOMMENDATION 21

That consideration be given to establishing a Family Support Response telephone service for persons with general concerns about children and young people and for assisting those person to appropriate family support services. In addition a Crisis Response Service providing outreach to both parents and adolescence in times of crisis be made available.

**Reason**

Currently a substantial number of calls are received by the Child Abuse Report Line which do not meet the current criteria for FAYS follow-up. Many calls are from persons who require assistance, for instance, family support or have general concerns about children and young people or from parents who have a crisis with an adolescent. Consideration should be given to having a person/s sited at the Child Abuse Report Line to whom such calls could be diverted and an assessment could be made to either provide information and/or referral to other more suitable services. In addition the establishment of an outreach service for parents and adolescences be developed.
RECOMMENDATION 22

That urgent consideration be given to the establishment of therapeutic and treatment services for parents and carer givers who abuse children and young people physically or emotionally. Such services are additional to those services recommended in Chapter 16 for persons who sexually abuse children.

**Reason**

Parents and carers who are known to have significantly harmed a child or young person, require specialised intervention to assist them to provide children and young people with a safe and protected environment in the future. Presently there are very limited specialised services that provide therapeutic or treatment services or a therapeutic environment in which parents can work through an array of complex issues. Those that have harmed their children may have a range of behaviours or emotional problems that required intensive intervention. The aims of such professional intervention is to both protect the children and to facilitate change in the caregiver so that the child’s care might improve. Specific services are also required for those that sexually offend against children and young people.

RECOMMENDATION 23

That there be further expansion of counselling and therapy services for adult survivors of childhood abuse.

**Reason**

Retrospective studies of victims of child abuse and neglect indicate that they are vulnerable to many problems including mental health problems, alcohol abuse, drug abuse, crime and violence. Demand for access to specialist counselling and therapy services is high. Many people need professional assistance in dealing with the traumas of childhood abuse. Therapy focused on ‘survival and healing’ are required to support adults through these problems.

CHILD SAFETY AND ENVIRONMENTAL FACTORS

In order to provide safe and sustainable environments for children and young people in the community, there are some fundamental requirements. These include appropriate and available housing, access to adequate income support and/or employment, and a general environment to enable children to thrive and feel safe. These aspects are also discussed in Chapter 3. Whilst some of these requires are solely funded by Government, others can be developed through local community initiatives.
### RECOMMENDATION 24

That greater emphasis be placed on developing community based initiatives which aim to strengthen community capacity and build community support which in turn provides child safe environments.

**Reason**

There are already a number of community based programs which aim to build community strengths and increase community capacity. Community development initiatives include those undertaken by Community Health Services; community and neighborhood houses; community based agencies such as charitable, religious and service agencies; local government and crime prevention initiatives like Neighbourhood Watch and safe houses.

While there are a number of programs occurring in some communities, generally they are ad hoc, often under funded or funded for short periods of time and are unable to fulfill the present and long term demands of the community. The broad aims of child safety and protection in the community are dependent upon building sustainable, functional and supportive environments in which children and young people can thrive and develop. The implementation of an overall strategy should identify the community development initiatives currently in existence, consider areas for further expansion, identify gaps in coverage and the extent of variation between regions as to the nature and quality of the services available.

### RECOMMENDATION 25

That the Government ensure that all programs and services express the desired outcomes to improve child protection.

**Reason**

Programs with either no or poorly expressed outcomes do not ensure that at all times the focus must be on the child and improving his or her protection. It can lead to programs being process driven rather than outcome driven.
RECOMMENDATION 26

That the Government develop a uniform but flexible system of performance measurement of efficiency, effectiveness and appropriateness of services for individual, family or groups with the following features:

- the system include identification of client and worker goals using a generic goal framework based on the target outcomes for the program
- success in achievement of goals be identified by both clients (including children and young people, where appropriate) and workers at termination of involvement in the program
- satisfaction with agency involvement be determined using a common client satisfaction questionnaire
- measurement of staff workload with a breakdown of direct and indirect client contact and travelling time
- the system be further reviewed, evaluated and modified either on an annual basis or after a period consistent with contract periods.

Reason

A consistent common framework for the evaluation of service outcomes for clients is required to monitor how well services are meeting their needs and achieving objectives for early intervention and prevention. It is currently difficult to assess how well services are operating and to assess performance in a fair and appropriate manner. A common framework will assist in working out what works well, what is not working so well and determining best service investment options.
INTRODUCTION

This chapter covers the following:

- brief details on the key agencies involved in the child protection system
- details of some of the current issues impeding effective coordination and collaboration between the various agencies
- details on information sharing and confidentiality issues
- key requirements for effective coordination
- recommendations for improving coordination and governance of the child protection system in South Australia.
Coordination and collaboration is now regarded as a central principle for effective child protection systems and is regarded as essential because various Government agencies are responsible for identifying, assessing and responding to child protection. There is no one agency which has an overarching primary responsibility for focusing on children and young people as special needs groups or for the prevention of child abuse and neglect.

RECENT HISTORY OF INTERAGENCY COORDINATION

The history of interagency coordination in South Australia as outlined in Chapter 4 of this report indicates that the implementation of this principle has not fared well. The centralised interagency structures that were established following the Report of the Task Force on Child Sexual Abuse such as the Child Protection Council, the joint SAHC/DFCS Child Protection Unit and the Department of Education and Children’s Services (DECS) Child Protection Officers were slowly dismantled leaving very little interagency policy, systems and infrastructure in place.

This dismantling has been the result of a shift in emphasis in the policies of Government and departmental bureaucracies to the deploying of resources to new business areas, and to a shift away from seeing child protection as an important system and process in its own right, requiring ongoing joint agency liaison and the continuing development and review of the effectiveness of such collaboration.

UNITED KINGDOM EXPERIENCE

This situation stands in stark contrast to the United Kingdom system, which since the 1970s, has focused on ensuring that inter-agency coordination through Area Child Protection Councils (ACPCs) continues to be the backbone of child protection in the community. An equal focus on ensuring effective management of these systems and on developing and refining the concept of working together and what this means in practice is also evident. There has been further development of the respective roles and responsibilities of each Government agency in child protection and in working cooperatively with other Government agencies.

This effort has been supported by a long-term focus on system and practice improvements through a well-funded research program focused on assessing how well the system is working with the objective of further improvement and refinement. However, despite this longstanding focus on interagency coordination at the area level, there is still concern within the child protection field about the need for national child protection structures to set standards, monitor local agency work and provide an overarching national strategy for protecting children. In South Australia, interagency cooperation is regarded primarily as a practice requirement of particular agencies or services as outlined in the Interagency Guidelines for Child Protection 1997. This system is heavily reliant on workers within services and the services themselves networking effectively without any overarching system of guidance, direction, support, review or continuous quality improvement in place.

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GOVERNMENT AGENCIES

Within South Australia there are a number of Government agencies and organisations involved in the child protection system and a brief summary of their respective roles is set out below.

The Department of Human Services

Family and Youth Services (FAYS) has the delegated statutory authority for receiving, investigating and assessing reports of child abuse and neglect. In most cases it also has delegated responsibility for children entering the alternative care system. Placement can be either voluntary at the request of parents for reasons such as family instability, illness, child’s behavioural problems or the child or parent’s disability, or involuntary without parental consent when children enter alternative care because of protective concerns. In the latter case an application must be sought from the Youth Court, for transfer of custody or guardianship from parents to the Minister to ensure the child or young person’s ongoing care and protection. The grounds for care and protection vary, but many cases concern allegations of serious abuse or neglect.

Child Protection Services There are two Child Protection Services located respectively at the Women’s and Children’s Hospital and Flinders Medical Centre. Both services provide assessment and treatment of infants, children and young people and their families where there are suspicions of child abuse and neglect.

Child Adolescent and Mental Health Services (CAMHS) provides both general counselling and support for children and young people with mental health difficulties as well as specific child protection related services.

Community Health Centres provide primary health care and health promotion, community development services including counselling for adult survivors of child abuse.

Child and Youth Health (CYH) is a State Government health service, funded primarily by DHS to provide a range of primary health care programs for children and young people.

DHS Grant Programs provide funds to non-Government agencies through the Family and Community Development Fund, Community Benefits South Australia and the joint State/Commonwealth Supported Accommodation Assistance Program. Organisations provide a broad range of support to individuals and families. Funding is primarily targeted toward community service projects that assist those who are suffering poverty or hardship or at risk of family breakdown.

Sexual Offenders Treatment Assessment Program (SOTAP) is managed through the Royal Adelaide Hospital and provides counselling to sexual offenders who are required to attend by court order. It also provides counselling services to people who believe they may be at risk of perpetrating child sexual abuse.

Yarrow Place is a service managed by the Women’s & Children’s Hospital and provides forensic medical, counselling and support to rape and sexual assault survivors over the age of 16 years.
**Justice Department**

The Justice Department is a group of portfolios which provides justice services to South Australians.

**South Australian Police (SAPOL)** In the area of child protection there are three special units within SAPOL. The Child and Family Investigation Units investigate notifications of child abuse and neglect which may amount to a criminal offence and may do so with assistance from FAYS social workers. The Child Exploitation Investigation Section is responsible for investigating allegations relating to child prostitution and pornography. The Sexual Assault Unit interviews children over seven years of age who are involved in sexual offence cases.

**Office of the Director of Public Prosecutions (DPP)** The DPP provides an independent criminal prosecution service. It initiates and conducts criminal prosecutions in the Magistrates, District and Supreme Courts. The DPP assesses the likelihood of a reasonable conviction being made before matters proceed. The DPP is usually involved in all cases of child sexual assault and severe physical assault or neglect cases.

**The Crown Solicitors Office** The Crown Solicitors Office is the principal provider of legal services to Government agencies, Cabinet and the Attorney General. The Office appears in the Adelaide Youth Court and before country Magistrate Courts sitting as the Youth Court on behalf of either the Chief Executive of DHS in relation to investigation and assessment applications, or the Minister in relation to Care and Protection Orders. The Crown also provides legal advice and legal representation for the Minister in the Family Court of Australia.

**The Youth Court** The Youth Court has the jurisdiction to hear and determine proceedings under the *Children's Protection Act 1993*. The Youth Court hears applications by FAYS for investigation and assessment orders and care and protection orders. The Care and Protection Unit which is under the auspices of the Youth Court is responsible for holding/facilitating family care meetings. Family care meetings provide families a formal opportunity to identify ways in which they can ensure a child is cared for and protected prior to proceeding to a care and protection order. The Care and Protection Unit is responsible for the review of these arrangements.

**The Office of the Ombudsman** The Ombudsman provides consumers/clients with external accountability for decision-making occurring within Government. The Ombudsman, although residing within the Justice portfolio, is an independent official who has comprehensive powers to investigate complaints on behalf of clients. The Ombudsman has power to direct a Government agency to revise a decision made in relation to a client.

**The Department for Correctional Services** has two major arms of the correctional operation – prisons and community corrections. Case management operates across both these areas. The aim of Correctional Services is crime prevention through the development and delivery of a variety of programs to address criminogenic need and to equip offenders with knowledge and skills to take place in the community. Community corrections involves post-prison or post-court management of offenders in fields such as probation and parole, bail, home detention and community service.
The Education Sector

**Department of Education and Children’s Services (DECS)** provides educational and care services for children, students and young people from birth through the compulsory years of schooling (children aged six to sixteen) to post school training and pathways planning. Education and care services are provided by DECS preschools, school and other children's services such as Family Day Care. DECS responsibility also encompasses the ‘determination and monitoring of standards in children’s services’ and ensuring the statutory and legal obligations of the department meets obligations in licensing and regulating Government and non-Government children’s services. It is also responsible for training and development for employees to ensure mandatory reporting responsibilities are fulfilled.

**Special Investigations Unit** This unit addresses more serious complaints against DECS employees which can come through notifications made by FAYS and/or SAPOL. The unit liaises with SAPOL when it follows through with criminal investigations. The sectors covered by the unit include those employed in the Children's Services Office, Government School and Children’s Services’ Sector and TAFE.

**Children’s Services (Licensing and Standards)** DECS has the responsibility for licensing and approval of non-Government child care centres, baby sitting agencies, Outside School Hours Care and Family Day Care. This unit addresses complaints which can come through notifications made by FAYS and/or SAPOL. This unit also liaises with SAPOL when it follows through with criminal investigations.

**NON-GOVERNMENT AGENCIES**

**Non-Government Education Bodies**

**Association of Independent Schools SA** One of the roles of the Association of Independent Schools SA is to support non-Government independent schools to develop programs and policies which ensure all staff including volunteers are aware of their legal obligation to notify, have appropriate training and encourage curriculum on the subject of child protection and human relationships. It is an association of non-Government, non-Catholic independent schools.

**South Australian Commission for Catholic Schools (SACCS)** has developed a Child Protection Policy which shapes the work of all Catholic Schools in the area of child protection in order to safeguard the welfare of children. The policy provides advice and assistance in developing protective and preventative programs, in partnership with families; encourages participation in training courses for mandatory notification; provides curriculum on care and protection and provides information in supporting students who have been abused.

**Non-Government Community Services Organisations**

**Non-Government community service organisations** provide a range of services to families and children including residential and in-home support, family and child counselling and therapy, education/skills development, family relationships counselling, advocacy and information and referral. There are a large number of non-Government community service organisations in metropolitan Adelaide and various country locations throughout South Australia providing services to families and children in need.

**Victim Support Service Inc** is a non-Government service that provides counselling and group work to non-offending parents and a state wide court companion service to support and assist families through the court process.
Comments made to the Review through submissions and consultations have provided significant commentary on the need for improved inter-agency collaboration. These views varied on the basis of the parties’ relationship to the system and included the views of clients, different service providers, young people and families as well as different funding agencies responsible either for the direct delivery of services or for funding other service providers.

The main issues raised by the submissions addressed the need for three levels of inter-agency coordination:

- interagency collaboration at a high level across key Government departments and agencies including community agencies
- interagency collaboration at a regional level
- interagency collaboration at the service provider level.

Submission comments on coordination include the following:

**NEED FOR OVERARCHING DIRECTION AND SUPPORT FOR INTERAGENCY COORDINATION**

The Review received a significant number of comments about issues related to interagency collaboration covering a broad range of areas that included:

**A need for interagency collaboration to enhance service provision**

A clear and concise direction is needed so that all departments and systems are working from the same plans. Perhaps this collaboration is difficult to achieve because there isn’t enough direction, nor enough ‘directors’ to ensure it happens. There should be a number of directors whose sole responsibility is to ‘manage’ cases and the expeditious distribution of information between agencies.²

Policy and processes that provide guidelines and outline procedures for interagency collaboration and partnership need to be established. Approaches currently appear to be agency based or dependent on individuals and tend to be ad hoc.³

A number of critical factors underpin the effectiveness of interagency collaboration and partnerships:

- commitment, follow up, consistency and responsibility.⁴

**A perceived failure to focus on the needs and interests of children and young people**

Interagency cooperation needs to focus on the interests of the child or young person and ensure that the standard of care approximates that which would exist for a child within a nurturing family context. Information needs to be accessible, giving appropriate consideration to the child’s right to privacy, to facilitate care especially for medical treatment. Often important medical information critical for assessing and determining treatment for a child is not available after hours if they are in alternative care.⁵

**Service providers, including FAYS staff, are frustrated in their attempts to access services for children and young people in a timely manner:**

Agencies from which FAYS seek a service for the clients are most often struggling to provide a timely service. Waiting times of many weeks to a few months are very common. This impedes FAYS intervention and frequently has a negative impact on the families, who often lose the motivation to address issues if they cannot be provided with the required service.⁶

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² Submission 37 Ms Annie Leo.
³ Submission 34 Staff of Tea Tree Gully Council.
⁴ Ibid.
⁵ Submission 35 Name Not For Publication.
⁶ Submission 48 Family & Youth Services Noarlunga District Centre
Perceived confidentiality provisions impeding communication between agencies

Often there are difficulties in trying to get DHS agencies to work collaboratively for the benefit of the client. Confidentiality requirements impede process as does having to have an involuntary client giving permission before relevant information is shared. 7

Improvements are needed in how and what type of information is shared between Government agencies and the non-Government sector and paid and unpaid workers. Not disclosing information to volunteers, for example can result in people being at risk (duty of care issues). 8

Rapid turnover of staff in FAYS and SAPOL

High staff turnover in FAYS has been consistently criticised as one of the major barriers and frustrations for achieving any degree of inter-agency coordination and collaboration between service providers in responding to the needs of a child for protection and support. The same criticism to a much lesser extent was made in relation to SAPOL. One submission succinctly highlighted the consequences of high turnover and changes in staff in FAYS:

- An inability to develop a useful relationship with families.
- Limited time to develop a working relationship with community agencies.
- Poor consultation and discussion by FAYS workers with other agencies who are also working with the family.
- Limited expertise in staff knowledge about babies and children’s developmental needs.9

FAYS’ requirements for reports from service providers jeopardise client/worker relationships:

Reports requested by FAYS often place agencies that are continuing to deliver a service to a family in a difficult situation. The requests seek an opinion which when stated may jeopardise the working relationship with this family resulting in them withdrawing from contact. Frequently that community agency is the only service that is supporting the family and its withdrawal from the service results in an isolated and unsupported family, further placing children at risk. Discussion needs to occur about a more workable report writing system. 10

It is clear that some community services often face the dilemma of either providing a report to FAYS, which may then jeopardise their relationship with a client (adult), or refusing to provide a report, which may impede an appropriate assessment of the child and family circumstance. Proposals by the Review for appropriate interagency collaboration and coordination, to be based on principles of collaborative participation may assist in overcoming some of these issues.

The failure to communicate between agencies and the implications of this failure:

Support is often withdrawn too early and without discussion with other agencies involved in supporting a family.

The decision needs to be made between FAYS, other workers and the family.11

Inter-agency collaboration requires a degree of shared decision-making and responsibility and the establishment of processes for this to occur.

On a positive note, there are a number agency protocols12 that have been developed in recent years to improve collaboration and coordination as well as a number of local agency to agency service agreements which set out individual agencies responsibilities to create service guarantees.

The Women’s and Children’s Hospital and Flinders Medical Centre CAMHS have developed an agreement to develop better joint protocols and set up demonstration projects between CAMHS’ and FAYS’ offices.
For example, on a smaller scale Southern CAMHS has developed the *Safe Families Program* which provides specific child protection funding to work with two FAYS District Centres (Marion and Murray Bridge) FAYS on confirmed abuse cases, as well as Northern CAMHS *Family Partnership Team* which works with confirmed abuse Tier 2 cases requiring an intensive therapeutic response.

Service agreements and protocols reflect the recognition of the need to improve collaboration. Many require updating and greater communication as to their implementation at the State-wide level. At the agency level they are often negotiated between agencies in the absence of an overarching service framework for treatment and therapy for children who have been abused and neglected and central agency agreements that will assist in ensuring sustainability and quality assurance.

Furthermore, there are few structures in place to ensure shared decision-making outside family care meetings and strategy discussions during investigations and assessment process for agencies involved in these processes.

**The role of FAYS in case management and case coordination**

The role of FAYS in leading and being responsible for managing case coordination was highlighted in submissions:

> ...information sharing and advocacy can be quite ad hoc and many agencies with different criteria, aims and procedures can be involved in a person’s life. Case coordination should remain a Government responsibility if it is to be effective. FAYS should be assigned case management responsibility for all child protection notifications including those cases investigated and those currently “written off” as “Resources Prevent Investigation”. This case management should enable participating support agencies both Government and non-Government agencies a stronger liaison and collaboration role.13

The role of FAYS is fully dealt with in Chapters 9 Sections A & B.

**Service Collaboration**

Another aspect of interagency coordination and relationship is in respect of service collaboration. It was emphasised to this Review, particularly during consultations, that there was either a dearth of services in some areas or lack of clarity as to which organisation, Government or non-Government, should be providing the services.

The concerns raised by the Child Protection Services (CPS) are an example of this. The CPS provides services of assessment and treatment of infants, children and young people and their families where there are suspicions of child abuse and neglect. These services work closely and collaboratively with the Child and Family Investigation Units in SAPOL and also with FAYS.

Concerns were expressed by CPS about some aspects of the relationships notably with FAYS which included:

- that the investigation system suffered from ‘chronic overload’ which caused delays in referrals and investigations thereby placing children at further risk
- that where the agency response to physical and sexual abuse was good, the response to chronic patterns of neglect and psychological maltreatment was poor

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13 Submission 137 Managers of Youth Supported Accommodation Assistance Program in South Australia.
14 These matters are discussed in Chapter 9.
that more effective exit management is required by FAYS and SAPOL in informing families of the outcome of investigations.¹⁴

A compounding aspect of these concerns was that in the course of CPS providing their assessment and treatment processes, they sometimes identified very complex issues within families which required intense counselling services.

These complex needs could most easily be met by other agencies, and further the CPS had already established a degree of trust with the families and that they were then in the best position to provide these services.

Two issues emerge from this situation. The first is the extent to which a CPS may be compromising its primary function by endeavouring to respond to such needs. Secondly, what process of ‘handover’ could occur when such needs arise to enable another agency or service delivery body to takeover the counselling role?

It is important for children and their families to have flexibility of delivery of services and to have those services delivered in the most appropriate manner, but at the same time a service agency should not compromise its services in a systemic manner.

This Review considered that this issue can be considered at the three levels of interagency collaboration recommended in this Chapter in conjunction with the increased and improved services recommended in Chapter 6.

**Need for greater understanding of confidentiality provisions and enhanced information sharing**

Sharing relevant information between departments and agencies is crucial to an effective and coordinated interagency response to allegations of child abuse and neglect. All people involved in protecting children and young people must be cognisant of a child’s vulnerability in relation to adults or those more powerful by dint of age or relationship.

All adults have a moral obligation to ensure the protection of children, and in relation to professional responsibility, the protection of children takes precedence over other client/worker relationships.¹⁵

Where a worker does not share relevant information, or agrees to keep the abuse or neglect secret, it is usually not possible to ensure that child’s safety or protection. When working in the area it is therefore critical to inform a client that it may not be possible to keep information confidential and where possible seek consent for the release of any personal information.

*Social commitment to the individual’s right to privacy is enshrined in legislation and commonly articulated in service policy. Other legislative mandates dictate personal information may be disclosed under some circumstances, such as for the protection of another person, or in the public’s interest. As a general rule, best practice is maintained if service providers routinely ensure written informed consent of clients prior to contact with other agencies.*¹⁶

There is however, considerable confusion and anxiety regarding how and when information should be shared and for what purpose. This has been a consistent theme raised during consultations, in submissions and during other consultation processes.¹⁷

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¹⁶ Department of Human Services (2000) Greater Than the Sum of the Parts - Collaboration to Address and Prevent Domestic Violence.
¹⁷ Ibid. consults, Social Welfare Services Planning Framework consults.
Some of the comments include:

- □ A belief that the duty of confidentiality restricts communication between agencies, and that a legislative alternative that both protects children and supports the parent is necessary.\footnote{Submission 39 Noarlunga Health Service Community Care Team.}

- □ There are gaps in inter-agency collaboration, and an umbrella policy on children’s issues should be incorporated into policies that are within the adult sector, so that policies on privacy and confidentiality/ethics ensure disclosure of whether an adult client has children.\footnote{Submission 72 Children of Mentally Ill Consumers (COMIC).}

- □ Protocols should be developed as a matter of priority to ensure that important information is shared and if necessary legislation governing the privacy rights of clients should be reviewed.\footnote{Ibid.}

- □ Improved communication is required between FAYS and health professionals, and there should be an obligation on FAYS to provide appropriate feedback to general practitioners and paediatricians, as well as protection to limit third party access.\footnote{Submission 152 Department of General Medicine (Women’s & Children’s Hospital).}

**Sharing information**

The Child Protection Interagency Guidelines 1997 set out the principles and procedures for the exchange of information between the key agencies involved in the child protection system. There are also other various codes, guidelines and protocols in relation to confidentiality for and between individual Government agencies that provide further guidance and direction.

Allegations relating to child abuse and neglect require that certain information be shared between a number of agencies and workers, and serious consideration be given to the provision of information to legitimate parties.\footnote{Children Protection Interagency Guidelines 2nd Ed. (1997).}

Within Government, the Cabinet Instruction on Information Privacy requires that persons employed by agencies covered by the instructions obtain consent before any personal information can be divulged to a third party. However, an exemption has been granted in relation to certain aspects of child protection investigations.

The two exemptions are:

1) if an employee outside of FAYS (formally DFACS), discloses the suspicion and the grounds of suspicion to an officer of FAYS
2) if employed within FAYS, disclosure of information to persons outside of the department, in so far as this is necessary to investigate the suspicion.

This Cabinet Instruction does not override obligations placed upon agencies by legislation, and before any information is disclosed to a third party every attempt should be made to seek the voluntary consent of all persons involved. Where this would impede the investigation, this may not be necessary.\footnote{Ibid.}
Under the *Children’s Protection Act 1993*, there is an expectation that workers will cooperate in sharing relevant client information and decision making in the best interests of the child. When issues arise they need to be resolved to ensure an effective interagency response and particular consideration must be given to:

- the safety of the child
- the child’s and parent’s right to privacy
- internal departmental or agency guidelines
- an understanding of the principles of confidentiality.24

These are complex matters and determinations require careful balancing of and weighing up the competing interests and rights of those involved. Workers may often be reluctant to request consent for sharing information because they believe this will impede their relationship with the client, and therefore do not share important and critical information with other agencies. This may not be possible when a child is at risk or where persons are unable to provide informed consent due to mental incapacity, the affects drugs or alcohol or due to language/cultural barriers. However, in practice many clients are prepared to share information and state they do not like having to keep reiterating their situation/history to many agencies again and again.

In relation to children and young people, there are a number of specific issues regarding how and what information should remain confidential. The Review has heard of significant information being withheld from foster carers regarding a child’s health status or behavioural problems to which any person undertaking an ‘in locus parentis’ role, would ordinarily be expected to have access. This does little to assist children or their carers.

**Children’s Protection Act 1993**

One of the major legislative provisions which impacts most directly on information sharing is section 58 of the *Children’s Protection Act 1993*. This sets out a confidentiality provision which prohibits the divulgence of any personal information obtained during the course of administering the Act.

It specifically relates to personal information about children, their guardians or family members, as well as anyone alleged to have abused, neglected or threatened a child.

This section allows for information to be divulged if it is authorised or required by law. Such a provision would permit personal information to be disclosed with the consent of the person. It would also permit evidence to be given if subpoenaed or where a relevant matter is before the Youth Court. Information may also be given in a statistical manner which would not reasonably be expected to identify individuals, or if an employee has been authorised or required to divulge the information by his or her employer.

FAYS states in its submission:

> There are situations where the provision comes into conflict with the administration of the Act and hinders good social work practice because it does not provide for the complex nature of the personal information collected and the “right to know” which may exist in some circumstances.25

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25 Submission 179 Family and Youth Services.
FAYS details a number of examples including:

- joint or shared personal information held which is the personal information of more than one individual
- rights of a birth parent no longer with the custody of their child, as the child lives with another birth parent, to know if that child is the subject of a child protection investigation
- reports of suspected abuse where the perpetrator is not an immediate family member and it would be an offence for FAYS to divulge to the parents the identity of the alleged perpetrator
- divulging personal information about children to foster carers.

In addition FAYS maintains that:

*The confidentiality provision needs to be balanced with the obligation to release sufficient information in order to provide for the safety and wellbeing of the child, as well as enable FAYS to exercise its duty of care in protecting third parties, such as other children in the foster care placement.*

*Rather than working from a point of non-disclosure, there are compelling arguments that FAYS should be able to disclose personal information, unless there is a reasonable child-centred reason not to such as where it is not in the child’s best interest to release the information or it is against the child's express wishes to do so.*

The Review agrees with these latter statements, and that the intent of this section of the Act was to prohibit those with the administration of the Act from disclosing information to others who have no interest or right to know this information.

The overriding objects and principles of the Act state that the safety of a child or young person is the paramount consideration and that any action must always be undertaken in the child’s best interests.

It would appear, in practice, that this section has been narrowly interpreted and applied, and it is impeding the appropriate cross-sectorial collaboration against best practices principles.

It is clearly not in a child’s best interests to have personal information critical to a child’s safety and protection or appropriate care not divulged to those responsible for their care. It is also nonsensical to interpret this section such that a parent would not have the right to information regarding a person who has been alleged to abuse their child, just because this is personal information about a third party. This is a circumstance in which the paramount consideration of the child’s best interests would prevail, so that a parent may protect the child from a third party.

The Review is proposing major legislative and structural reforms which will require a high degree of interagency collaboration and coordination. This will necessitate the sharing of personal and confidential information in the broader interests of children.

Specifically in relation to improving interagency information sharing, the following is recommended.

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26 Submission 179 Family and Youth Services.
RECOMMENDATION 27

That the South Australian Child Protection Board auspice the updating of the Child Protection Interagency Guidelines in order to take account of changes to legislation, the development of the Regional Child Protection Committees and Interagency Case Management processes. In doing so, a communication strategy be developed, to ensure that all those with statutory responsibilities are aware of their obligations in relation to confidentiality, information sharing and privacy. This is to be explained in language which can be easily understood and applied.

Reason

There would appear to be a number of impediments to appropriate information sharing and collaboration, based on privacy and confidentiality concerns. A review of the current guidelines is warranted as well as the development of appropriate communication strategy and training, to ensure all those with statutory responsibilities are aware of how and when to share sensitive information.

BROAD COMMUNITY APPROACH TO CHILD PROTECTION

Enhancing child protection efforts, however, is not simply a matter of Government and non-Government agencies working together, it is also a responsibility of the community including the private sector, families and individuals. General practitioners are one group who are more likely to have contact with children and are in a position to detect abuse and neglect of children. Improving child protection outcomes and preventing child abuse and neglect is a whole of community issue that requires a broad focus and the harnessing of effort at every level.

Whilst there has been an increased focus on providing a better response to the needs of people that services are designed to serve, across many Government agencies, these efforts to date have been focused on particular groups. Examples are the establishment of the Aboriginal Court, Drug Court and Domestic Violence Courts, amongst others as well as the Exceptional Needs Process in DHS. They generally reflect an upstream service response aimed at managing high demand at the intervention end of service delivery. There has been less focus given to the prevention of child abuse and neglect as well as monitoring and improving systems responses.

There is a need for an overall strategy to promote improved coordination and collaboration across all sectors of Government as well as a whole of community approach, including non-Government agencies to focus on child protection. The approach recommended is to establish complementary statutorily mandated central and regional bodies which are able to communicate with each other to produce effective and efficient results. The prime focus of these bodies is to improve outcomes for children, young people and their families with the aim of preventing abuse and neglect.

A three level process is recommended, two of which are to be provided in statute and the third to exist at the practice level, in the Inter-Agency Case Management process.
The first level is the creation of the South Australian Child Protection Board. This high level Board is recommended to be composed of the chief executive officers or directors of each of the Government departments of:

- Department of Human Services (DHS)
- Family and Youth Services (FAYS)
- Department of Education and Children’s Services (DECS)
- South Australian Police Department (SAPOL)
- Crown Law Department (Director of Prosecutions)
- Child and Youth Health (C&YH)
- Local Government
- Division of State Aboriginal Affairs

As well as:

- an independent expert in child protection
- Commissioner for Children and Young Persons
- a representative from the South Australian Council of Social Services (SACOSS)27
- a representative from the Association of Independent Schools SA
- a representative from the South Australian Commission for Catholic Schools.

The chairperson should be a person of high standing and independence.

The main purpose of the Board composed of 14 persons is to promote collaboration and coordination between all bodies. It is a Board which is designed to overcome “silos” which currently exist between sectors and agencies whereby there is a blinkered and narrow approach taken between organisations to shift responsibility for providing services between them because of their respective financial stringencies. This results in the focus moving away from the child who then “falls through the cracks”.

There is a similarity between this proposed body and the previous South Australian Child Protection Council chaired by Dame Roma Mitchell which was highly regarded but gradually lost its impact because the level of attendance by the Heads of Departments’ dwindled and were replaced by alternative lower grade officers.

The strategies to overcome this problem are:

- Firstly, the South Australian Child Protection Board is recommended to be mandated in legislation for high level membership. This can be supplemented if necessary, but not substituted, with other officers with specific knowledge of the topic within the department concerned.

- Secondly, it is recommended that the specific programs on which the Board will initially concentrate are those for which the Board will be given a pool of funds in relation to which differing departments and agencies will bid for portions to provide services.

- Thirdly, one of the roles and functions of the Board will be to develop inter-agency protocols and guidelines including processes to resolve the “grey” areas or “cracks” so that children and their families are not further disadvantaged.

- Fourthly, the Board will report to the Premier and not to any of the departments represented on the Board, which will also encourage a whole-of-Government approach.

27 This representative is to give a voice and a means of communicating with the non-Government organisations such as Anglicare etc.
It is therefore proposed that a South Australian Child Protection Board be established to promote:

- leadership in the community on child protection and the prevention of child abuse and neglect
- coordination and collaboration across Government, non-Government and community and joined-up inter-agency responses to child protection and the prevention of child abuse and neglect.

It is recommended that the **role and function** of the Board includes:

- developing protocols and guidelines within and across departments and agencies generally and on particular projects using best practice
- overseeing implementation of protocols and guidelines and developed
- undertaking research and analysis on child protection issues\(^28\)
- identifying particular child protection issues for inter-agency collaboration
- reviewing and monitoring legislation, policies, practices and services regarding child protection and making recommendations to Parliament\(^29\)
- developing strategies for involvement with national programs or sources of funds or seeking Commonwealth funding for projects
- receiving and monitoring reports from the Regional Child Protection Committees on regional plans
- establishing short, medium and long term strategies.

In order to give the Board an initial focus upon which to concentrate, and support the development of collaborative and coordinated initiatives, it is proposed that the Board will have **pooled funds** available to it to encourage collaborative initiatives that focus on five major topics at the outset:

- children and young people under the Guardianship of the Minister
- adolescents at risk
- early intervention and prevention especially for 0-3 years
- Aboriginal health and family support services
- community education.

This pooled funding will allow initiatives in these areas to be primarily progressed through the regional committees promoting a coordinated and collaborative approach, building up the relationships between service providers and community at all levels.

The staffing levels required to support the Board would be five full-time equivalents.

The Board should meet not less than 10 times per year and preferably on at least a monthly basis.

\(^{28}\) There is also a function of research in relation to general issues related to children, which is also given to The Commissioner for Young Persons referred to earlier.

\(^{29}\) There is also a similar function in relation to general issues related to children, which is also given to The Commissioner for Young Persons referred to earlier.
RECOMMENDATION 28

That a South Australian Child Protection Board be created and mandated by statute.

That the role and function of the Board include:

- develop protocols and guidelines within and across departments and agencies generally and on particular projects using best practice
- oversee implementation of protocols and guidelines
- undertake research and analysis on child protection issues
- identify particular child protection issues for inter-agency collaboration
- review and monitor legislation, policies, practices and services regarding child protection and making recommendations to Parliament
- develop strategies for involvement with national programs or sources of funds or seeking Commonwealth funding for projects
- receive and monitor reports from the Regional Child Protection Committees on regional plans.

Reason

The main purpose for the creation of the Board is to promote collaboration and coordination between all bodies. It is a Board which is designed to overcome "silos" which currently exist between sectors and agencies. Interagency and inter-professional coordination and communication has been well documented as having the potential to enhance or undermine child protection. Interagency coordination is not a natural state of affairs and it does not merely result from good intentions. Structural mechanisms must be in place to ‘enforce’ a high level of dialogue and cooperation.

Regional Child Protection Committees

The establishment of regional committees is regarded as an important basis for inter-agency collaboration at this level and for improving the development of community responses to local variations on child protection.

Regional committees will enable regions, particularly those with significant rates of child protection notifications and substantiations, to develop whole-of-community strategies engaging community, Government, including local Government, non-Government service providers and community organisations in partnerships to respond to child abuse and neglect concerns and broader child protection prevention initiatives.

Given that there are different sources of funding (particularly “one-off”) from Commonwealth, State and local Governments for various programs that may be implemented at a local / regional level, most service providers in an area find it difficult to keep track of what is currently available. This changing service context is exhausting for service providers who are often trying to connect people with appropriate services and supports. Regional Child Protection Committees will provide a regional focus where services can provide information about service availability.
Representation is recommended to include key senior individuals from regional Government services such as education, SAPOL, FAYS, health services, local Government and possibly extend to include other key non-Government agencies and services within the area such as general practitioners.

The Chair of the committee may be an appropriate senior person from any one of the department agencies.

It is recommended that the existence and general structure of Regional Child Protection Committees be incorporated into legislation and further details such as the number of regions and other features may later be prescribed in a schedule to the Act.

In making this recommendation for the establishment of Regional Child Protection Committees, the Review notes that there is an absence of any agreed common regional boundaries in South Australia. The absence of agreed regional boundaries and administrative changes to boundaries by Government agencies is one of the major impediments to effective interagency coordination and collaboration. It affects the development of efficient working relationships between workers in different agencies and reduces any meaningful continuing relationship between Government agencies and communities. It is clearly beyond the scope of this Review to determine the regions and their boundaries.

The Review proposes that pending any future longer-term alignment of boundaries between agencies, the Regional Child Protection Committees should be attached to and be served by DHS. The committees could be set up in line with the current four Community Health Regions (Metropolitan) and five of the major Regional Health Committees (Country).  

The functions of the Regional Child Protection Committees should include:

- implementing the protocols, guidelines and policies developed by the South Australian Child Protection Board
- developing a plan for child protection in the region and for collaboration in the region, and forwarding the plan to the South Australian Child Protection Board for approval
- making recommendations to the South Australian Child Protection Board for changes or for suggestions for future collaborative strategies
- applying to the South Australian Child Protection Board for portions of the pooled funding to implement strategies in the region.

The Committees should meet not less than six times per year.

The committee would be supported by a Regional Liaison/Project Officer position and have appropriate administrative support.

The functions described above will encourage two-way communication between the South Australian Child Protection Board and the committees. The statutory mandate will raise the level of importance of the committees and encourage commitment.

The relationship in turn between Regional Child Protection Committees and Inter-Agency Case Management meetings described in detail in Chapter 9 will be vital in developing appropriate responses and supporting quality case management outcomes across a range of service providers.

30 Currently there are 7 regional health committees.
RECOMMENDATION 29

That Regional Child Protection Committees be created and mandated by statute.

That the functions of the Committees include:

- implementing the protocols, guidelines and policies developed by the South Australian Child Protection Board
- developing a plan for child protection in the region, the means of collaboration in the region and forwarding the plan to the South Australian Child Protection Board for approval
- making recommendations to the South Australian Child Protection Board for changes or for suggestions for future collaborative strategies
- applying to the South Australian Child Protection Board for portions of the pooled funding to implement strategies in the region.

That pending future longer-term alignment of boundaries between agencies such committees be attached to and be served by DHS and aligned to the current 4 Community Health Regions (Metropolitan) and 5 of the Major Regional Health Committees (Country).

Reason

The main purpose for creating Regional Child Protection Committees is to encourage inter-agency collaboration at this level and improve the development of community responses to local variations on child protection. They will also act as a support for Inter-Agency Case Management meetings (described in Chapter 9). Such committees will:

- provide a capacity to monitor regional/local efforts for the prevention of child abuse and neglect and monitor local agency work and inter-agency collaboration
- will enable an improved identification of regional/local service needs and influence planning by Government departments and agencies.

The Interagency Case Management Process

The Review considers that there is an urgent need to move beyond ad hoc approaches that emphasise episodic interventions and to increasing support for integrated systems. Inherent is a shift in focus from notions of specific problem management to a focus on the management of people within a human development model. Such a model recognises that people need to be supported in a consistent and continuous way and that this support needs to sequentially address the priority issues for families and children, so that changes can be manageable and achievable. It also requires greater involvement and engagement of workers from key agencies in shared decision-making.

This is dealt with in more detail in Chapter 9 Section A.

RECOMMENDATION 30

That an Interagency Case Management model be established for all child protection cases assessed as having very high, high, or moderately high risks as set out in Recommendation 40 in Chapter 9.
INTRODUCTION

This chapter covers the following:

- provides a brief historical context and suggests a human rights perspective for developing a framework of action
- provides an overview of some of the major national and State reviews and reports
- describes some of the issues and complexities and provides some specific data
- discusses some of the systems and legal issues and
- offers recommendations to assist in progressing and building on the good work already occurring in this area.
GENERAL DISCUSSION

In discussing child protection for Indigenous children and young people it must be acknowledged at the outset that there are many complexities and issues which cannot be dealt with from within a narrow ‘incident’ based framework. The interplay and interconnection between health, welfare, housing, education and justice factors require a commitment to work outside of rigid silos and to work across Government and non-Government agencies and with the community in order to begin to address this most pressing problem.

It must be recognised that Indigenous poverty and disadvantage (and all its antecedents) is juxtaposed against the emergence of an Indigenous middle class, where many Aboriginal children and young people are growing up in families who are meeting their needs for safety, health and education.

Urban Aboriginal families and communities are facing different challenges and issues from those Aboriginal families living in rural and remote areas, and in particular, those on the Lands. To add further to the complexity is a recognition that:

there is no such thing as ‘the Aboriginal Community’ rather there are numerous discreet communities with distinct cultural social economic and family identities.¹

DEMAGRAPHICS

In the 1996 census it was recorded that there were 386,000 Aboriginal and Torres Strait Islanders which makes up 2.1% of the Australian population.² The Indigenous community is currently expanding at rate more than twice that of the total population, with an average growth rate of 2.3% with a projected growth rate of 20% to 469,000 by 2001.³

In South Australia there are 23,425 persons who identify as Aboriginal or Torres Strait Islanders. Aboriginal and Torres Strait Islanders make up 1.6% of the total SA population.⁴ In SA there are 48 cultural and kinship groups and a number of major language groups. The younger age demographic of the Aboriginal community, which is the reverse ratio of that of the wider population, is of importance in discussing child protection services and initiatives and has particular implications for the development of an Indigenous child protection framework.

HISTORICAL PERSPECTIVE

Acknowledgment of the past legacy of welfare practices and the grief and loss experienced by many Aboriginal families, children, young people and their communities has been highlighted in many submissions to the review. Indicative is that of the Aboriginal Advisory Groups comments:

For Aboriginal people, the subject of child protection invokes deep and mixed emotional. Many Aboriginal families, communities and individuals are still suffering from the consequences of past colonial policies and practices.

¹ Submission 146 Aboriginal Legal Rights Movement Inc.
² ABS (1999) ‘Aboriginal and Torres Strait Islander Australians: A Statistical Profile from the 1999 Census’ Year Book Australia.
Key issues that have historically had and continue to have an impact today are:

- Dispossession and separation from land; erosion of culture; loss of traditional ways of life; loss of family, kinship ties and traditional relationships; and the history of relationships with white people and society
- Marginalisation within the greater Australian society
- Socio-economic disadvantage which includes high levels of poverty, over-crowded housing, homelessness, and unemployment.

In order to provide guidance and direction for the future, Governments and service providers must have an understanding of the past policies and practices and the impact on the community today. Whilst many important initiatives have been undertaken to educate the non-Indigenous community with the aim of developing a greater understanding of Aboriginal history and heritage there is still widespread racism, paternalism and exclusion evident in the wider community.

A full understanding of the history of Aboriginal contact with welfare and child protection system is an absolute prerequisite for any agency or service provider working with community. The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families found that:

Indigenous children have been forcibly removed from their families and communities since the very first days of the European occupation of Australia. In that time, not one Indigenous family has escaped the effects. Most families have been affected in one or more generations by the removal of one or more children. Nationally, the Inquiry concludes that between one in three and one in ten Indigenous children were forcibly removed from their families and communities between 1910 and 1970.

The Inquiry also found that continued removal of children is still being perpetrated today. There are many reasons for this:

Indigenous young people come into conflict with the law due to policing and the administration of justice. Indigenous families and communities live in poverty, are provided with inadequate and usually inappropriate services and do not have decision making power about the services they receive, particularly about how children and young people are dealt with … young people who do come into contact with the child welfare system are more likely to come into contact with juvenile justice system.

If the service systems are to begin to assist the community in reducing the over-representation of children and young people and the ‘dependence’ of families on the welfare system, true dialogue and relationship building must take place. Neither is it permissible for any one agency to have responsibility for the ‘problem’ – a concerted whole of Government effort developed with true collaboration with elders and leaders is required, one that is built on respect and a recognition that:

Aboriginal families and communities see what is happening to their families, children and young people and want to do something about it, not as passive objects of welfare but as full participants.

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5 Submission 181 Aboriginal Advisory Group.
7 Ibid.
8 Ibid.
9 Submission 181 Aboriginal Advisory Group.
Noel Pearson, an outspoken Aboriginal leader put it bluntly and provoked much controversy when he stated that in his view:

…there has been a significant change in the scale and nature of our problem over the past thirty years. Our social life has declined even as our material circumstances have improved greatly since we gained citizenship… our descent into passive welfare dependency has taken a decisive toll on our people, and the social problems which it has precipitated in our families and communities have had a cancerous effect on our relationships and values. Combined with our outrageous grog addiction and the large growing drug problem amongst our youth, the effects of passive welfare have not yet steadied. Our social problems have grown worse over the course of the past thirty years. The violence in our society is of phenomenal proportion and of course there is inter-generational transmission of the debilitating effects of the social passivity which our passive economy has induced.10

Many reviews and reports have been undertaken spelling out the significance of the problems facing many Indigenous communities which leave them vulnerable to family violence and child abuse. To effect long lasting positive change requires decisive action, not more reports and shallow promises.

In February 2000 the Aboriginal and Torres Strait Islander Commission (ATSIC) in a media release in relation to domestic violence stated that:

…..there have been far too many Government reports on Aboriginal affairs which have been written and simply allowed to gather dust in a filing cabinet. Talk is cheap. It is time for action and we are calling on the State and Federal Governments to respond with enough financial resources to ensure we can adequately tackle domestic violence in our communities.11

Domestic violence within Indigenous families and communities is having a profound impact on children and young people and must been viewed as a major child protection issue. The recent release of the report Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities in July 2002 in Western Australia, found that:

…family violence and child abuse occur in Aboriginal communities at a rate that is much higher that that of non-Aboriginal communities. The statistics paint a frightening picture of what could only be termed as ‘epidemic’ of family violence and child abuse in Aboriginal communities.12

It is contended that a similar statement could be made for many of the Indigenous communities within South Australia.

12 Ibid p xxii.
The situation facing many Aboriginal communities in SA is dire. Unless the Government views what is happening as a major human rights issue, little change will be effected. The recent Coronial inquest into the deaths of three adults (aged 25, 27 and 29 years) who died as a result of petrol inhalation on the Anangu Pitjantjatjara Lands paints a desperate picture of a community where there is little hope and long-term survival is under threat. Despair and cultural and family disintegration are commonplace and all Governments’ attempts to promote changed are, on any measure, failing:

Petrol sniffing is endemic on the Anangu Pitjantjatjara Lands. It has caused and continues to cause devastating harm to the community, including 35 deaths in the last 20 years in a population of between 2,000 and 2,500. Serious disability, crime, cultural breakdown and general grief and misery are also consequences...Clearly, socio-economic factors play a part in the generally aetiology of petrol sniffing. Poverty, hunger, illness, low education levels, almost total unemployment, boredom and general feelings of hopelessness form the environment in which self-destructive behaviour takes place.13

Australia ratified the United Nations Convention on the Rights of the Child in December 1990 and it came into effect in January 1991. Described by some as the ‘Magna Carta’ for children, the Convention promotes children’s interests and welfare ‘as an issue of justice rather than one of charity’.14 The Convention provides a human rights framework within which the interests of Aboriginal children and young people can be forwarded. Whilst the Convention is concerned about the obligations of Government to attend to the rights of children and young people, it does so whilst acknowledging the role and rights of parents.15

Children’s rights include: the right to freedom of expression and protective measures against economic and sexual exploitation, drug abuse and other forms of abuse and neglect; the right to a reasonable standard of living, health and basic services; the right to education and the right to leisure. Children and young people with special circumstances, such as those suffering disabilities or orphaned must be recognised and provided for and there are special regulations covering cultural concerns of minority and Indigenous children and rehabilitative care for children suffering from deprivation.

Most Government departments have begun to recognise the inadequacies of the current service system and have developed ‘statements of reconciliation’ and principles to underpin service delivery.16 These statements are seen as positive steps by the community17, however, many children and young people are still not being afforded the same access to education, health, welfare and justice responses as other non-Indigenous members of the community. This is a major human rights issue and new approaches are needed.
UNICEF, in its *New Global Agenda for Children (2000)* identified three priorities to address entrenched disadvantage facing many of the world’s children. All of these apply to Aboriginal children and need to be considered within a broader child protection plan:

**Early Childhood Development**

Every child enjoys the highest attainable standard of health and nutrition, and reaches the child’s full emotional, social, and intellectual development in a clean, safe and caring environment.

Targets include a reduction in infant child mortality and low birth weight; reduction in stunted growth and an increased number of children achieving defined status at age three and five in regards to physical, emotional, social and intellectual development.

**Basic Education**

Every child, from birth to adolescence, will realise the right to basic education of good quality.

Targets identified include all children completing primary education by 2015; gender equality in education, and achievement by all children of nationally defined levels of learning in numeracy, literacy and life skills.

**Adolescent Development and Participation**

Adolescents live, learn and work in safe supportive environments with access to services and opportunities in order to develop their capacities, achieve and maintain optimal health and wellbeing, and participate in and contribute to their societies.

Targets include reduction in mortality and morbidity rates due to pregnancy related complications, alcohol and drug abuse overdoses, violence and suicide; and increase the number of 18 year olds who have the skills and opportunities to have sustained livelihoods.

In addition UNICEF identifies what countries must do to improve the lives of children and as one commentator pointed out:

…sad as this reality is, Indigenous children fall short on many, if not most, of the targets set. First, is the creation of enabling environments, second is the fairer allocation of existing resources or injections of new resources; third is the need for the institutions of Government to be more responsive, participatory and accountable. All require an understanding of human rights and the claims these make on government to create environments in which children, their families and communities ‘can enjoy the respect to which they are entitled.’

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RECOMMENDATION 31

That the principles contained in the United Nations Convention on the Rights of the Child (UNCROC) be reflected in all statutes affecting Indigenous children and young people and form the underpinning principle objectives driving legislation in this State.

That the South Australian Child Protection Board, when developing protocols and guidelines, has regard to the three targets identified by UNICEF in its New Global Agenda for Children (2000).

Reason

The situation facing many Aboriginal communities in South Australia is dire. Unless the Government views what is happening within these communities as a major human rights issue, it is likely that minimal change will be forthcoming. While many Government agencies have begun to acknowledge the inadequacies of the current service system and have developed statements of reconciliation to underpin service delivery, legislative recognition of the situation is required to ensure the situation receives the highest level of attention.

IMPORTANT NATIONAL INQUIRIES IN ABORIGINAL POLICY

Over the past 20 years there has been a growing recognition amongst the Indigenous and non-Indigenous community that the social, economic and health status of many Aboriginal people are the worst of any population group.19

Two major national inquiries have been highly influential in putting Aboriginal issues on the public agenda and many writers to the Review have called for the Recommendations of The Royal Commission into Aboriginal Deaths in Custody and the Bringing Them Home Report to be implemented in full.

THE NATIONAL INQUIRY INTO THE SEPARATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN FROM THEIR FAMILIES - BRINGING THEM HOME

This seminal report dedicated to the generations of Aboriginal children taken from their families and communities, who are still searching for home and to the memory of the children who will never return – the ‘stolen generations’ – makes a number of significant recommendations that have relevance to this Review.

Some of the recommendations have been implemented such as the establishment of family tracing and reunion services – ‘Family Information Services’. Others are still being progressed and still others are not being progressed at all – such as ‘reparation and compensation for removal’.

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**Self determination** is one concept articulated in the report as a mechanism to bring about the changes required. Some communities which provided information to the Inquiry wanted to control the child welfare and juvenile justice systems themselves while others wanted to share these powers and responsibilities with the State and Territories.

The concept of *self determination* has grown in acceptance in recent years, however, many communities require significant assistance to work towards this goal. One of the recommendations of the Inquiry was the development of national legislation to establish a framework for negotiations at community and regional levels for the implementation of self-determination in relation to the wellbeing of Indigenous children and young people.20

This was to be underpinned by the following principles that:

- Indigenous communities are free to formulate and negotiate an agreement on measures best suited to their individual needs concerning children, young people and families
- that negotiated agreements will be open to revision by negotiation
- that every Indigenous community is entitled to adequate funding and other resources to enable it to support and provide for families and children to ensure that the removal of children is the option of last resort; and
- that the human rights of Indigenous children will be ensured.21

The report also included a recommendation that the legislation authorising Indigenous communities if they so desired:

…to facilitate the transfer of legal jurisdiction in relation to children’s welfare, care and protection, adoption and and/or juvenile justice; the transfer of police, judicial and/or departmental functions to an Indigenous community, region or representative organisation; share these functions and have control of funding to forward programs and strategies in relation to children, young people and families.22

Whilst self-determination is one concept that is often spoken of:

…there has never been clarification, or a practical understanding developed, of what ‘self determination’ means in practice.23

Ownership and control of agencies and services by Indigenous communities is a vitally important aim, however, there is an equally vital need to ensure that Aboriginal communities are offered a range of services which are culturally appropriate within mainstream and Indigenous services. In this way individuals can have before them a range of choices and options analogous to those that exist for many in the non-Indigenous community.

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21 Ibid Recommendation 43b.
22 Ibid Recommendation 43c.
In recent times there has also been considerable criticism of some Indigenous agencies, and whilst it is not the intention of this Review to make detailed comment on the criticisms, it must be noted that some Indigenous community members have been highly critical of some Indigenous services and agencies. For example, there have been claims made that:

- some of these agencies have failed them in delivering any real changes
- some agencies are often ‘nepotistic’ in operation, controlled by individuals or families and do not necessarily give appropriate attention to the needs of the broader community, and
- the inflexible application of the Aboriginal Placement Principles may lead to already vulnerable children being placed in situations of risk.

These types of criticisms are not new (for example, see report Violence in Indigenous Communities24) but they do highlight the need to ensure that communities have adequate resources and support, and ensure effective participation in decision making when it affects their children, young people and families.

THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

The Report of the Royal Commission into Aboriginal Deaths in Custody National Report 25 made many recommendations which have particular significance to this Review. Whilst some are directly related to juveniles who offend, the association between the child protection system and juvenile justice systems cannot be overlooked. Key recommendations are listed hereafter:

Young Aboriginal People and the Juvenile Justice System

62. That Governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for Governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise. (2:252)

Schooling

72. That in responding to truancy the primary principle to be followed by Government agencies be to provide support, in collaboration with appropriate Aboriginal individuals and organisations, to the juvenile and to those responsible for the care of the juvenile; such support to include addressing the cultural and social factors identified by the juvenile and by those responsible for the care of the juvenile as being relevant to the truancy. (2:368)26

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26 Ibid.
Aboriginal Youth

234. That Aboriginal Legal Services throughout Australia be funded to such extent as will enable an adequate level of legal representation and advice to Aboriginal juveniles. (4: 177)

235. That policies of Government and the practices of agencies which have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies.

236. That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs Governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding.

237. That at all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both Government and community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy.

238. That once programs and strategies for youth have been devised and agreed, after negotiation between Governments and appropriate Aboriginal organisations and communities, Governments should provide resources for the employment and training of appropriate persons to ensure that the programs and strategies are successfully implemented at a local level. In making appointment of trainers preference should be given to Aboriginal people with a proven record of being able to relate to, and influence, young people even though such candidates may not have academic qualifications.

239. That Governments should review relevant legislation and police standing orders so as to ensure that police officers do not exercise their powers of arrest in relation to Aboriginal juveniles rather than proceed by way of formal or informal caution or service of an attendance notice or summons unless there are reasonable grounds for believing that such action is necessary.

The test whether arrest is necessary should, in general, be more stringent than that imposed in relation to adults. The general rule should be that if the offence alleged to have been committed is not grave and if the indications are that the juvenile is unlikely to repeat the offence or commit other offences at that time then arrest should not be effected.

240. That:
   a. Police administrators give police officers greater encouragement to proceed by way of caution rather than by arrest, summons or attendance notice;

   b. That wherever possible the police caution be given in the presence of a parent, adult relative or person having care and responsibility for the juvenile; and

   c. That if a police caution is given other than in the presence of any such person having care and responsibility for the juvenile such person be notified in writing of the fact and details of the caution administered…
242. That, except in exceptional circumstances, juveniles should not be detained in police lockups. In order to avoid such an outcome in places where alternative juvenile detention facilities do not exist, the following administrative and, where necessary, legislative steps should be taken:

a. Police officers in charge of lockups should be instructed that consideration of bail in such cases be expedited as a matter of urgency;

b. If the juvenile is not released as a result of a grant of bail by a police officer or Justice of the Peace then the question of bail should be immediately referred (telephone referral being permitted) to a magistrate, clerk of court or such other person as shall be given appropriate jurisdiction so that bail can be reconsidered;

c. Government should approve informal juvenile holding homes, particularly the homes of Aboriginal people, in which juveniles can lawfully be placed by police officers if bail is in fact not allowed; and

d. If in the event a juvenile is detained overnight in a police lock-up every effort should be made to arrange for a parent or visitor to attend and remain with the juvenile whether pursuant to the terms of a formal cell visitor scheme or otherwise.

Such steps should be in addition to notice that the officer in charge of the station should give to parents, the Aboriginal Legal Service or its representative. (4:202)²⁷

SIGNIFICANT NATIONAL AND STATE INITIATIVES

Their Future, Our Responsibility – Making a Commitment to Aboriginal and Torres Strait Islander Children

The Secretariat of National Aboriginal and Islander Child Care (SNAICC) which is the national non-Government peak body representing the interest of ATSI children and families, published its ‘blueprint’ for Government commitment to Aboriginal children and young people in 2001. SNAICC advocated that the Federal Government pledge its support for a number of significant policy directions. While these policy directions were aimed at the Federal Government, they have relevance to the SA context and can influence outcomes for children and young people in this State. They further highlight the need for a strong and active partnership between this State and the Commonwealth.

They include the:

- development of a National Aboriginal and Torres Strait Islander Family Policy which will aim to reduce the number of Aboriginal and Torres Strait Islander children being removed from home for child welfare and poverty reasons
- expansion of Aboriginal and Torres Strait Islander Family Support services
- establishment of national benchmarks for all Government services at all levels to ensure planning takes into account the high proportion of Indigenous persons under age 30 (70%)
- implementing Bringing Them Home recommendations and the SNAICC National Plan of Action
- a national commitment to early childhood development and
- re-instatement of funding for the ATSIC Community and Youth Support Program.

This report prepared by the National Indigenous Child Safety and Family Wellbeing Working Party establishes how to proceed in South Australia to achieve a legal and service response which is truly respectful of Aboriginal family relationships. It sets out a number of recommendations or ‘ways forward’ and has developed accountability guide posts that can be used as a checklist as part of the reporting requirements to the National Coordination Group. It emphasises the importance of an international human rights framework and investment in maternal and infant health, family support services, education and youth development and participation. This document sets out principles to guide the development of Indigenous child protection services and provides significant guidance to SA in developing its own framework.

Our Children, Our Future sets also out eleven ‘Accountability Guideposts’ and indicators to assist Government to measure achievements.

Table: 3 Accountability Guideposts

<table>
<thead>
<tr>
<th>GUIDEPOST</th>
<th>INDICATOR</th>
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<tbody>
<tr>
<td>Aboriginal Child Placement Principle</td>
<td>In place in legislation</td>
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<td>Self Determination</td>
<td>Supports/resources available to assist communities to take increased responsibility</td>
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<tr>
<td>Community Awareness and Education</td>
<td>Are there mechanisms to ‘Stop the Silence’ and talk about child abuse and neglect</td>
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<td>Access and Equity</td>
<td>Are there clear mechanisms for children and families to access services</td>
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<td>Healing</td>
<td>Are there healing services for survivors and victims of abuse</td>
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<td>Workforce Development</td>
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<td>Are there resources in mainstream services directed proportionally to Indigenous need</td>
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<td>Service Integration and Coordination</td>
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<td>Communication</td>
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<tr>
<td>Rekindling Culture</td>
<td>Is the role of Elders recognised in rekindling culture</td>
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<tr>
<td>Research</td>
<td>Is there a study of the impact on racism on educational outcomes and attendance.</td>
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</table>

(Source: Our Children, Our Future, Everyone’s Business pp 24-28)

28 Submission 181 Aboriginal Advisory Group.
30 One (1) indicator is set out as an example.
Council of Australian Governments (COAG)

Also of importance is the Council of Australian Governments’ (COAG) acknowledgment of the ‘continuing social and economic disadvantage and disparity of life expectancy compared with non-Indigenous population’ and commitment to addressing this disadvantage and its call for a ‘new approach’ to facilitate change.

COAG recognised that a ‘new approach’ was required that incorporated the following components:

a. engage with Indigenous communities as partners with shared responsibilities in the development of policy and practices and the design and delivery of services;

b. focus on enabling local leadership, building local resources and tailoring services to meet local need;

c. ensure all levels of Government, agencies and organisations work jointly with each other and with communities to achieve optimum outcomes;

d. adopt flexible funding approaches which are responsive to local needs and support integrated and innovative initiatives; and

e. promote economic independence and advancement.

It was agreed that Governments would make sustained efforts and would:

▫ invest in community leadership initiatives tailored to local needs, which builds the capacity of Indigenous communities to develop and implement programs and participate effectively in partnerships; and

▫ in partnership with Indigenous communities, review and re-engineer existing programs and services, to ensure they deliver practical measures which support families, children and young people, emphasising prevention and early intervention, with particular emphasis on family violence, drug and alcohol dependency and other symptoms of community dysfunction.

The ATSIC/State Government Partnering Agreement

The ATSIC/State Government Partnering Agreement was signed in December 2001. The agreement builds on the COAG Agreement and details specific initiatives for joint action by SA and ATSIC.

Priority outcomes of relevance to this Review include:

▫ reducing the rate of Indigenous youth suicide and self harm within SA communities and improving human services provision to vulnerable young people

▫ addressing the mental health/emotional well being needs of Aboriginal people, including young people

▫ tackling substance misuse, including petrol sniffing

▫ building on successful programs such as Family Well Being

▫ making Aboriginal maternal, child and youth health a priority for action, building on the National Indigenous Child Safety and Family Wellbeing Framework

▫ implementing the Indigenous Violence Strategy Framework for Action;

▫ providing community based family and youth programs which focus on prevention and early intervention

▫ considering judicial reforms including changes to the Youth Court to make it more responsive to the needs and circumstances of Aboriginal children and their families – the Nunga Court at Port Adelaide is regarded as an appropriate model

▫ supporting and guiding youth participation processes.
An implementation and reporting framework has been developed, and all state Government departments are required to report on their efforts to address all the priorities identified.

**Solid Foundations: Health and Education Partnership for Indigenous Children Aged 0 to 8 Years**

A discussion paper was prepared in June 2001 for the Ministerial Council on Education, Employment, Training and Youth Affairs which highlighted the importance of the ‘early years of life’. It points to a range of findings:

…that low birth weight, recurrent illness, a lack of psychological stimulation, acute and/or chronic malnutrition and the stresses of poverty can lead to poor health and general lowering of intellectual, behavioural and social abilities, often leading to poor school performance and dropping out.33

The paper suggests that education and health interventions are more likely to be successful in the early years and less costly than remedial and rehabilitative interventions in the later years of childhood and adolescence. It builds on the new research findings into physical brain development and the importance of appropriate care and stimulation in the first three years of life.34

It details a number of State and Territory initiatives currently underway or recently completed that focus on improving the health outcomes of Indigenous Australians. It recognises the close relationship between health and educational outcomes and points to the major progress to reduce childhood mortality and morbidity through initiatives such as:

- universal childhood immunisation
- improved ante-natal and maternal care
- control of particular diseases (eg respiratory illness)
- nutritional programs (for example, breast feeding promotion).

It states that these have dramatically reduced the mortality and morbidity rates for Indigenous children, nevertheless, it points out that the health of Indigenous children is still poorer than the health of other Australian children.35 It provides advice on nine health issues of concern that affect Aboriginal and Torres Strait Islander children from birth to eight years. These include:

- lower life expectancy at birth
- low birth weight and failure to thrive
- poor quality diets
- high disease rates, especially chronic ear and respiratory infections
- social and emotional wellbeing
- substance misuse
- adolescent pregnancy
- childhood trauma, and
- childhood injuries.

This paper provides a useful basis for informing the work of education sectors as well as informing other sectors such as health, Indigenous affairs and the family and community services sector at national, State and regional levels. Further, it illustrates the need to work in a coordinated fashion across portfolios in order to achieve better outcomes for children, young people and their families.

34 Ibid see also Chapter 6 of this Report.
Warrki Jarrinjaku Jintangkamanu Purananjaku – “Working together everyone and listening”

Prepared for the Commonwealth Department of Family and Community Services as a background paper for the Aboriginal Child Rearing Strategy (Warrki Jarrinjaku ACRS) in May 2002, this Report provides a review of the literature on Aboriginal Child Rearing and associated research. The report points out that in recent times there has been a growing recognition of the need to have an approach of service design and delivery that places equal value and respect on quality practices from both Kardiya (non-Aboriginal) and Yapa (Aboriginal) cultures.

In order to develop a ‘both ways’ approach, a great deal needs to be known and understood about Aboriginal ways of caring for and rearing children.36

One piece of research highlighted in the report was Pipirri Wilmaku “for the little kids”: Innovative Child Care Report 2000-2001. Senior Aboriginal Women living in remote desert communities identified four key principles underpinning all matters regarding the ‘growing up’ of their children (Waltja, 2001), namely:

- The Dreaming, the law
- family, extended family, all family
- the home, the land, the country, this place, and
- holding everything, keeping everything together.

These four principles describe the child’s relationship and responsibilities with everything – people, animals, land, family (Tjukurpa, Waltja, Ngura and Kanyini). Children are conceived and grow up with an understanding that they are part of this system and responsible for upholding these principles.

The report points out there are a number of distinctive features which emerge in regard to attitude and practices in relation to babies and young children. In non-Aboriginal culture babies are seen as helpless and in need of a great deal of direction from adults and are required to develop routines as directed by adults. However, Aboriginal children sleep, eat and play whenever and wherever they choose.37 By contrast Yapa and Anangu babies and young children are seen as small adults, who have a particular place in the family and community, together with all the responsibilities under law and culture. Further, Aboriginal babies in the lands have almost complete freedom from such routines.

Tjitji Tjuta Atunyamanama Kamiku Tjukurpawanangku – Looking After Children Grandmothers’ Way

This report produced in 1991 was the first time that a Government department anywhere in Australia had asked an Aboriginal Woman’s Council (the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council) to conduct its own study on community women’s views concerning child protection policies. Some of the key recommendations from this report required that the then Department of Family and Community Services (FACS) now called Family & Youth Services (FAYS) do the following:

- Establish policies and procedural guidelines which are based upon the desires of Aboriginal people (Anangu) and the organisations that represent Aboriginal people (Anangu). Such policy development must involve Anangu in a decision-making role in the preparation of any statements relevant to the AP Lands. Policy regarding removal of children from the AP Lands is a crucial issue for Anangu which needs to be addressed.
- Ensure that appropriate training of all Departmental staff in cross-cultural issues be conducted with Anangu closely involved in training program development and implementation.
- Ensure that FACS provide resources as a high priority to establish appropriate programs and strategies for education and service delivery for child protection on the AP Lands as identified by Anangu.

37 Ibid.
Learning From Past Messages “A Different Future” for Aboriginal Services

Within the South Australian context a review of the ‘consultations, reviews and reports’ undertaken over a 25-year time span 1972-1997 in Learning From Past Messages “A Different Future” for Aboriginal Services provides an historical picture of the consultations and reports developed by the then Department of Family and Community Services and other major Government State and Federal reports. The major themes and messages still have significant relevance today and are reflected in many of the submissions and previous reports mentioned. Some of the key messages include:

- the need to support and value Aboriginal families and communities in the care and protection of children and young people
- children and young people to be cared for within their families, kinship groups and communities
- greater accessibility of services to all Aboriginal people
- the importance of Aboriginal leadership in redressing issues
- challenging racism and discriminatory behaviours that form barriers and limit culturally appropriate service delivery
- more cooperation and use of resources for holistic service delivery and
- increased focus on health and wellbeing without foregoing safety, rights and needs of children and young people.

Coronial Inquest into the deaths of three Aboriginal people from the Anangu Pitjantjatjara Lands

The South Australian Coroner, Mr Wayne Chivell, handed down his findings after conducting inquests into the deaths of Kunmanara Ken, Kunamanara Hunt, and Kunmanara Thompson. Whilst the Anangu Pitjantjatjara Lands covers two States and one Territory, the South Australian Coroner was sent to the Lands to consider the evidence and take submissions from various individuals and agencies. Under Section 25 (2) of the Coroners Act 1975 the Coroner is empowered to make recommendations if, in his opinion, to do so may ‘prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest’.38

Submissions received through the child protection review process have requested that these findings be taken into account when making any recommendations in relation to the Lands.

Some of the Coroner’s key recommendations of specific relevance to child protection include:

- That Commonwealth, State and Territory Governments recognise that petrol sniffing poses an urgent threat to the very substance of the Anangu communities on the Anangu Pitjantjatjara Lands. It threatens not only death and serious and permanent disability, but also the peace, order and security of communities, cultural and family structures, education, health and community development.
- Socio-economic factors such as poverty, hunger, illness, lack of education, unemployment, boredom, and general feelings of hopelessness must be addressed, as they provide the environment in which substance abuse will be resorted to, and any rehabilitation measures will be ineffective if the person returns to live in such conditions after treatment.
- The fact that the wider Australian community has a responsibility to assist Anangu to address the problem of petrol sniffing, which has no precedent in traditional culture, is clear. Governments should not approach the task on the basis that the solutions must come from Anangu communities alone.

38 The Inquest into the Kunmanara Deaths delivered on September 6 2002 by the South Australian Coroner, Mr Chivell p 75.
In particular:

- The proposal before the Tier 1 Committee of APLIICC to appoint four youth workers and a coordinator for the Anangu Pitjantjatjara Lands should be implemented forthwith. Practical issues such as employment conditions, housing conditions and the like must be dealt with. The situation should be monitored to ensure that this number is sufficient to meet the needs of all communities;
- The establishment of a culturally appropriate Homelands/Outstation program should be undertaken to provide a venue for community respite, recreation, skills training, education and the like in the context of abstinence from petrol sniffing. Such establishments should not be considered as rehabilitation facilities for chronic petrol sniffers;
- APLIICC should consider the future role of FAYS in relation to children at risk on the Anangu Pitjantjatjara Lands, and in particular whether their role needs to be expanded into a much more proactive community development role;
- A much more energetic, concerted and creative approach to recruitment of suitably qualified experienced and appropriate staff will need to be undertaken in order to attract people to employment in the implementation of these strategies;
- The interventions described above must be implemented as part of an overall multi-faceted strategy, and not piecemeal, as they are interdependent and stand a high chance of failure if they are introduced separately;
- The recommendations of the Royal Commission into Aboriginal Deaths in Custody should be re-examined by both Commonwealth and State Governments as a check to assess the degree to which those recommendations have still not been implemented.

Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities - ‘Putting the picture together’

This report, released in July 2002, was commissioned at the request of the Western Australian Government. The inquiry was to examine the issues raised by a Coroner’s Inquiry into the death of a young 15-year-old Aboriginal girl and the way in which State Government agencies dealt with the issues of violence and sexual abuse in one particular community (Swan Valley Nyoongar).

The inquiry was also to examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in the Aboriginal community generally, and to provide a report with recommendations on practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures.

The report produced almost 200 findings and recommendations as well an overview of family violence and child abuse, including causality and prevalence and a comprehensive picture of service system responses by seven key Government agencies.
The Inquiry recognised the efforts of all agencies to respond to family violence and child abuse; nevertheless, it stated that the current service system is not able to adequately address the escalating rates of family violence and child abuse. It proposed a framework based on important principles for moving forward. Some of these principles include:

- the allocation of resources using a model based on disadvantage and need rather than based on capacity to lobby and argue for funds
- the use of a community development approach which uses successful strategies from working in developing countries, whilst acknowledging the centrality of local culture, traditions and structures
- the development of a ‘one stop shop’ or community centre that responds to the range of factors and problems that are linked to, and result from, family violence and child abuse.

In summary, the two major national initiatives as well as 12 other significant initiatives discussed above sadly reflect repeated themes, which in spite of their reiteration have resulted in little real improvement for Indigenous people. How many times must the same message be given in formal reports funded by Governments before change occurs?

**RECOMMENDATION 32**

That the message of Aboriginal disadvantage be a matter of specific community education.

That all Government agencies take into account the priorities and recommendations detailed in the key National and State Reports before developing new policies, programs and services.

That the yet to be established South Australian Working Group on the Indigenous Child Safety and Family Wellbeing provide a representative on the Child Protection Board so that initiatives designed to progress the safety and wellbeing of all children and young people have a strong Indigenous focus.

**Reason**

These recommendations are aimed at assisting the process of obtaining outcomes for Aboriginal communities. They must be seen in the context of the more specific recommendations of this Review.

They recognise that the disadvantages suffered by Aboriginal people are the responsibilities of the whole community, and that the community needs to be informed of their situation.
CHILD ABUSE AND NEGLECT

The connection between child abuse and neglect and other factors such as familial violence, substance abuse, poor educational levels, poor health status and lack of social cohesion must be acknowledged. Research has shown the association between stressful, negative community conditions and maladaptive coping behaviour and social dysfunction.

Aboriginal people are disadvantaged across a range of factors. They tend to have:

- Lower incomes than the non-Indigenous population, higher rates of unemployment, poor educational outcomes and lower rates of home ownership. Aboriginal people are more likely to be in impoverished dwellings... be in overcrowded living conditions and live in houses in high need of repair, than non-Aboriginal people.

- The high levels of poverty, unemployment, homelessness and ill health found in Aboriginal communities, of themselves make Aboriginal and Torres Strait Islander families more susceptible to becoming involved with both child protection and juvenile justice services.

The Aboriginal and Torres Strait Islander Commission, Adelaide Office in its submission to the Review stated:

Responding to child abuse and neglect without addressing the underlying issues of an inadequate and unhealthy social and economic support base will make no long-term difference to the situation. There is a clear need to commit to building societal structures that are inclusive and accommodate Aboriginal and Torres Strait Islander peoples aspirations and cultures.

REPORTING CHILD ABUSE AND NEGLECT

Aboriginal children and young people are over-represented in all parts of the child protection and care system in all States and Territories as compared with other children. In relation to child abuse it must be noted that these statistics represent only those matters reported to authorities, and underestimate the real incidence of child abuse and neglect in both the non-Indigenous and Indigenous community.

It has been asserted that this under-reporting is due to several factors. Three of the key factors are the rural or remote location of communities where monitoring by and contact with child health or welfare professionals is likely to be reduced or minimal, concern by authorities about excessive intervention for fear of reprisals from the community and the media and reluctance of the community to report child abuse and neglect.

This view concerning the reluctance to make reports within the Aboriginal community was further supported, both in consultations with key staff in the Department of Human Services, who said there was a great deal of reluctance to speak about the extent of child abuse and violence that is currently occurring in some communities, as well as by the findings of the Gordon Inquiry in Western Australian where the WA Police Service suggested:

...that there is a reluctance within the Aboriginal community to report suspected child abuse.
Community silence and denial impacts on the safety and wellbeing of children:

As long as the veil of silence and denial remains over this area, the opportunities for children to suffer without help remains as well as service available to the rest of Australian society will not be adapted and made accessible for Aboriginal communities.48

The Queensland Women’s Taskforce found that there was anecdotal evidence to suggest that:

…the sexual abuse of young males was increasing, and remains largely unreported, because of the hidden nature of male to male sexual attacks and the shame expressed by victims.49

Additionally, a Commonwealth study entitled Violence in Indigenous Communities commissioned under the National Crime Prevention Program through the Federal Attorney-General’s Department points to a variety of studies that talk about the neglect, physical abuse and rape of infants.50

It has also been reported that when the community do report, they are not believed, and reporting can sometimes result in the child being removed from the community rather than the perpetrator.

Many Aboriginal women believe that ‘it is no use reporting because they don’t believe you anyway’.51

Whilst there are considerable issues for Indigenous communities in reporting child abuse and neglect, the maintenance of mandatory reporting is generally supported by contributors to the review.52

As one submission pointed out:

Mandatory reporting has its detractors and its advocates. The former point to the rights of children who cannot initiate their own remedies and the public interest requirement that we need to know how children are being treated and the overriding obligation of the State to prevent harm. Critics point to the inundation of welfare departments, failure to respond, lack of experienced workers, lack of services even if problems are identified, the ‘trawling’ in of ‘innocent’ families and the consequent detraction from serious cases and the lack of research information about the impact of mandatory reporting.

These are valid concerns. For the Aboriginal community there are additional issues; the fear of a repeat of the Stolen Generation experiences; fear of revenge (particularly so in remote areas); of being responsible for breaking up the family and justifiable fear of the long term consequences for Aboriginal children in the ‘care’ system.

Mandatory reporting is not a panacea for lack of resources to families and health/welfare professionals. But the alternative response of minimising the extent of the problem is no solution either.

The failure of the system to respond adequately and the confusion about who is the client is not a reason to abandon the principle. A return to voluntary reporting could leave infants and young children in particular extremely vulnerable. Mandatory reporting does save lives. In the case of adolescents other issues come into play and have been identified53 including the right to full participation in the decision to report. Adolescents need time to reflect on the implications of a report and are often motivated by concern for young siblings still at home...


52 Submission 181 Aboriginal Advisory Group, Submission 146 Aboriginal Legal Rights Movement Inc.

Aboriginal communities need time to discuss both the implications of mandatory reporting and whether this, in any way, compounds the “cult of silence” around abuse of children, particularly in remote areas. Remote communities faced with an immediate crisis need an immediate local response – one which can utilise multi-disciplinary teams with local knowledge.  

**RECOMMENDATION 33**

Whilst it is acknowledged that mandatory reporting requirements do present many dilemmas and difficulties for Indigenous communities, it should be retained and further, provision for specific education programs for Aboriginal workers and community be developed to ensure culturally appropriate mechanisms are in place for dealing with reports within their community.

**Reason**

Children, whether they be Indigenous or non-Indigenous, have a right to be protected and mandatory reporting makes a public commitment and increases the general community awareness of child abuse. Whilst it is given that there are an unknown number of incidences of abuse and neglect that are not reported, mandatory reporting does assist in establishing, to some degree, the nature and incidence of child abuse within our community. This is highly desirable within Indigenous communities where there are particularly sensitive issues concerning child abuse and domestic violence.

**Child Protection Intervention**

There are particular issues which arise in relation to the possible removal of Indigenous children and young people, for reasons of protection. Some individuals and agencies have made representations to the Review that we are witnessing a failure to act or intervene in the lives of Aboriginal children and that the:

> “pendulum has swung away from enforced removal to the extreme of inaction due to collective guilt and fear”.  

It is stated that FAYS is now reluctant to act because of the history of enforced removal and as such children are being left in situations of extreme abuse and neglect, including ‘psychological harm’ culminating in a “form of reverse racism”.  

There is now a major dilemma facing agencies and communities dealing with children and young people who are living in dangerous and abusive situations and a belief that:

> The enactment of the current legislation which insists upon Aboriginal children being placed within their own culture, takes precedence over the needs and wellbeing of the child.

If children are removed from family and community then:

> …the question will then arise as to whether it is presently possible to satisfy the recs (sic) 46a, b and 51 of the Bringing them Home report  

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54 Submission 181 Aboriginal Advisory Group.  
55 Submission 160 Child Protection Services Women’s and Children’s Hospital.  
56 Submission 160 Child Protection Services Women’s and Children’s Hospital.  
57 Ibid.  
58 Submission 146 Aboriginal Legal Rights Movement Inc.
However it must be recognised that the *Bringing Them Home* report, while highly sensitive to any continued removal of children, sets out quite clear guidelines for a child’s required placement acknowledging at the same time that for some individual children their best interests would not be served by remaining within their family and/or community.

It has been put to this Review that Aboriginal children:

\[\ldots\text{are more frequently returned to too dangerous care situations}\ldots\text{and that there are numerous cases where children have been returned to family or extended family care where they have been subject to re-abuse.}\]^{59}

Some aspects of these concerns will be alleviated by the amendments suggested to sections 16 and 17 of the *Children’s Protection Act 1993*. Other concerns need to be addressed by way of practice guidelines to specifically address culturally sensitive interventions.

**CHILD ABUSE DATA**

Aboriginal children and young people under the age of 18 years constitute 2.25% of all children in South Australia\(^{60}\) and yet they constitute around 16% of all children notified to Family and Youth Services, a eight fold over-representation.\(^{61}\) The extent of over-representation increases as they move further into the system so that they comprise 30% of the total number of children who are the subject of a renotification.\(^{62}\)

The following tables indicate various significant points in the child protection pathway for Indigenous children and young people. Table 4 depicts the types of Tier 1 notifications by percentage. Neglect has consistently throughout the period been the major category notified in this Tier classification.

**Table 4: Tier 1 Notifications – Aboriginal Children\(^{63}\)**

<table>
<thead>
<tr>
<th>Tier 1 Aboriginal Children</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>34.6%</td>
<td>37.2%</td>
<td>26.3%</td>
<td>27.9%</td>
<td>26.6%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>12.3%</td>
<td>8.9%</td>
<td>24.6%</td>
<td>8.8%</td>
<td>4.2%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>7.4%</td>
<td>16.7%</td>
<td>2.7%</td>
<td>6.6%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Neglect</td>
<td>45.7%</td>
<td>37.2%</td>
<td>46.6%</td>
<td>56.6%</td>
<td>55.7%</td>
</tr>
</tbody>
</table>

Table 5 details the types of abuse categories which have been confirmed once investigated, for both Indigenous and non-Indigenous children and young people. Most significant is the increasing percentage of Aboriginal children and young people confirmed as having been neglected - rising from 38% for all types of confirmed abuse in 1997-98 to 52% in 2000-2001.

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59 Submission 160 Child Protection Services.
60 ABS (2002) 2001 Census Basic Community profile and Snapshot 4 South Australia.
61 Submission 179 Family & Youth Services Advisory Group.
62 Submission 179 Family & Youth Services Advisory Group.
63 Tables, 4, 5 and 6 Department of Human Services Dot & Warhoune as cited in Submission 179 FAYS.
Table 5: Confirmed Notifications by type of abuse

<table>
<thead>
<tr>
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<tr>
<td></td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
</tr>
<tr>
<td>Physical Abuse</td>
<td>37%</td>
<td>35%</td>
<td>34%</td>
<td>44%</td>
<td>30%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>8%</td>
<td>14%</td>
<td>8%</td>
<td>13%</td>
<td>6%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>17%</td>
<td>21%</td>
<td>13%</td>
<td>16%</td>
<td>17%</td>
</tr>
<tr>
<td>Neglect</td>
<td>38%</td>
<td>30%</td>
<td>46%</td>
<td>27%</td>
<td>46%</td>
</tr>
</tbody>
</table>

Table 6 depicts re-abuse by type of abuse for Indigenous children and young people, as a percentage. Again the neglect category is found to be the most pre-dominant.

Table 6: Re-abuse by type of abuse – Aboriginal Children

<table>
<thead>
<tr>
<th>Re-abuse - aboriginal children</th>
<th>96/97</th>
<th>97/98</th>
<th>98/99</th>
<th>99/00</th>
<th>00/01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>16.9%</td>
<td>20%</td>
<td>26.1%</td>
<td>19.8%</td>
<td>14.7%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>5.1%</td>
<td>4.3%</td>
<td>4.3%</td>
<td>1%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>3.4%</td>
<td>11.4%</td>
<td>24.6%</td>
<td>19.8%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Neglect</td>
<td>69.5%</td>
<td>64.3%</td>
<td>44.9%</td>
<td>59.4%</td>
<td>65.6%</td>
</tr>
</tbody>
</table>

As stated in the FAYS submission:

*The very nature of neglect, and the difficulty in turning such situations around without longer, more intensive family support interventions contributes to the increasing proportion of children subject to neglect.*

Receiving Notifications

Section 5 of the *Children’s Protection Act 1993* has specific provisions which relate only to Aboriginal and Torres Strait Islanders. These provisions require consultations to occur in a culturally appropriate manner. The child protection reforms of 1997 established an Indigenous service for receiving child protection notifications, that is, Yaitya Tirramangkotti and in doing so, provided a specific Indigenous service for the community to call with their concerns. However,

*It was originally envisaged that Yaitya’s role would focus more on prevention. Following a notification, Yaitya staff would meet with the family and discuss problems.*[^64]

In reality, Yaitya operates alongside the Child Abuse Report Line and when notifiers ring they can report direct to Yaitya if the matter involves an Aboriginal child or young person. They provide consultation and advice on culturally appropriate departmental intervention, using the same ‘western diagnostic tools to rate notifications according to the Triage system’[^65].

The most common types of notifications are those for neglect, with confirmation being significant for physical abuse and neglect (see Tables 4, 5 and 6 above). Whilst there is a general support for a specific Indigenous response at the point of intake, there is concern that many Aboriginal people are unaware of Yaitya Tirramangkotti and what it does, as well as concern at its limited capacity to deal with matters in a more preventative manner.

[^64]: Submission 181 Aboriginal Advisory Group.
[^65]: Ibid.
RECOMMENDATION 34

That Yaitya Tirramangkotti continue in its current operational form. Further, that a review be undertaken to assess:
- general awareness and usage of the service by the Indigenous community
- the efficacy of current safety and risk assessment tools and
- whether current staffing requirements are sufficient to provide an appropriate first point of contact service for persons with concerns about Indigenous children and young people.

Reason

While the Aboriginal specific ‘report line’ operates within a ‘western’ child protection framework, it is generally believed to be in practice, a more ‘culturally appropriate’ service than was previously available through individual district centres. It should therefore be retained, but improved through a review of its current service and functions.

A NEW APPROACH

The Aboriginal Community Considerations Focus Group, auspiced by the Justice Advisory Group, stated that:

The foundation point in all discussions around ‘child protection’ rests within the western social construction of reality. Legislation enacted has therefore followed this stream of consciousness. The cultural context for Aboriginal people is different and considerations of ‘child protection’ are therefore necessarily embodied in a different frame of reference... Successful change in models, both short and long term will require recognition of working with Aboriginal clients where possible, within the Aboriginal paradigm.

Many contributors to the Review have made a plea for a new approach to dealing with the issue of child abuse and neglect amongst Aboriginal children and young people and the development of alternative service delivery models:

Current organisational structures focus on short-term intervention with little attention being paid to clients’ needs in the long term hence the revolving door. This may mean that children are kept safe for a short term with a band-aid fix, but they return with more entrenched problems.

Within Aboriginal and Torres Strait Islander communities past strategies to address social, economical and political disadvantage have been short-term and ad hoc as a result of funding restrictions, inflexibility and covert racism.

Some writers support a complete revision of protective services in relation to Indigenous communities. Attempts to ‘tinker’ with mainstream systems to make them more culturally appropriately are seen as tokenistic. For example, although an Indigenous worker may be employed, there are still other professionals involved, and, in particular, key decision-making still remains with non-Indigenous officials.

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66 Submission 196 Justice Advisory Group, Aboriginal Focus Group
68 Submission 63 Sharon McCallum & Associates Pty Ltd.
69 Submission 145 ATSIC.
Others suggest that the first major change that could occur is to develop a child protection program and process specifically designed for Aboriginal families.\textsuperscript{72}

\textit{This is very different to developing a mainstream program and then making it ‘culturally appropriate’. Rather than making a program appropriate to the culture, the better approach is to grow, with the Aboriginal community, Indigenous programs.}\textsuperscript{73}

As stated earlier in this chapter significant reviews and reports have supported the concept of ‘self determination’ and a strong desire by Indigenous people’s to have control over what happens to them. Principally, the \textit{Bringing Them Home} report recommended that the Federal Government establish negotiations to allow Indigenous people to formulate and negotiate an agreement, leading to legislation to transfer power to Indigenous communities if they so desired.

According to Cunneen and Libesman, (2002) there has been no indication that any State/Territory Governments will move towards law reform in order to effect such a transfer of power. Whilst this may well be an ideal aim ‘there has never been clarification, or a practical understanding developed, of what ‘self-determination means in practice’.'\textsuperscript{74}

Furthermore:

\textit{…despite statements to the contrary, the processes and mechanisms employed by child welfare agencies to promote Indigenous autonomy have not adequately acknowledged the saliency of Indigenous domains nor have they seriously challenged the precepts of existing administrative domains that govern child protection interventions. Consequently the processes employed by child protection agencies to develop culturally appropriate services have seldom matched the rhetoric associated with them.}\textsuperscript{75}

This Review reinforces the view that whilst there has been much rhetoric by white authorities in regard to ‘self determination’, considerable work still needs to take place before communities have ‘any real sense of control or ownership’ of child welfare processes within their communities.\textsuperscript{76} Currently, there is little requirement or pressure placed on statutory authorities to ensure that intervention occurs in a culturally appropriate manner, that appropriate consultations take place and community is genuinely involved in decision-making.

There are a number of constructs that require consideration, in order to move towards a system that is based on understanding, collaboration and caring with Aboriginal community.

\textbf{Caring and Family in an Aboriginal Sense}

Many Aboriginal families are viewed as highly dysfunctional by statutory agencies. Failure to recognise and understand the natural and inherent caring relationships within family and kinship is often evident or downplayed by those that intervene. It is contended that:

\textit{A positive self-identity is partly derived in the acknowledgment and existence of all relationships within family, kinship and community/country context. The manifestations of this brand of caring may appear to go unnoticed or unrecognised by mainstream agency staff in ‘child protection’ investigations as such, hence the necessity of Aboriginal officers’ involvement in any form of family assessments undertaken.}\textsuperscript{77}

\textsuperscript{72} Submission 63 Sharon McCallum & Associates Pty Ltd.  
\textsuperscript{73} Ibid.  
\textsuperscript{76} Submission 196 Justice Advisory Group – Aboriginal Focus Group  
\textsuperscript{77} Submission 196 Justice Advisory Group – Aboriginal Focus Group
Also non-Aboriginal people and Government authorities generally recognised the primacy of the nuclear unit:

For Aboriginal peoples, family has the status given to all relatives and acknowledges all existing relationships, clan groups and kinship. The obligations and prescribed roles that follow from this construction of family presents a wholly different set of opportunities and options in social relations and the growing up of children, in the provision of caring and protection and in the manner in which responsibilities are ascribed, shared and supported.\textsuperscript{78}

Building Respectful Relationships

For non-Indigenous people working with Indigenous people, it must be recognised that social interaction of any kind is premised upon and dictated by, relationships with kin:\textsuperscript{79}

This protocol means Aboriginal people generally place a high value on relationships amongst themselves and this is what guides any form of social exchange. Interaction between Aboriginal communities and agency staff is also governed by similar understandings thus requiring agency workers to respect and build relationships with clients before ‘business’ is conducted.\textsuperscript{80}

Any form of interaction between Government agency staff and Aboriginal families must come from a position of understanding and be respectful of the importance of relationships within the community.

Current Legislative Requirements

The current child protection system is, for many Aboriginal people, ‘largely a reflection of existing and historical inability of systems to recognise the rights of children to develop within safe and healthy families and communities’.\textsuperscript{81} Whilst attempts to legislate for culturally appropriate practice have been generally supported, many feel that in practice that these are not being implemented.

For instance, the Aboriginal Child Care placement principle is not seen to be appropriately supported through policies and legislation. Section 5 of the Children's Protection Act 1993 states that no decision or order may be made under the Act regarding placement unless consultation has first been had with a recognised Aboriginal or Torres Strait Islander organisation. A "recognised organisation" is one that the Minister, after consulting with the Aboriginal community and Torres Strait Islander community (or section thereof), declares by notice in the Gazette to be a recognised Aboriginal organisation.

Sixteen Aboriginal organisations are authorised under the Act as official groups to be consulted with regard to placement of an Aboriginal or Torres Strait Islander child. However, little is known about the effect of using gazetted agencies in practice. As one submission pointed out:

Consultation is not defined (it may be thorough or desultory). There is no clear picture of how most of these gazetted Aboriginal organisations (some in very remote locations) are operating – if at all. There is an urgent need to review how this and whether Torres Strait Islander groups are being adequately represented…

…there is one critical missing link in the process of determining placement of Aboriginal children – that of local level knowledge and involvement. The original idea was for gazetted Aboriginal organisations to provide cultural expertise at Family Care Meetings. However, that role is primarily taken by the funded Aboriginal service providers such as Aboriginal Family Support Services (AFSS).\textsuperscript{82}

\textsuperscript{78} Ibid. 
\textsuperscript{79} Ibid. 
\textsuperscript{80} Ibid. 
\textsuperscript{81} Ibid. 
\textsuperscript{82} Submission 181 Aboriginal Advisory Group.
Placement of children may occur separate from a Family Care Meeting process or court action and little is known about how input from the community or family is sought and obtained. Placement is only one decision, albeit a very serious one, which requires proper consultation, involvement and input of Aboriginal community.

Legislation and policies must be strengthened to ensure that consultation occurs at a variety of stages during child protection intervention. There is also considerable concern that the current system of service delivery is flawed and many Aboriginal family and community are not receiving appropriate levels of service, leaving children and young people vulnerable and at risk of removal.

There are major challenges to providing effective coordinated services to Aboriginal people. The Gordon Report in WA has articulated some of the challenges facing Government agencies - all have relevance to the situation in SA. They include:

- the need for legislative or policy frameworks to support effective collaboration between agencies
- the need for the provision of middle-management level committees serving as intermediaries between the upper level management committees and on the ground service providers
- barriers to the sharing of information between departments which currently have a negative impact on the effectiveness of collaborative service delivery must be overcome
- the need for the allocation of an independent lead coordinator to oversee coordinated service delivery be put in place
- factors such as remote settings create substantial difficulties for the development of coordinated service delivery.

**Legislative and Policy Framework**

Significant policy development has taken place in recent years and has resulted in a plethora of State and national reports which articulate the types of mechanisms, principles and policies that need to be in place as set out earlier in this chapter.

In terms of legislation, there is currently no national legislation which covers child welfare in respect to Aboriginal and Torres Strait Islander children and young people. In South Australia, the intent of the *Children’s Protection Act 1993* was to enshrine in legislation key principles and processes for dealing with Aboriginal children and young people in an attempt to bring about a more sensitive and culturally appropriate approach. In practice, the process of consultation that is required in legislation tends to occur at a very late stage in the child protection process, such as at the Family Care Meeting stage or Court, and as such has limited capacity to assist families and community to put in place protective measures at earlier stages.

A number of legislative amendments are required to strengthen consultation, ensure greater attention is paid to collaboration, and share appropriate information at the earliest possible point of intervention.

These are set out in Chapter 23.

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Community and Regional Collaboration

A fundamental requirement for achieving true consultation with family and community is building relationships at the local and regional level. The twin goals of collaboration and coordination must take place within the context of true consultation with the clients to whom the service/intervention is being provided:

There is a need for flexible funding models, improved streamlined services and interagency collaboration and partnership. Funding administered to Aboriginal and Torres Strait Islander community-based services are being choked by bureaucracy and are consequently un-coordinated, inefficient and short term due to varying Government agencies regulations, requirements and restrictions. Aboriginal and Torres Strait Islander community-based organisations are conditioned by having to function within these varying guidelines and policies and consequently, are struggling to provide a consistent and proactive level of services to families.84

Aboriginal and Torres Strait Islander people’s are being forced into proving their inadequacy and this subsequent reliance upon welfare systems are contributing to the poverty traps that make it hard for Aboriginal and Torres Strait Islander people to escape. This cycle does little to restore empowerment with Aboriginal and Torres Strait Islander people’s and reinforces a dependency on a system that Aboriginal and Torres Strait Islander people’s have little influence or any degree of control.85

This Review heard that before the Children’s Protection Act 1993 came into operation, a mechanism existed at the local level which enabled families, service providers and the community to come together with the then Department of Family and Community Services. Called Aboriginal Child and Family Committees these operated at district centre level and worked closely with the welfare staff.

The principal role of Aboriginal Child and Family Committees was to bring together the relevant elders, agencies, family and kin to develop appropriate plans and agreements with family for the safety and protection of children and young people and ensure services and supports were available.

Social workers from the relevant District Centre chaired meetings and, in collaboration with family and community, devised case plans with agreed time-lines for action. Whilst a high degree of control and ownership for decision making rested with the family and the community, actual legislative authority remained with the statutory agency. The Review was informed that this process was one which had a high degree of support from families and community and was regarded by many current Indigenous workers as a concept worth revisiting.86

A committee constructed on similar lines would in fact complement the Child Protection Regional Committee and the Interagency Case Management structures as proposed by the Review, (see Chapters 7 and 9) with some particular differences.

An Aboriginal Child, Family and Community Advisory Committee could be formed around each District Centre. Each committee would have an appointed local Aboriginal coordinator. Support for this could come from the three FAYS Principal Cultural Consultants who would also be members of appropriate Regional Child Protection Committees. The Principal Cultural Consultants would provide input at the regional level for the development of services and processes that culturally supports the community and be a conduit for information to pass from the regional level to the local level and ensure Indigenous issues at the regional level had a priority focus. In view of the fact that it is recommended by this Review for there to be nine Regional Child Protection Committees and at present there are only three Principal Cultural Consultants, other senior Aboriginal people could be appointed to sit on the Committee after appropriate consultation.

84 Submission 145 Aboriginal & Torres Strait Islander Commission.
85 Ibid.
At the District Centre level, the local coordinator would, with the allocated social worker and the family, determine the need for a case conference, which would trigger a call for the Aboriginal Child, Family and Community Advisory Committee to come together. Once a decision was made that a conference was required, the local coordinator would be responsible for ensuring that ‘proper’ process was adhered to; for example, ensuring that the appropriate family members were invited and culturally appropriate processes were adhered to. The Committee could be made up from a variety of persons – elders and leaders who have genuine status,87 kinship group members, family, agency workers etc.

Each attendee would agree to maintain the confidentiality of personal information regarding the children, young people and family involved; however, the focus would be squarely on developing plans and agreements that ensure the ongoing safety and protection of the child or young person. In this respect their roles would parallel the Interagency Case Management process.

The Aboriginal Child, Family & Community Advisory Committee would:

▫ provide decision-making at a local community level
▫ ensure that proper supports are in place for the family
▫ provide appropriate and sensitive input at all critical decision-making stages and
▫ potentially build on and strengthen community capacity.

Times when the Committee would be required to meet would include:

▫ all Tier 1 and Tier 2 cases within four weeks of confirmation
▫ when placement outside of the immediate family was being considered or imminent
▫ before any voluntary custody arrangement was entered into
▫ before impending court custody was being considered to ‘remove’ children from family
▫ when children were returning to family after a period in care
▫ when adolescents were at serious risk of harm or offending, or after emergency placement of Aboriginal children in care.

The Committee would also provide a focus for review and monitoring of cases to ensure case plans and agreements on all sides were being fulfilled.

Many Indigenous families have at any one time a variety of agencies involved in their lives and many do not know of the existence of the other. Coordinated responses such as these would provide enormous benefits to both clients and agencies, as one of the major advantages is the reduction in duplication of services and effort.

87 Those who are traditionally the holders of wisdom and knowledge as suggested in Submission 181 Aboriginal Advisory Group.
RECOMMENDATION 35

That an Aboriginal Child, Family and Community Advisory Committee be formed in conjunction with each FAYS District Centre. That each Committee:

- have a permanently appointed local Aboriginal coordinator
- meet on case by case needs basis
- roles and responsibilities are articulated in legislation with clear processes for appeals.
- have a FAYS Principal Cultural Consultant or Senior Aboriginal person permanently appointed. Such Principal Cultural Consultant to provide input to the Committee on the need for the development of services and processes that culturally supports the community.

Reason

The basis for the establishment of a local Aboriginal Child, Family and Community Committee and local and regional coordinators arises from two main arguments. Firstly, this type of structure has, in a similar form, been seen to be effective in the past and is supported by many Aboriginal staff across the public sector and, secondly, it is sufficiently similar and complementary to changes being recommended by this Review for the broader child protection system.

Sharing Information

The topic of sharing information and confidentiality is discussed generally in Chapter 7. There are some significant differences on the topic when considering Indigenous communities.

One of the major barriers to coordination and collaboration is the vexed issue of confidentiality and information sharing. Genuine consultation cannot take place without a place to share, openly, information of a sensitive and confidential nature. However, in relation to Aboriginal community, there needs to be recognition that notions about the importance of privacy and confidentiality in non-Aboriginal communities are not necessarily the same as those in Indigenous communities.

The lack of appropriate information sharing has been raised as a particular issue for agencies working with families who are involved with the FAYS.

Recognised or gazetted agencies report difficulties with first point notification and ongoing consultation in almost every case referred to them by FAYS.

There are quite specific and long-standing concerns about a lack of information being fed back to agencies about details of investigation assessment orders and their consequences for children and families. Aboriginal agencies have clearly indicated that they can provide far more support to families if they are themselves provided with written feedback on the orders issued by the Court. In many instances, family members have expressed concern about an order, which they do not fully understand – or consequences – which might be long-term, such as a guardianship order up to age 18.88
It is important that family, community agencies and FAYS develop appropriate mechanisms for sharing information and dealing with highly sensitive issues in a culturally appropriate manner. A first task of the Aboriginal Child, Family and Community Advisory Committees needs to be the development of a process for determining how information is shared between all major parties and key service providers.

**RECOMMENDATION 36**

That Aboriginal Service Division with key parties and service providers such as ATSIC, AFSS and FAYS develop an agreed process for sharing information about children, young people and families that are involved with the child protection system. The aim of the protocol is to ensure that children and young people are safe and protected.

**Reason**

An agreed process will ensure that all parties are aware of their responsibilities in relation to information sharing. It will make clear to families, children and young people what information will be shared, and to whom and how and will enable families to have a say about what they believe is important to be passed on. An agreed protocol will cover the sharing of written and verbal information and will be consistent with legislative and Government regulations.

**HEALTH AND EDUCATIONAL OUTCOMES**

It may be necessary when considering child protection to take into account a general context of Aboriginal children and their health and educational circumstances. It is noted that these issues are closely associated with and may have implications for child protection outcomes and practices.

Compared with the non-Indigenous population of children and young people, Aboriginal children have poorer health and educational outcomes. In health terms, Indigenous persons have lower life expectancy at birth and higher mortality rates in all age categories than non-Indigenous persons.

One particular health consequence of significance is the incidence of otitis media with effusion (OME) among Indigenous children living in remote communities which can lead if untreated or improperly treated to an ‘educationally significant hearing impairment’. One study undertaken in the Northern Territory showed that 79% of Indigenous students were found to have an educationally significant hearing impairment and 40% required the services of an ENT specialist to treat active disease and/or required reconstructive ear surgery.

The National Indigenous English Literacy and Numeracy Strategy recognises that the health status of children is a powerful influence on their ability to attend early childhood centres and school. Whilst at school it also impacts on their capacity to learn and fully to participate in schooling activities.

90 Ibid p 22.
91 Ibid p 23.
The issue of child protection in rural and remote Indigenous communities requires particular consideration. This Review has already noted the Coroner’s comments on the particular nature and features of the social and economic environment that exist on the remote AP lands and the recommendations made as a consequence of the inquests conducted into the deaths of three young adults on these lands.

The foreword to the report Looking after Children – Grandmothers’ Way reflects the true extent of underlying concern among Aboriginal people on the lands about child and family outcomes:

Women’s Law, Grandmothers’ Law is really important one to us. It teaches us many traditional means of controlling and caring for children. We are worried about our family structure breaking down. We are worried about grog and petrol sniffing and how that affects our families. And we are also worried that government and welfare mob don’t understand our way and our problems.

We women have ideas about what to do to make it better. We want Government and welfare mob to listen to what we say and our ideas. We want them to work with us and our organisations, to get it right.

We call this report “Tjitji Tjhuta Atunymanama Kamiku Tjukurpawanangku”, Looking After Children, Grandmothers’ Way. That is the way.92

From the various reports that have been produced and submissions to this Review, there are five important areas of consideration that need to be acknowledged in relation to child protection program development for Indigenous communities on the lands. They include health outcomes, violence and its impact on children and young people, child protection intervention in rural and remote communities and community development which are discussed below.

**Health Outcomes**

Aboriginal people suffer the poorest health of any population group in Australia and for children on the Lands, these poor health outcomes commence in their early years.

The poor health of Aboriginal children has been well documented over the past ten years. Aboriginal infant mortality rates are falling but are still 2.8 times higher than for non-Aboriginal children. Patterns of mortality and morbidity are similar to those in developing countries with high rates of gastroenteritis, respiratory and other infections.93

In one area, the AP Lands, ‘failure to thrive’ is a major health issue with an estimated 25% of infants and young children being affected.94 Alarming numbers of children in remote communities do not receive adequate nutrition and are therefore not reaching their potential either physically or mentally.95 Also of significant concern is the lack of adequate nutrition which can lead to stunted development. Stunting, a marker for chronic malnutrition during infancy is a common problem in developing countries and is a major contributor to reduced cognitive function.96 Effective strategies to ensure appropriate nutrition and stimulation must be put in place to ensure that babies and young children in remote communities do not suffer long-lasting deficits in the physical and mental functioning.

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95 Ibid.
96 Ibid.
Violence and its Impact on Children


The Commonwealth Government in its commitment to addressing the issues of crime and violence in Australia funded research into violence in Indigenous communities as part of the National Crime Prevention Strategy. Ibid.

This research details a review of the literature on Indigenous violence, the forms of Indigenous violence, violence programs in Indigenous communities and offers strategies for combating Indigenous violence, specifically, the need for:

- community driven programs
- community agencies to establish linkages and working relationships with each other and with relevant Government agencies and

It is estimated that Indigenous women are 45 times more likely than non-Indigenous women to suffer violence. Submission 181 Aboriginal Advisory Group.

The Coroner’s Inquiry into the death of three young adults who were petrol sniffers from the AP Lands heard that one woman in four, between the ages of 15 and 44 living on the AP Lands, had been a client of the Domestic Violence Service. Approximately 80% of the violence committed by males was perpetrated whilst they were under the influence of marijuana, alcohol or petrol. The under-reporting of violence, especially rape and assault of women by men, has been highlighted as a major issue in some studies. Submission 151 Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council.

The tragedy of this that not only are the women themselves suffering, but children and young people are being placed in situations of extreme risk as a result of violent behaviour towards mothers and caregivers. Young children are particularly at risk at being placed in situations of extreme danger with the potential of being ‘removed’ from community as the only way of ensuring their safety. This in effect continues the removal practices of old and causes considerable pain to family and community.

In the submission from Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women’s Council Aboriginal Corporation, the Council pointed out that:

*The NPY Women’s Council Domestic Violence Service and the Nutrition Support Project have been receiving and responding to child abuse referrals since 1995. These programs do not receive specific funding for this work but have provided the service where possible within the existing programs as a result of an overall failure by FAYS to adequately respond to these matters.*

*The child abuse prevention work has relied on the knowledge and skills of existing staff and their networks with families in this remote region and other agencies. The Domestic Violence Service responds on average to 25 referrals per month. At least 80% of those referrals involve children… This year alone three women have been murdered by their partners leaving nine children orphaned.* Submission 151 Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council.

It is thought that a ‘social climate of violence tolerance’ has emerged which in some ways replicates traditional fighting and associated customary law, albeit in a very different form and under very different circumstances.
Young People
Adolescents living in rural and remote communities require specific attention:

*Being a young Indigenous person in central Australia is a risk factor for poor health, shortened life expectancy, imprisonment, drug and alcohol abuse, violent death, poverty, low standards of education, unemployment and the diagnosis of behaviour as psychotic.*

Many senior women are concerned about young teenage mothers who lack the skills to protect and nurture their children.

*Young teenage mothers cannot cope. Their babies under four years are being left hungry. We get no sleep at night and this is having an enormous impact on family life.*  
Lalla West

*Young teenage mothers love their children but have cannot express that love as they are too immature. They talk rough way to their kids and come to their own mothers to find out why their kids are crying and what’s wrong with them. They don’t bother feeding them and they just leave them to us grandmothers. This because they are addicted to playing cards and haven’t developed the right feelings for their children.*  
Eunice Porter

The problem of substance abuse is causing devastating consequences for many young people in remote communities. Petrol sniffing and marijuana use amongst young people, as well alcohol abuse, are having severe negative impacts on community. Substance abuse is the cause of the single largest category of disability identified on the AP Lands – particularly that of Acquired Brain Injury caused by petrol sniffing. Another cause of disability in both adults and children is alcohol, with foetal alcohol syndrome from exposure to alcohol during pregnancy being far more significant that previously thought.

It is therefore vitally important that Aboriginal children and young people in rural and remote communities have access to the same quality of protection and the safety and wellbeing promoted as non-Indigenous children and young people.

Child Protection Intervention
The current system, which requires the notifier to contact the Child Abuse Report Line in Adelaide, is regarded as useful for ‘streamlining notifications and ensuring consistency’, however, there are considerable issues relating to remote communities that need to be considered.

Many children living in remote communities are at risk of serious harm yet FAYS workers are only able to provide infrequent visits to these remote areas. It is asserted that some children have as many as 25 notifications and ‘yet nothing has changed in the life of the child’. FAYS is seen as being reluctant to use its statutory authority in situations of extreme danger and risk to children and young people:

*All children have the right to be protection and FAYS are responsible to ensure this occurs. No other organisation has the power to enact the law regarding child protection and FAYS seem reluctant to do so. Whilst this occurs, child abuse and neglect continues to occur in these communities with a growing tolerance for such abuse and among community members and service providers.*
The type of systems approach is questioned:

…the use of a standard mainstream child protection system, designed largely for and by non-Indigenous people, potentially creates problems of injustice and poor intervention. The high rates of Aboriginal families within child protection systems across the country give testimony to this mis-match.\textsuperscript{111}

Without Anangu control of events related to child protection, the department’s work will continue to be regarded by Anangu with little credibility or favour. It is imperative that ensuring Anangu control and ongoing consultation be a priority for the department through agreements that can be monitored.\textsuperscript{112}

There is an urgent need for FAYS to improve its quality of services to families on the AP Lands, and to improve worker understanding of the situation on the AP Lands.\textsuperscript{113} The Coroner specifically recommended that the future role of FAYS needs to urgently consider improved responses to children at risk on the Anangu Pitjantjatjara Lands, and in particular whether their role needs to be expanded into a much more proactive community development role.

There are also insufficient services currently available to children and young people residing in remote communities and there is an urgent need for integrated child and youth services, which is more than providing a basketball court and few balls.\textsuperscript{114} Services must include activities that provide meaning and stimulation including early childhood centres, after-school activities and holiday programs.

The need for new approaches that ‘get in early’ is urgently required. Many of the recommendations from previous reports articulate goals, principles and frameworks that have been developed with the Aboriginal community and will work. Many good programs have been tried but are often not sustainable in the long term due to the short term nature of pilot programs or the inflexible service agreements arrangements that tie funding to working within strict criteria, thus reducing the capacity to work in a holistic and preventative manner.

\textbf{RECOMMENDATION 37}

The Review endorses the recommendations of the Coroner in the Inquiry into the deaths of 3 young adults from petrol sniffing on the AP Lands and urges that they be implemented quickly.

That DHS consultatively develops an overall strategy to target specific and urgent needs of Aboriginal children and young people on the Lands. This requires strategic action with expressed outcomes and continuing monitoring to assess its effectiveness.

\textbf{Reason}

The situation of Aboriginal children and young people on the Lands is a critical problem which needs urgent attention and practical solutions. Too many children and young people are in circumstances which are dramatically worsening their health and wellbeing and will have long-term effects for the future of those communities apart from the current stress which is caused by those circumstances.
Community Development

Community development initiatives which focus on prevention strategies, address the antecedents to child abuse and neglect, are flexible in dealing with emerging community issues, and require skilled, supported and respected workers who are able to work across service agencies.

Too often, training for Aboriginal and Torres Strait Islander workers are inadequately resourced, are too few and far between and are delivered by mainstream service providers who do not always consider cultural differences in terms of language and learning styles.

Aboriginal and Torres Strait Islander peoples are often placed in conflicting positions where they are trying to promote cultural awareness and understanding, manage their responsibilities as professionals and their cultural obligations as a member of their respective community.115

It has been suggested by FAYS that community development workers could be attached to that agency and take on key roles with Aboriginal families and communities as well as coordinating service response to Aboriginal families and communities. In the past there has been a strong focus on community education with the production of specific educational materials in a variety of media – videos, pamphlets and books. Over recent years community education and community development for and with the Aboriginal community has diminished. FAYS staff have expressed the need for this role to be recognised and supported again and to actively engage with the community in designing appropriate community development programs that incorporate education and awareness about child protection:

Although many Aboriginal & Torres Strait Islander communities are aware of and recognise that family violence, child neglect and child abuse are having a damaging affect on the wellbeing of our children, many Aboriginal and Torres Strait Islander communities are disempowered from doing anything about it. Community education and awareness are paramount in terms of breaking the damaging silences about these issues and to support families and communities who are taking action to address these concerns.116

Aboriginal and Torres Strait Islander workers need to be involved in designing, presenting and evaluating relevant child protection training and education packages to ensure the effective delivery of professional services.117

The lack of inclusion of ongoing education of the systems operations/guidelines/policies and legal requirements of child protection has resulted in Aboriginal and Torres Strait Islander community-based organisations not receiving adequate support in terms of mandatory reporting responses and assessment processes.118

115 Submission 179 Family & Youth Services Advisory Group.
116 Submission 145 Aboriginal & Torres Strait Islander Commission
117 Ibid.
118 Ibid.
### RECOMMENDATION 38

That Aboriginal community education and development officers be attached to each FAYS District Centre. Part of their role would include the delivery of community information and education initiatives with a major focus on child protection.

### Reason

A range of information, education and community development initiatives are required for Aboriginal communities in relation to child protection, in order that they provide a process for community to discuss sensitive issues and develop solutions relevant to those communities. Damaging silence around abuse, particularly sexual abuse of Aboriginal children and young people, impedes their protection and leaves them at risk.
INTRODUCTION

This chapter discusses:

- a brief overview and general observations of the current roles and functions of Family and Youth Services (FAYS)
- staffing and resource concerns of FAYS
- accountability practices including audits and complaints processes
- organisational and structural arrangements required for effective child protection systems including interagency case management processes.
GENERAL DISCUSSION

The Department of Human Services (DHS) through its operational arm, Family and Youth Services (FAYS) has the principal statutory responsibility for dealing with child protection concerns in SA. FAYS’ service delivery responsibilities include:

- financial support services
- child protection services
- youth and juvenile justice services
- custody and guardianship of the Minister children and young persons, case management and support services
- alternative care placement and support services
- assisting victims of domestic violence.

There are 19 District Centres located across the State in the following locations: Adelaide, Enfield, Aberfoyle Park, Noarlunga, Marion, Elizabeth, Modbury, Salisbury, Woodville, Gawler, Ceduna, Port Lincoln, Murray Bridge, South East, Coober Pedy, Pt Augusta, Whyalla, Riverland, Pt Pirie.

District Centres are direct service providers with staffing levels ranging from 15 to 45 direct service staff. District Centres generally operate using team structures aligned to program areas or a combination of program areas; for example, child protection, child and family, adolescents, financial counselling. In addition to salaried staff, each District Centre manages a volunteer program and some have psychologists who provide assessment for children and families.

During consultations and in some submissions people talked of the past when FAYS was itself a Department (Department of Community Welfare 1978-1987; Department of Family and Community Services, 1987-1997). Many held a perception that the focus on critical issues such as social justice and disadvantage and in particular child protection had decreased since the creation of the DHS in 1997. Similar views were also reported in the Review of FAYS Structure and Functions, August 2002 by Semple and Associates, in which a number of staff expressed concerns that FAYS had lost significant status as an organisation during the past 10 years.¹

The opposite view has also been proffered, namely, that there are advantages for staff and clients in being part of a coordinated health, housing, youth, community services and social justice portfolio.

Both views have legitimacy and any disadvantages that FAYS has experienced are now best dealt with by strengthening its operational service delivery rather than returning to its previous stand-alone position. This can best be achieved by strengthening regional and local structures centred on child protection discussed hereafter, as well as its participation in the proposed overarching high level South Australian Child Protection Board as discussed in Chapter 5.

OVERALL COMMENTS

Child protection is a complex and vexed social issue that brings with it a variety of emotional responses. Many workers employed in or volunteering in human services organisations and general community members have taken considerable time and effort to put their views to the Review. In doing so, many have expressed deep frustration at the inadequacies of the FAYS system and hold deep concerns for children and young people in the community.

Comments received have been highly critical of the current system and its move towards a residual, incident-based approach. Nevertheless, other professionals, community members and submission writers have emphasised that whilst they have made many concerning comments regarding FAYS operations, this is done in order to facilitate solutions and change rather than ‘blame or dump on’ the agency or individual workers. There is acknowledgment by many in the community of the difficulty of statutory welfare work.

As an example:

I have always admired this Branch’s (sic) willingness to engage with and, where appropriate, implement creative and innovative policies and practices. My submission comes then from someone who has a commitment to, and respect for, the Department and Branch (sic) and the staff which work within them.²

Some of the comments in this submission may imply criticism of FAYS. That is not intended: examples are provided to assist the reviewers to understand the nature of the gaps and areas of inconsistent service responses.³

Some of the overall strengths of the FAYS operational system identified through the submission and consultation process include:

- the centralised intake system known as the Child Abuse Report Line which provides Statewide 24 hour telephone response to allegations of suspected child abuse and neglect
- the Aboriginal specific team (Yaitya Tirramangkotti)⁴ to deal with child protection assessment decisions at the point of intake
- the current investigatory handling of Tier 1 cases within the required timeframe
- the use of validated risk assessment tools for guidance in targeting resources to those where there is the highest risk
- the availability of high quality procedures and practice guidelines
- the reduction in the numbers of children being re-abused in relation to physical and sexual abuse
- the development of the Interagency Code of Practice for Interviewing of Children and Caregivers
- the Mandated Notification Training Consultancy Service
- FAYS Consumer Advocates
- the dedication and commitment of FAYS staff
- FAYS Training Branch.

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² Submission 63 Sharon McCallum & Associates Pty Ltd.
³ Submission 56 Intellectually Disabled Services Council.
⁴ The name Yaitya Tirramangkotti means ‘people of prevention’ and was presented to the Department by Elders of the Kaurna people, the original occupants of the central Adelaide plains.
Some of the overall weakness or criticisms of the FAYS system include:

- the ‘incident’ and crisis-driven approach resulting in only those cases of serious risks being followed up
- the use of contract, inexperienced and untrained workers resulting in children and families receiving less than optimal services
- poor understanding of child development, mental health issues, impact of drug and alcohol abuse, early intervention models resulting from inadequate university and/or in-service training
- limited use of opportunities for collaboration with other agencies
- restrictive work practices preventing workers developing more long-term relationships with families and the communities in which they live, especially Indigenous families
- failure to effectively intervene when there are issues of neglect and emotional abuse (Tier 3s) leaving children and young people at risk from long-term harm
- cases closed prematurely and without discussion with other agencies involved
- lack of appropriate workload management and measurement system.

### A COMPETENT AND EFFECTIVE WORKFORCE

Effective delivery of services is dependent upon having sufficient staff in place with the necessary knowledge skills and confidence to undertake the work. Workers must have the requisite skills and competencies; access high quality training that draws on current research and best practice; be well supported in their role through the provision of effective supervision and have an understanding of the wider social and political context within which they operate.

**Staffing Levels**

FAYS staff comprise social workers, youth workers, community service workers, administrative and managerial officers, in total representing 1089.5 full time equivalents (FTE’s). Currently there are 145 social work positions dedicated to the front end child protection work and 138 social workers and youth workers dedicated to working directly with children and young people under custody or guardianship orders and young offenders. The resource allocation model that was designed in 1991 used a formula for the allocation of staffing and resources based on population and social demographics rather than workload at district centres. In 1991 it allocated 143 social workers to front line child protection work and 218 social workers and youth workers working with children and young people under orders and young offenders. The use of this formula would appear to have resulted in no significant increase to front line staff levels over a 10-year period.

The two major adjustments to staffing which have occurred in the time were allied with two specific matters. One was for the establishment of the Child Abuse Report Line in 1997 where a total of 13 staff were employed. The second was in 2000-2001 when an additional $1 million (18 FTEs) was distributed across District Centres to address the increase in the numbers of cases designated as “resources prevent investigation” (RPIs) discussed hereafter.
In relation to social workers undertaking front-line child protection during the period from 1991 to 2002, child protection notifications have increased from 5149 notifications in 1991-1992 to 18680 notifications in 2001-2002. During this time period there has been increasing social disadvantage and poverty coupled with increasing complexity of individual and family issues such as mental health problems, drug and alcohol abuse and domestic violence. This has impacted considerably on FAYS’ ability to respond.

It is not an overstatement to say that the current situation is in crisis and the system is not able to cope with the demands being made on the statutory services required and expected of FAYS. This is further compounded by the other staffing issues discussed hereunder.

**Staff Recruitment and Retention**

In order to recruit and retain high quality professional staff a culture of service excellence is required which rewards collaboration and teamwork and is built on best practice. Currently there are a number of factors impeding the development of such a culture within Family and Youth Services.

A high turnover rate of social work staff, whilst common in many child protection agencies, is having a significant impact on the agency’s effectiveness, morale and is impeding the development of collaborative relationships with clients and other service providers and is de-stabilising teamwork within the District Centres.

The use of contract positions is another related area of major concern. The ‘unresolved continuous contract positions’ currently being offered to staff has been seen as impeding effective workplace practices. Currently in FAYS there are 73 social workers employed on a short-term contract basis. District Centres may recruit energetic and competent staff on a short-term basis but are unable to extend their contracts and lose them to other district centre offices or to other sections of the public or community services. The uncertainty and stress associated with contract work results in a decrease in morale of staff as they are being ‘forced’ to look for work elsewhere.6

The issue of contract staffing has been a known problem for a number of years and whilst there have been efforts in recent times to improve this situation, the disproportionate use of such staff demands urgent efforts to control this practice.

Another area of significance is the issue of wage parity and the classification levels of FAYS’ social workers with other social workers across the public sector. Currently FAYS’ social work staff are classified within the base grade or PSO1 range whilst their counterparts in, for example, the Community Health, Child Protection Services and CAMHS are employed at a starting salary at PSO2 level, in recognition of the complexity of the work they do.

Child protection work requires skilled workers who have an understanding of a diverse range of issues (legal, child development, child and adolescent mental health, drug and alcohol, psychological and behavioural) in order to intervene with families in a variety of situations many of which are difficult, complex, stressful and potentially volatile. In addition, most of the work is done with non-voluntary clients, which differs significantly from services provided by other organisations.
Further, there are insufficient progress paths which recognise the value of increased experience and expertise of more senior practitioners who should, and usually do, take the brunt of the front-end work and act as mentors and role models for those with less experience. Many contributors to the review have recognised the need for the recruitment and retention of these more experienced and professional workers. One way of achieving this may be by recruiting experienced staff who have a minimum of two years experience working in another agency.

**Special Staffing Considerations**

Other areas highlighted for special mention in submissions included the recruitment and retention of staff who are Aboriginal, or from culturally or linguistically different background, or psychologists and those required to work in country locations. This is a common problem shared with other Government agencies.

Bearing in mind that the greatest proportion of children who are the subject of care and control orders on a proportion of population basis are Aboriginal, coupled with the differing approach which Aboriginal people have to parenting and extended family responsibilities for children, there is a need to ensure that Aboriginal staff are employed in the agency. Their overt presence in the agency is beneficial for a variety of reasons including to give credibility to the agency, giving confidence to the Aboriginal community that their views will be taken into account and also suggesting alternative flexible ways for child protection which may be able to be applied to non-Aboriginal children and their families.

Whilst it is acknowledged that considerable effort has been made in recent times to recruit and retain Indigenous staff and provide promotional opportunities within the agency, it still needs further improvement. There are some helpful precedents in the manner in which the Port Augusta and Murray Bridge Centres are utilising Aboriginal workers and the secondary sensitising effect which has occurred within the non-Aboriginal staff.

A similar approach is required in relation to recruiting and retaining staff from culturally or linguistically different backgrounds. The problems of child protection differ in some important respects by reason of cultural difference. Some cultural communities have differing views on child discipline, treatment of gender difference, respect appropriate for parents and may also suffer from social isolation. These are most manifest in communities arising from immigration by seeking of asylum.

During the Social Welfare Services Planning Framework process psychologists within FAYS indicated that they would welcome the opportunity to expand their role within the agency and provide therapeutic child and family interventions, which would be specially tailored to families requiring long-term interventions.

In relation to rural and remote services, in other areas of DHS it is noted that incentives are offered to those prepared to work in rural and remote locations. Similar schemes would be of benefit to FAYS to enable appropriate recruitment and retention of staff.

Other special staffing considerations concern the recruitment and deployment of FAYS financial counsellors, community support workers and volunteers. Each of these groups of workers play a significant and critically important role in improving outcomes for individuals and communities. There is great potential for the development of integrated and collaborative practice between these staffing groups and social workers. In some areas integrated practice is working effectively and bringing significant benefits, however, in other locations, this does not appear to be happening. A review of the current working arrangements for allied staff and social work staff is to be considered.

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7 Ideally staffing ratios should reflect the culturally diverse population of the State.
**Work Environment**

The rate and intensity of critical incidents involving staff affected by violent incidents has markedly increased. It has been stated these types of incidents coupled with complexity of FAYS’ caseload, has contributed to poor morale. High staff turnover rates, increases in stress claims and increases in requests for counselling are further indicators of poor morale and are issues that require urgent attention.

In light of recent events, staff safety is being reviewed across all Government agencies. This should not be limited to questions of security of staff but should include a review of the factors which are leading to the high numbers of persons claiming compensation for stress. Hopefully, implementation of a number of the recommendations in relation to staffing levels and resources may assist in alleviating the numbers of stress claims.

**Workload Management**

Like many human service providers, there are a number of drivers which impact on the capacity of an agency to provide effective services to the community. Managing demand is only one aspect to be taken into consideration. Work demand is affected by broader societal and economic pressures over which statutory welfare agencies have limited control – factors such as employment rates, community and neighbourhood cohesiveness, family structure, financial safety net payments, etc. These factors also impact on other community support agencies resulting in contraction of the scope of services available for child protection as they too ‘struggle’ to deal with increasing demand.

Non-Government agencies and community services have the option of using mechanisms to control workloads, for example, only accepting referrals from particular types of clients such as those presenting with a particular problem; restricting intakes to limited times or locations, holding waiting lists or closing their books. However, a statutory welfare agency’s capacity to manage and control its incoming work is driven by a legislative mandate. In the area of child protection:

> FAYS remains the agency of last resort when other agencies withdraw their services. If Government cuts back the range of its services, directly and inevitably this ups the ante on FAYS in terms of the non-negotiable demand for service that FAYS must then respond to.⁹

Once a case is ‘accepted’ in the system there are also a variety of ‘internal’ drivers that impact on the capacity of individual workers to respond. The most significant one: the work generated as a result of impeding Youth Court action and the need to maintain extensive record keeping and data in order to fulfil legal obligations. This, coupled with the complex mix of issues and needs that many families now present with, further increases the pressures upon workers’ capacity to respond effectively. One submission summarised it thus:

> …at the same time the work has also become progressively much more demanding and time consuming on a case-by-case basis. It means...that the ‘unit cost’ of investigating a child abuse report, or of supervising a State ward, has also been subject to wholesale increases on a sustained ongoing basis.¹⁰

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⁹ Submission 32 Mr Jay Tolhurst.

¹⁰ Ibid.
It was common practice for workers in the 1970s and 80s for workers to carry case loads of up to 30. What was once seen as reasonable and manageable in terms of workload has now become overwhelming and unmanageable. This burgeoning demand and increased complexity of cases has forced FAYS to prioritise its services exclusively toward those families and children seen by FAYS to be the most extreme risk...and in having to spread itself across too many cases, has also had to cut corners on service quality until quality has fallen well below minimum acceptable levels.  

Staff have very limited capacity or grounds to argue that they cannot take on more work. While supervisors are highly sensitive to workload pressures and ‘manage’ many unallocated cases themselves, when a high risk, high priority case ‘hits the desk’, they have little option but to insist that workers stop what they are currently doing and take on the more urgent and pressing matter. This has a negative impact on all those involved and causes considerable frustration to the workers and clients involved.

Another factor impacting on the workload and capacity for the professionals to fulfil their essential role as social workers is the amount of time which they are spending at computers. The Review was informed during consultations that this was up to one third of their time. This is concerning for two main reasons. First, it detracts from precious time available to do social work and secondly it calls into question what is being placed on a computer system which itself is overloaded.

A workload management and measurement system which provides for: 

reasonable levels of servicing, ie staff inputs, on a per case basis, and reasonable case loads on a per worker basis

is viewed as an important first step in providing organisational support and protection.

A workload management and measurement system has been something that has been ‘promised’ to workers for many years and, with the exception of brief time in the late 1980s, no workload management system has been operationalised. In order to develop such a system, it is critically important to involve external stakeholders in the discussions about design and implementation. In the Department of Community Development WA staff have just trialed a workload management system which is supported by the unions and professional bodies representing workers. A similar system which is adapted to the South Australian context is seen as highly desirable.

In relation to organisational and staffing issues discussed above, the following composite recommendations are made.

11 Ibid.
12 Ibid.
13 Interview with John Hancock, Department of Community Development, WA.
RECOMMENDATION 39

That DHS undertake a comprehensive review of all human resource management policies and practices within FAYS to ensure appropriate management policies and practices are in place, specifically to:

- reduce the number of contract staff
- increase the level of skill of the workforce
- provide an incentive scheme for the recruitment and retention of Aboriginal, culturally diverse and country staff
- enable appropriate progression commensurate with knowledge and skills.

That DHS develop a business case for Treasury which looks at providing appropriate classification and wage parity for FAYS base grade social worker level in line with other social work staff across DHS.

That DHS consider setting a minimum of two years' experience for social worker entry before employment within FAYS.

That DHS/FAYS undertake the development of a workload measurement and management system that appropriately calculates workload volume and takes into account regional and socio-demographic factors, in order to determine the most appropriate allocation of resources. This should be undertaken in consultation with staff, unions and professional bodies with consideration being given to the WA model, as an example of a workable model.

That DHS/FAYS explore further workplace opportunities for psychology staff and community support workers.

That DHS/FAYS review the information which is being placed on the Client Information System to ensure that it is relevant and concise.

Reason

The combination of these strategies will ease the pressure on overburdened staff, encourage recruitment and retaining of skilled staff, restore the capacity of FAYS to perform its statutory functions and better utilise the skills of its workforce.
There is a plethora of detailed reports and reviews which have been undertaken within DHS and FAYS at great intellectual and economic expense over the last decade, which have focussed on the vital need for interagency case management to achieve an efficient and effective delivery of services in respect of child protection and family support. The most comprehensive is the *Interagency Guidelines for Child Protection 1997*. There is nothing fundamentally wrong with any one of these approaches or guidelines; however, the problem has been a failure to implement them properly. Interagency collaboration appears to be a very elusive goal in practice and is without doubt one of the reasons for the terms of reference of this Review including a whole-of-Government approach to child protection.

This Review is recommending an overall plan and strategy designed to provide a three-way approach to interagency collaboration and coordination which is detailed in Chapter 7. The aim of the plan is to place the child or young person as the central focus in relation to any action or services and to make the system less reliant on individual relationships and networks. It is designed to encourage interagency collaboration at three levels, through:

- an overarching body, namely, the South Australian Child Protection Board which is reflective of a number of important agencies and groups and responsible for giving promotion, guidance, direction and high level commitment to interagency collaboration
- strong Regional Child Protection Committees composed of key senior individuals similar in composition to the South Australian Child Protection Board, at the regional level
- the setting up of Interagency Case Management process for individual cases, for which persons are drawn from variable service providers as required.

This part of the report will focus on the third of the strategies, namely, the Interagency Case Management process. The other two strategies are discussed in Chapter 7.

The need for such a process arises from the consistent and persistent call from families, young people and workers to involve families, agencies and children and young people in decision-making at an early stage.

An interagency case management process should:

- ensure that families receive a coordinated and collaborative response
- minimise duplication
- alert agencies involved about the services being provided and required
- reach a collaborative agreement about the general plan and direction in the case
- identify any gaps in service provision in a particular location, and enable an information flow to the Regional Child Protection Committee.

While casework, case planning and case management are viewed as the fundamental framework underpinning social work practice it is evident that this is unfortunately not happening as often and as thoroughly as is required. Case management within FAYS is currently defined as:
A method of ensuring integrated and coordinated service responses to address identified client needs and to meet agreed goals. Case management involves FAYS staff in an active and influential role in service coordination, review and evaluation. Where relevant, FAYS workers will advocate for the development of packages of services to meet identified needs. Case management intervention occurs at both a client and systems level. FAYS case managers will be responsible for:

- ensuring that key stakeholders act in a coordinated and collaborative way to meet the needs of FAYS clients
- ensuring clients are provided with services and interventions to address their identified needs
- ensuring timely access to services.

This definition can easily be integrated into the proposed interagency model and has relevance across all of FAYS’ major program areas. Further it is a model that has portability whether a child or youth is subject to a child protection concerns, a young offender, an adolescent at risk or a child in alternative care.

This section specifically addresses the structural and operational arrangements as they relate to child protection, where a child or young person has suffered serious harm or is at risk of significant harm, although it may also be a model which is apposite for other program areas.

**The Interagency Case Management Meeting**

It is recommended that FAYS assume the role of Case Manager with responsibility for all cases assessed at serious or moderate risk. This does not prevent the principal caseworker being a professional from another agency or another lead agency taking on the majority of the work. However, because of the statutory requirements, FAYS must retain case management responsibility.

Once the assessment, investigation and risk levels have been determined the FAYS Senior Social Worker, in conjunction with the caseworker, will call an Interagency Case Management Meeting. The timing for the holding of this meeting will be within four weeks (4) of an investigation, but can be sooner. It may not be possible to wait until all assessments have been completed. Such a meeting is required for all cases in which the child/ren are assessed as being at serious or moderate risk.

The meeting is to be chaired by a Senior FAYS worker (Supervisor, Senior Practitioner). Depending on the complexity of the case a DHS/FAYS Manager/Principal Social Worker from the region may also chair the meeting.

The principal purpose of the meeting is to ensure the child’s or young person’s safety and protection, as well as developing an appropriate case plan. The case planning process will follow existing case planning processes and require a plan to be developed which will specify:

- key information, goals and objectives
- actions including changes required to provide safety within the family context
- roles and responsibilities of all participants
- date of review.
Participants will include:

- the family and, where appropriate, the child/ren or young persons
- any person nominated by the family to support them and the child/ren through the process (suitable child support person/advocate)
- a representative from any key agency involved with the family, with a preference for the principal worker who has had previous contact with the family
- key agencies which may not be currently involved but where it has been assessed that there are particular needs/issues that need to be addressed and a referral to that agency is imminent (consent from the family will need to be sought regarding participants).

Some Tier 3 families in which the child/ren are assessed as low risk may benefit from an Interagency Case Management Meeting. Many Tier 3 families have intractable and long-standing issues and require a coordinated and collaborative response, where duplication is minimised and all agencies involved are aware of the services being provided. Agreement about the general plan and direction is also seen as highly desirable. An Interagency Meeting is not compulsory for Tier 3 families but is for all Tier 1 and 2 cases.

**RECOMMENDATION 40**

That an Interagency Case Management model be adopted for all child protection cases assessed as having very high, high or moderate risk. The broad application of such a model to be also applied to low-risk cases and other program areas.

Such a case coordination mechanism should:

- involve formal meetings of all relevant service providers that have a direct and significant relationship with the child and family as well as the child and family
- ensure appropriate processes for shared decision-making and allocation of responsibilities
- focus on determining priority needs of the child and family
- develop a case management plan that is available to the child and family and relevant service providers and establishes appropriate and reasonable objectives and timeframes for families
- determine and agree about responsibilities for aspects of treatment, monitoring progress and provision of support and reporting back to the group
- be led and managed by FAYS case workers in recognition of statutory responsibilities and mandate. However, another service provider may become the lead agency undertaking the majority of the work.

**Reason**

Involving all key participants at an early stage ensures that agencies, including FAYS, are clear about their roles and responsibilities and the family has significant input into decision-making and understands what is required of it. It is a proven model that has been shown to improve outcomes for children, young people and their families and allows appropriate review and monitoring of the child/ren or young person’s at risk.
TRAINING AND SKILLS ENHANCEMENT

As previously highlighted, child protection work involves multiple skills. There is also a community expectation that staff who work directly with children, young people and their families as well as those who supervise and manage them, are knowledgeable, skilled and capable of exercising professional judgement. This includes senior staff who manage corporate governance and risk, determine policy and practice, develop interagency linkages and secure and allocate resources.

It is critical that staff at all levels are provided with opportunities for developing competencies commensurate with their responsibilities.

*Training should create an ethos which values working collaboratively with other professionals, respects diversity (including culture, race and disability), is child centred, promotes partnership with children and families and recognises families’ strengths in responding to the needs of their children.*

All staff working in the child protection arena require education and training in a variety of areas in order to exercise effective judgement when dealing with the community when there are concerns regarding the wellbeing of children and young people.

At a minimum, all staff including all allied workers (youth workers, community support workers, financial counsellors) and volunteers must have knowledge of:

- the predisposing factors and indicators of child abuse
- the legal and statutory framework and their requirements within it
- the impact of intervention on children and young people and their families.

In addition, front line professional staff must have:

- reinforcement of skills in conducting complex interviews and negotiating often complex issues within families
- the knowledge and skills to collaborate with other agencies and disciplines in order to safeguard the welfare of children
- a sound understanding of the legislative framework and wider policy context within in which they work.

The re-introduction of the Training and Development Unit within FAYS in 2001 has been seen as positive initiative towards creating and developing a skilled and trained workforce. The focus of current training programs has been to assist the needs of ‘new’ staff and currently a gap exists between training and development for new employees and the ongoing training and revision for staff who have been in the agency for some time. Additionally, opportunities to meet the training requirements of more experienced workers are needed.

A number of quality training courses are available through the unit and FAYS’ staff can access registered training providers to deliver competency based training in Interagency Practice,Certificate 3 & 4 Youth Work, Writing Court Reports and Mandatory Notification.

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16 In 2001-2002 forty nine different training courses were offered.
Whilst the re-introduction of the unit has been greeted positively, concerns have been raised in relation to many training courses being filled quickly and the lengthy waiting times. The need to have essential training for new workers as near as possible to the beginning of their employment in FAYS has been highlighted as an issue.

There is also a need for an ‘intensive induction training program’ in core competencies such as the legal and statutory framework, identification of harm, intervening in families, and undertaking investigatory assessment before undertaking working within a child protection team.

A well-planned and centrally coordinated approach to training within DHS with a specific focus on FAYS’ business is necessary, so that interagency training is made available and efficiencies gained.

Further, in viewing training from a broader perspective, there is a deficit of coursework or training within universities offering social work and social science courses, in relation to child protection and child welfare practice. Thus, professionals must be trained and gain all their experience on the job which reduces the usefulness of new social work graduates and casts the entire burden of fundamental training for child protection work on the Government and private agencies.

**RECOMMENDATION 41**

In relation to FAYS training, see Chapter 21 Education and Training.

**SUPERVISION OF STAFF**

Staff in the front line statutory practice must be well supported by effective supervision. The receipt of high quality supervision is essential for ensuring a appropriate level of accountability and scrutiny of so that families and children receive quality intervention.

*Supervision of workers carrying out family assessment is essential, as the assessment can have far reaching effects on the planning of care and whether families can respond to children’s needs within their time frames.*

FAYS must consider the level of expertise, experience, knowledge and professional skills of those who are providing supervisory roles. Their learning needs are of equal importance to those carrying out interventions and assessments.

It is noted that while the supervisor-to-staff ratio has not significantly increased, the demands and expectations upon supervisors has changed, thereby limiting the time available for developing, supporting and supervising staff.

In addition, during the Review process it became apparent that that the most critical decision-making point in FAYS lies with the supervisor. The supervisor carries delegations including determining whether a child should be removed from a situation and court action initiated. A restructure of FAYS in 1991 shifted the delegations that once rested with managers and regional directors to supervisors. It would seem an appropriate time to consider how this works in practice.

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19 Submission 179 Family & Youth Services.
RECOMMENDATION 42

That DHS/FAYS ensure that Managers, Supervisors and others in leadership positions have access to, are supported and encouraged to undertake regular training and staff development.

That DHS/FAYS review all delegations with particular focus on the delegations of supervisors, in order to determine whether such delegations are appropriate for critical decision-making and accountability.

Reason

Ensuring staff in positions of supervision and leadership have opportunities for learning and development is crucial in child protection work. This includes not only managerial/leadership development but also training in ‘best practice and current theoretical perspectives’ to ensure their professional skill level is kept up to date, as is the case with most other professionals (for example, doctors, psychologists).

Supervisors are well placed in the agency to assist workers making critical decisions and plan for interventions. They must have a high level of skills and knowledge and be capable in a range of very complex tasks. Whilst they are in turn supervised by managers, such supervision may not include case decision making. It would seem an important time to review the delegations in light of the new regional arrangements.

ACCOUNTABLE PRACTICE

The legal responsibility of DHS through its service provider FAYS in the exercise of its child protection functions has to be viewed today in the context of increased calls for public accountability and transparency within a highly sensitive field. The premise that workers ‘act in good faith’ and that the State always acts in the ‘best interests of the child’ is being increasingly called into question.

The litigious and adversarial context within which the work is often conducted, presents particular difficulties for statutory agencies such as FAYS. At its most simplistic, balancing the recording of information for legal and accountability purposes has shifted the focus of the work to one in which workers spend large amounts of time at computer screens and desks filling out case records and data, rather than working directly with children, young people and families in their homes.

At its most complicated, the Crown, the department and families are spending lengthy periods in the Youth Court contesting applications seeking the protection and care of a child or young person and the subsequent placement of the child away from their parent/s. Termination of parental rights of children and young people and the placement of children in alternative care brings with it many challenges and requires considerable accountability and scrutiny. The Youth Court is the proper place for such decision-making and affords a high level of scrutiny and accountability.20

While the Court affords a high level of scrutiny and accountability for those matters that appear before it, the majority of cases never reach the court.

20 See Chapter 15 Children and the Courts.
A number of changes are being proposed by the Review which will ensure external scrutiny and accountability for cases not before the Court in various ways. These include aspects of the proposed roles of the Commissioner for Children and Young Persons and the Children and Young Persons’ Guardian who will oversee standards and practice for children and young people living out of home as discussed in Chapter 5.

**COMPLAINTS AND REVIEWS**

**COMPLAINTS MECHANISMS**

All clients have the right to make complaints about administrative acts and decisions which affect the lives of themselves and their children and to have those complaints heard and treated respectfully. In relation to other situations (such as adolescents at risk, young offenders, child protection and children with disabilities who require care but are not under orders) there are limited transparent mechanisms for dealing with complaints, or for a review of practice and/or appeals from decision making within FAYS. Almost all processes of review are internal and present the agency with significant conflicts of interest.

The current process involves:

- local resolution at the District Centre level
- further appeal assessed by individual principal social worker/managers within FAYS but outside of the District Centre level.

When a complaint concerns an allegation of abuse against a foster carer or an employee or volunteer of FAYS it is currently dealt with through a special investigation by two Senior Social Workers of FAYS not connected with the person who is the subject of the allegation. If the alleged perpetrator is a foster carer then a person from the Alternative Care Service Providers (ACSPs) is included as a reviewer.

While this offers some review, clients have limited ‘external’ options other than recourse to the Minister, through the Ministerial process. Additionally, the Ombudsman may review administrative actions or decisions and make determinations regarding what actions or redress need to be taken by the particular Government agency. This review by the Ombudsman is not well publicised and is utilised infrequently in the area of child protection.

There is a ‘consumer advocate’ employed within FAYS and whilst there have been many positive comments about the support provided by this position, person/s employed in this position are at low level (ASO5) and therefore have questionable power in representing the client concerns against other senior staff or challenging decision making at the district centre level.

There is also a Health and Community Services Bill before the South Australian Parliament, but this is limited to complaints about services across the broad area of health and human services. It does not include complaints and grievances related to administrative actions such as actions of FAYS officers in their child protective role.
In looking at an appropriate complaints mechanism, a three-tier system would be sufficient and effective to provide a level of accountability and scrutiny.

- first level - a local resolution process at the District Centre level (as is currently the case)
- second level - a Specialist Review and Investigation Unit which is internal to DHS but is removed from FAYS
- third level - a specialist unit sited within the Ombudsman’s office.

**Local resolution process**

Many complaints can and should be handled at a lowest level of intervention – that is, through the local resolution process where the person/s complaining can speak directly with the worker, supervisor or manager. Whilst this is viewed by FAYS staff as generally working well in many instances, other submissions to the Review raise the difficulty of clients and in particular young people being intimidated by this process. Some feel that doing this will affect the ‘relationship’ with the social worker and they will be ‘punished’ for having made trouble. This potential adverse aspect can best be dealt with by the complaints process being published in an easily readable form which contains a description of the whole three-tier system.

FAYS staff recognise the need for a new internal complaints and appeals process and this is currently being progressed. However, many people have written or telephoned the Review detailing their case histories and providing information of their situation, in the hope that the Review might be able to intervene in their circumstances. The level of frustration many people are experiencing should not be underestimated. Many believe they have not had a fair hearing and believe that situations are being dealt with ‘in house’ to protect workers and the agency. Some may never have their situation resolved satisfactorily, however, a mechanism that provides some level of independence is warranted.

The gravity of the effects of decision making and actions taken by FAYS warrants a more transparent and independent process and should include an external complaints and appeals process.

**Specialist Review And Investigation Unit**

A central specialist review and investigations mechanism created outside of FAYS is recommended in this Review, to be called the Specialist Review and Investigation Unit.

This recommendation is made as a consequence of considerations of the following matters.

Current special investigations in relation to investigations of FAYS employees and fosters carers are conducted internally. It is acknowledged that a considerable amount of work has already been undertaken by the DHS in the development of special investigations procedures and draft procedures in relation to abuse of children in care or by FAYS employees or volunteers. These procedures are currently being trialed. There is also support for the current principal social worker position in FAYS for ‘special investigations’ who provides advice on best practice on operational matters.

Nevertheless, there are a number of concerns arising from the current arrangement of special investigations, namely, independence of those undertaking the investigation and the recording of information regarding outcomes and appeal processes for carers.
The Alternative Care Review March 2002 (the Semple Report) noted that:

Special investigations of carers are creating considerable difficulties for DHS, FAYS, ACSPs and, in particular, carers. A review of special investigation process was undertaken in 2001 and recommended a number of changes. The current practices frequently leave carers in limbo for excessive periods of time. This is clearly not satisfactory, neither as a matter of natural justice, nor in creating a positive environment for attracting additional family carers at a time when there are significant shortages. 22

The Semple Report recommended that DHS accord a high priority to resolving long-standing special investigations of family carers.

This Review concurs with this position and also makes the following points and suggestions.

Firstly, undertaking a ‘special investigation’ in relation to child abuse within the system, whilst similar to other investigations, has an added dimension of complexity. Investigations of this kind must ensure all persons investigated have a right to a high level of procedural fairness, given that one of the potential outcomes of such an investigation may be a person losing their livelihood (in the case of an employee) or having a child in their care removed permanently and, in turn, being de-registered.

Secondly, there is no central data recording of the investigation on the child protection system, as special investigations are not recorded on the central child protection database. Children and young people who make allegations against workers or foster carers have this information recorded on their file but there is no electronic mechanism to match this information with other child protection concerns.

It would seem an important first step to ensure that all allegations of abuse and/or neglect are recorded on this central data system to ensure appropriate counting and scrutiny of their circumstance.

A central approach to recording and tracking information minimises the risk of children/young people getting lost in the system. It also ensures accountability to the community when issues are raised. This approach is consistent with most other models interstate where there is a central recording of abuse in care allegations. 23

This situation needs to be rectified urgently with safeguards built in restricting access to specified senior people.

Thirdly, the appeals process for carers regarding the outcome of a special investigation is undertaken within FAYS. The Department of Human Services recently produced a ‘Special Investigations’ Fostering Care booklet which was distributed to all carers and contains information about special investigations.

The booklet is well set out and provides clarity regarding a complex set of arrangements. In the booklet it tells carers they have a right to lodge an appeal with the Director of FAYS which, of course, is an internal review only.

Having FAYS in the position of both investigating and reviewing its own decisions leaves it significantly open to criticism of bias and/or cover up. Certain allegations regarding inappropriate decision making in relation to whether to de-register foster carers have been raised with this Review. A mechanism that provides a proper and fair process and which enables an independent review (appeal) of a matter that is outside of FAYS must be considered as a matter of probity and fairness.

It is clear that a review process removed from FAYS is necessary to deal with allegations of child abuse within this system.

The **Specialist Review and Investigation Unit** within DHS, proposed by this Review would have a broader role than just investigating FAYS employees or foster carers. Such a unit would be separate from FAYS, but with authority to access FAYS information regarding both complaints in relation to actions by FAYS as well as allegations of abuse or neglect for all children and young people in alternative care arrangements, including residential care and secure care or by FAYS employees and volunteers. The unit would be staffed by persons skilled in child protection.

This recommendation is in keeping with current research.

> Most international literature supports external investigations and independent review systems in addition to effective internal systems....

Such a body would be at the appropriate level for a second-tier review and although internal to DHS would be sufficiently removed from FAYS as to provide independence, transparency and integrity. Hopefully such a process properly conducted would minimise recourse to the third tier of review.

**Specialist Unit in Ombudsman’s Office**

This is the final administrative review process and is also discussed in Chapter 5. Essentially, this avenue of review is totally independent of the Department. A specialist unit is suggested within the Ombudsman’s Office because of the strengths which the Ombudsman’s Office offers to the process of independence coupled with the need for there to be specialist knowledge and understanding of the area of child protection. Further, a specialist unit may be perceived to be more user friendly to clients. Thereafter the same appeal Court process as presently available under the *Ombudsman’s Act 1972* would also apply.

**RECOMMENDATION 43**

That DHS establish and publicise a three-tier review process that involves:

- a local resolution process at the District Centre level
- a Specialist Review and Investigation Unit within DHS but removed from FAYS
- a specialist unit sited within the Ombudsman’s Office.

in relation to complaints against decisions and actions of FAYS, including allegations of abuse against foster carers, FAYS employees and volunteers.

**Reason**

The above three-tier review process in relation to complaints will provide an avenue for accountable, independent and transparent review of complaints as the to management of cases and any allegations of abuse within the system. Such mechanism is not applicable to complaints against “services” which according to a proposed Bill already before Parliament, are to be dealt with through a Health and Community Services Ombudsman.
OTHER REVIEW MECHANISMS

Annual Reviews
Submissions to this Review have been concerned about the lack of ‘duty of care’ afforded children, young people and their families and the overall lack of independent accountability and appeals processes within the system other than those cases conducted within the ambit of the Youth Court.

In relation to children under the Guardianship of the Minister, the highest level of accountability must be assured. At present such children are required by the legislation to be ‘reviewed’ yearly. The review is to be carried out by a panel appointed by the Minister. The role of the panel is to keep under constant consideration the existing arrangements for the care and protection of the child and continue to be in the best interests of the child.25 The Minister is then required to provide a copy of the conclusions reached by the review panel to be given to the child, the child’s guardians and the person who has the care of child.

It would appear that a specific panel to undertake this function has not been established but that a process of annual review occurs at the District Centre level. The Review has heard that this legislated review is not occurring within the time frame set out by legislation, if at all. A practice audit conducted by FAYS in 1999 and 2000 revealed that only 37% of annual reviews were at that time being held.26

As far back as 1985, in Review of Procedures for Child In Need of Care, author Ian Bidmeade27 recommended that the Court might better undertake this function. During the Review it has been suggested that the Court would be an appropriate place to review yearly, all children and young people under orders.

To some extent, the Youth Court provides an oversight for children and young people placed on 12-month orders as they must return to the Court to have an extension of the order. The oversight by the Court, however, only lasts until the child or young person is placed on a long-term order. In the case of long-term orders, yearly reviews are then to be conducted by the Department or if the child or young person returns home (and if an order is not in place), there is no review.

Whilst there are some advantages with the Youth Court being an appropriate jurisdiction for the yearly review of all children under Guardianship of the Minister, such a proposal would place a significant increase in the already over stretched workload of FAYS and also places an additional stress on children and their carers anticipating another Court process and may be overly intrusive for those children and young people whose placement needs are being satisfactorily met.

Instead, it is proposed by this Review that the annual reviews be retained as a function of FAYS which will report the outcome to the proposed office of the Children and Young Persons’ Guardian. See Chapter 5 Recommendation 4.

Quality Audits
In relation to quality audits, FAYS’ Principal Social Work and Senior Practitioner staff undertook responsibility for overseeing a practice audit in both child protection and Guardianship of the Minister program areas. The audit was designed to provide FAYS management with objective internal advice on the extent to which FAYS own minimum required standards were actually being applied.28 The audits took place during 1999 and 2000. There has also been some internal auditing on compliance with minimum standards. Both these processes are conducted ‘in-house’.

25 Children’s Protection Act 1993 (SA) section 52.
28 Submission 32 Mr Jay Tolhurst.
The results of the audit showed a sustained, across the board pattern of non-adherence to minimum required practice quality standards and that ‘over-stretched workers were resorting to “systemic corner cutting” in order to cope with their out-of-control workloads’. Areas of practice that emerged as meeting acceptable standards were the investigation of all Tier 1 cases within the required 24-hour time response and consultation with an approved Aboriginal organisation prior to any placement of an Aboriginal child or young person in care.

The audit process is seen by this Review as a positive initiative. It effectively monitors the level of minimum standards adherence and provides a quality assurance mechanism outside of the local district centre. Executive and senior staff can receive vital information about performance in critical program areas and make adjustments accordingly. It is acknowledged that this process is resource intensive. Within the structure recommended by Semple and Associates, an executive position of Program and Quality Services is proposed. This recommendation by Semple is strongly supported by this Review. Within this structure it would be possible to establish a permanent Quality Assurance Unit. Such a unit would have responsibility for the conducting of random audits of child protection and Guardianship of the Minister files, as well as other quality assurance tasks.

30 Submission 32 Mr Jay Tolhurst.
RECOMMENDATIONS 44

That the Annual Reviews for all children and young people under the Guardianship of the Minister be retained as a function of FAYS in the manner indicated in legislation and be enforced within the Department.

That the outcome of the Annual Review to be reported to the Children and Young Persons’ Guardian. (Further see Recommendation 4 in Chapter 5)

That consideration be given to establishing a Client Information Monitoring and Reporting System to support FAYS Senior Executive and FAYS Managers’ in monitoring critical cases and critical incidents, evaluating practice quality and other service initiatives. Such a system will require:

- the development of appropriate reporting mechanisms across program areas
- clear processes for reporting
- detail the types of situations which will need reporting, for example all Aboriginal children removed from birth family, all substantiated Tier 1’s of children under one year etc.

Further, that consideration be given to establishing a permanent Quality Assurance Unit within FAYS. Such a unit could be located within the FAYS Quality Service and Programs Section and as part of its general functions include:

- conducting audits of randomly selected files
- collating information from Annual Reviews and referring this information to the Guardian for Children and Young Persons
- identifying practice and research issues arising from audits and making recommendations for action to management.

Reason

In relation to annual reviews, information from the Practice Audit revealed that only 37% of Annual Reviews were conducted within FAYS. Apart from being contrary to provisions of the Act, it demonstrates a marked divergence from good practice in relation to vulnerable children. Compliance with the Act is urgently needed.

In relation to quality assurance process, while there has been considerable improvement by FAYS to develop quality improvement mechanisms in recent years, a dedicated unit with the overall responsibly for quality assurance is deemed necessary. The new structural arrangements being proposed will assist in improving quality arrangements, however, a unit with a designated task of developing quality measurements and monitoring outcomes for children and young people is viewed as highly desirable. In turn, this unit to could be the conduit for information flow to the Children and Young Persons’ Guardian.
FAYS’ budget component for 2001-2002 was $176 million (which includes $89 million given out in concessions) and represents 6.3% of the total DHS budget.\(^{31}\)

The issue of adequate resources has been repeatedly stressed throughout the consultation process and in numerous submissions.\(^{32}\) The effect of constrictive budgets and lack of funding to the support service system cannot be underestimated.

We believe that the current system of responding to notifications is seriously under-resourced and that the capacity of the department to provide adequate assessment, investigation and follow up with families is hampered by these resource constraints. We would welcome an increase in the resources available.\(^{33}\)

The Family Law Committee recommended:

\[\begin{align*}
\text{\ldots an increase in funding, or reallocation of funding within FAYS, to ensure that it is properly resourced, such that matters which require investigation are investigated.}\end{align*}\]

An analysis undertaken by FAYS in 2000 demonstrated that resources were being directed to the families who had the greatest risk of re-abuse (very high and high risk cases); however, "no district centre has been able to work with families at the suggested level of visits because of the increase in workload."\(^{34}\)

This is still the situation today, and many staff have voiced their high level of frustration at the systems overload, and an inability to work with families on a longer-term basis to assist them to manage risk and build parenting capacity.\(^{35}\)

As a result, FAYS’ intervention is now being driven to a narrow ‘incident’ based approach to deal with child abuse or neglect concerns rather than a broader view of child protection which focuses on harm or future harm regardless of whether an incident has already occurred or not. This, coupled with FAYS’ ability to only provide services to those children and young persons most likely to be at risk of serious re-abuse, has angered many community individuals and agencies.

In case audits which were conducted by FAYS over a two-year period in 1999 and 2000 for the Child Protection and Guardianship of the Minister program areas, a picture emerged of widespread non-compliance or under-compliance with the required standards.\(^{36}\) This non-compliance has been directly attributed to workload pressures. In the past the unmet demand on the front end investigative aspect of child protection was quantified and managed by closing cases unable to be allocated for investigation by using a code of ‘resources prevent investigation’ (RPI). The use of RPI provided both a means of making resource constraints transparent and measurable as well as providing a safety valve on the system at the front end.

In response to the demand overload the use of RPI's increased dramatically from 176 cases in 1997-1978, to 1014 in 1999 – 2000\(^ {37}\) and as a result FAYS received an extra $1 million from the Government to take on more staff ‘in return for abolishing’ RPIs.\(^ {38}\)
In 2001-2002 the ‘official’ RPI figure is 294 cases, however, there is anecdotal and submission evidence\textsuperscript{39} that would suggest that the effect of ‘abolishing’ RPI’s has resulted in the ‘overload’ being hidden from view as many district centres are unwilling to record cases against this code.

An increase in the base funding of Family and Youth Services must occur in order to fulfil current requirements. Significant work is required to develop an appropriate resource allocation model with the capacity to increase funding based on supply and demand as well as changes to the socio-economic circumstances. A ‘unit costing’ formula worked out with Treasury could enable the agency to deal with changes in the workload on a more flexible basis. It is suggested that DHS report annually to Treasury on workload and an agreed funding adjustment process be built into all budget bids.

**RECOMMENDATION 45**

That instead of a piecemeal approach to extra resources, DHS staff and Senior Treasury with Cabinet approval, undertake a comprehensive budgetary and workload analysis of Family and Youth Services to determine current demand. Such an analysis is to take into account socio-economic and trend data, with a view to developing funding models based on agreed formulas.

**Reason**

The child protection system within FAYS is not currently fulfilling its statutory functions. Whilst some improvements can be made which are cost neutral, most are not. An overall assessment of extra resources is required in order to provide appropriate statutory and other services. The current ad hoc approach of requests to obtain extra resources is not adequate and funding should be provided using an appropriate model.
Chapter 9B
Family and Youth Services Part B: Child Protection Processes

INTRODUCTION

This Chapter provides:

- an overview of Family and Youth Services’ child protection processes
- some statistics on child abuse and neglect
- some description of key points in the child protection process
- specific recommendations at the end of this chapter for improving the current service response to child protection cases in South Australia
- discussion on processes for dealing with allegations of extra-familial (outside the family) abuse.
GENERAL DISCUSSION

The South Australian child protection system is like many others, a complex mixture of events and interventions that can lead to a number of possible outcomes. The principal points of recording and data collection occur during a number of stages or events, and include notification, investigation, substantiation or confirmation, placement in out-home-care (alternative care) and custody or guardianship. Not every child or young person who is notified follows this path and nor should they.

In the yearly analysis of child protection data the Australian Institute of Health and Welfare (AIHW) publication *Child Protection Australia*, reports on the principal stages across all States and Territories. In their latest publication for 2001-2002 they report that the number of child protection notifications across Australia increased significantly over the past six years rising from 91,734 in 1995-96 to 137,938 in 2001-2002, a change of 50%. Between 2000-2001 to 2001-2002 the number increased by 22,467, a change of 19.5%.

There is considerable nationwide concern for the alarming increase in children and young people being the subject of notification. National strategies are being called for and once again there is discussion regarding the need for consistent legislation across all States and Territories. One leading academic describes the situation as follows:

> Our child protection systems are clearly in crisis…mandatory reporting of child abuse by professionals is not directly a major factor driving escalating notifications but it has reinforced the fundamental assumption now pervasive in the whole community – that the State can protect most at-risk children by exercising its statutory power.2

In South Australia, the situation is similar to other States and Territories with significant increases in notifications being recorded.

The following figure 1 and table 7 illustrates the significance of the problem for South Australia.

Figure 1: Child Protection Notifications, Investigations & Substantiations

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Table 7: Child Protection Notifications, Investigations & Substantiations

<table>
<thead>
<tr>
<th>Year</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>CP Reports</td>
<td>11651</td>
<td>13132</td>
<td>15181</td>
<td>16314</td>
<td>18681</td>
</tr>
<tr>
<td>CP Matters</td>
<td>8111</td>
<td>9124</td>
<td>9591</td>
<td>9988</td>
<td>11203</td>
</tr>
<tr>
<td>Investigations</td>
<td>4697</td>
<td>5198</td>
<td>5018</td>
<td>5156</td>
<td>5633</td>
</tr>
<tr>
<td>Substantiations</td>
<td>1871</td>
<td>2114</td>
<td>2085</td>
<td>1998</td>
<td>2230</td>
</tr>
</tbody>
</table>

As is evident, reports/notifications\(^3\) have increased from 11651 in 1997-98 to 18,681 in 2001-2002, a staggering increase of over 7000 reports in a six-year period or 60%. Those that meet the criteria for follow-up (CP Matters) have risen from 8111 to 11,203, an increase of over 3000 reports or 38%. Of the 18,681 notifications received in 2001-2002, these related to 11,974 children and young people.

FAYS considers the following contributing factors to be influential in the increase in notifications. These include:

- increased community expectation for children’s safety and wellbeing
- increased media coverage of the issues
- confidence in the centralised intake process and, in particular confidence with in the Aboriginal community of the role of Yaitya Tirramangkotti
- social problems; for example, mental health, domestic violence, drug and alcohol misuse are increasing and is having a significant impact on parental capacity to provide safe care for children, and
- fewer family support services provided by community agencies, resulting in referrals for assistance perhaps being inappropriately labelled child protection.\(^4\)

COUNTRY REGIONS AND METROPOLITAN ADELAIDE

For South Australia in 2001-2002, the rate of notifications for children aged 0 – 17 years was 53 per thousand. There was a wide variance in the number of notifications recorded between country and metropolitan areas, which is understandable given the population sizes.

Notifications from country regions represented just over 5000 reports with nearly 13,000 coming from the metropolitan area of Adelaide. In relation to children, the highest rate of notifications per children was 114 per thousand in the metropolitan area covered by the Elizabeth District Centre. The highest rate of notifications per child in the country areas was from the area covered by the Port Augusta District Centre with the rate of notifications for children 110 per thousand.\(^5\)

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\(^3\) In 2000-2001 the classification of notifications in SA was changed to excluded ‘notifier concern reports’ and to report nationally only those matters ‘screened in’ as a ‘notification’.

\(^4\) Submission 179 Family & Youth Services.

\(^5\) DHS Data Warehouse.
NOTIFICATION BY TYPE OF ABUSE

There are four categories of abuse recorded – emotional abuse, neglect, physical abuse and sexual abuse. Each notification is categorised under one of these types even though there may be more than one type of abuse alleged. Usually the most serious type of abuse is listed at the point of intake.

In the year 2001-2002 there were a total of 18,681 notifications, and of these, 4139 were for emotional abuse (22%), 7874 were for neglect (42%), 4360 were for physical abuse (23%) and 2308 were for sexual abuse (13%). The only change of significance is a drop in physical abuse notifications and an increase in emotional abuse notifications from 1999-2000.

Table 8: Type of Abuse

<table>
<thead>
<tr>
<th>Year</th>
<th>1999-00</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotional</td>
<td>17%</td>
<td>22%</td>
</tr>
<tr>
<td>Neglect</td>
<td>42%</td>
<td>42%</td>
</tr>
<tr>
<td>Physical</td>
<td>27%</td>
<td>23%</td>
</tr>
<tr>
<td>Sexual</td>
<td>14%</td>
<td>13%</td>
</tr>
</tbody>
</table>

THRESHOLD OF ABUSE AND NEGLECT

Of considerable concern in South Australia is the growing gap between notifications to FAYS and those ‘screened in’ for some type of follow-up response. As can be seen in Figure 1 the gap between reports meeting the criteria for follow-up (based on the legislative definitions of reasonable suspicion of child abuse and neglect) and those classified as not warranting further intervention (‘notifier concern’) have increased over the period. In 1997-1998 there were 3549 cases classified as notifier concern and in 2001-2002, there were 7477 cases, an increase of 111% during the period.

It has been asserted in some submissions that the category of ‘notifier concern’ has unwittingly been used as a way of managing the incoming workload, resulting in an increase of the ‘threshold’ for acceptance of a case of child abuse or neglect to a high level.

Current FAYS’ guidelines advise staff to determine whether the report contains sufficient information to be considered an allegation of child abuse or neglect. After initial consultation, if there is insufficient information or if the notification does not constitute reasonable grounds for a suspicion of child abuse and neglect, and the notifier agrees that it is not a child protection matter, it will not be recorded and no further action will be taken.⁶

In response to an awareness of the number of cases recorded as ‘notifier concerns’, a survey was undertaken by the Child Abuse Report Line with some District Centre staff. Most District Centre staff expressed satisfaction with the classification system, agreeing that matters assessed as ‘notifier concern’ did not meet the threshold for intervention.⁷ However, this did not seem to be the view shared by other community members and professionals working in the area. Many have expressed to the Review concerns in relation to cases being rejected as warranting an investigation.
One cannot underestimate the level of frustration for persons on this matter.

The escalating numbers of child protection notifications, linked in no small way to our system of mandatory reporting in South Australia, requires a different approach and response if we are to make a real impact on the wellbeing and safety of vulnerable children. At present the response provided by statutory authorities appears to suffer from the ‘too much or too little’ syndrome. At one level criticisms are being directed at the system for not being responsive to situations of real concern…despite changes made in screening notifications, …workers engaged with families where children at high risk complain that notifications are not being followed up on a timely basis or responded to with a full investigation.⁸

The problem with an incident-based response is that it is not a sufficiently preventative response. It is too narrow and misses the multi-faceted set of contributory factors present before an incident occurs for families with complex problems including mental health difficulties, drug and alcohol problems and domestic violence. It is not sensible in these situations to only address the content of the notification regarding the child/children. This approach misses the parenting context in which the child lives.⁹

The “Notifier Concern” Threshold (NOC)…is fundamentally about what should be seen to be child abuse and what should not. Many notifications are…afforded a status…where no FAYS response is indicated. One common basis upon which a report might be given a NOC status is that where risk factors like drug abuse or mental health problems are reported, but specific allegations suggesting that an actual incident of abuse has occurred is lacking.¹⁰

A community member put it this way:

I had to report my daughter. She was a drug addict with 5 kids. She had managed to get off the drugs and take responsibility for herself; however, she was really stressed being cooped up with the kids all day and I was really worried about her and what she might do. She needed help and respite for the kids. FAYS wouldn’t take it on as they said I was there to look after her and the kids were therefore ‘safe’. Its pretty hard to report your own daughter but I couldn’t get help from any one else and you can only get access to services if you go through FAYS.¹¹

Another worrying aspect is that some professionals in the community had talked of having ‘learnt’ what to say in order to get a tier response.¹²

…Family and Youth Services Officers were coaching referrers when they rang CRACAS (Child Abuse Report Line) to emphasise the abuse aspect of their concern to ensure the referral was rated a high priority. This was the only way the front line officers believed they could justify the allocation of resources of the particular case.¹³

It is understandable that as demand increases and pressure is placed on statutory services to take up more and more cases, that what is considered ‘actionable’ and what the community and other professionals believe is ‘actionable’ diverges considerably.

What is important is that FAYS is able to receive reports from the community for all children and young people ‘at risk of significant harm’ and the system be constructed to accept concerns regarding children and young people before an actual incident of abuse or neglect is evident. Changes to legislation discussed in Chapter 23 (Child Protection Legislation) are aimed at assisting in this matter.

⁸ Submission 131 Children’s Interest Bureau Advisory Committee.
⁹ Submission 155 Children’s Protection Advisory Panel.
¹⁰ Submission 32 Mr Jay Tolhurst.
¹¹ Consultation with the Reviewer.
¹² Consultation with the Reviewer.
¹³ Notes of interview with Mr B. Budisilik, Consultant, WA.
HIGH RISK INFANTS

It is noted positively that there has in recent times been considerable effort by FAYS to deal with some of the most concerning cases of ‘risk’ without an actual incident being evident. A ‘high risk infant’ category has been developed allowing ‘investigation’ of cases where people notify extreme concerns regarding infants under 12 months of age. This category has been incorporated in the child protection system to provide a service response to very young children where family characteristics such as mental health, substance abuse, domestic violence, intellectual disability, for example, impact on parenting capacity so significantly as to pose grave risks to a child’s safety.14

Whilst commendable in its intention it has been raised in the Review that it excludes other children and young people at serious risk of harm who may also require a response. Significant legislative reform is proposed that will shift the focus from one of ‘incident’ to one of harm or future harm. It is envisaged that this will alter the current threshold and result in shift towards intervening earlier and preventing more serious abuse and neglect from occurring.

INVESTIGATIONS

Another area for consideration is the difference over time between the number of investigations being undertaken as a percentage of the notification rate. The number of investigations has decreased as a percentage of the notifications received. For instance, in 1992-1993 investigations occurred in 78% of all cases notified. In 2001-2002 this figure has dropped to 30%. Put another way, whilst the workload arising for notifications has increased dramatically over the period, the actual number of investigations carried out has remain relatively stable. This is visually depicted in Figure 2 and Table 9 showing the percentage numbers of notifications and investigations during that time period.

Figure 2: Investigations as a percentage of Notifications

Table 9: Investigations as a percentage of Notifications

<table>
<thead>
<tr>
<th>Year</th>
<th>92-93</th>
<th>93-94</th>
<th>94-95</th>
<th>95-96</th>
<th>96-97</th>
<th>97/98</th>
<th>98/99</th>
<th>99/00</th>
<th>00/01</th>
<th>01/02</th>
</tr>
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<tbody>
<tr>
<td>All Notifications</td>
<td>6942</td>
<td>7865</td>
<td>8821</td>
<td>8935</td>
<td>10094</td>
<td>11651</td>
<td>13132</td>
<td>15181</td>
<td>16314</td>
<td>18681</td>
</tr>
<tr>
<td>Investigations</td>
<td>5406</td>
<td>5593</td>
<td>6115</td>
<td>6408</td>
<td>5768</td>
<td>4697</td>
<td>5198</td>
<td>5018</td>
<td>51561</td>
<td>5633</td>
</tr>
<tr>
<td>Investigations as a percentage of Notifications</td>
<td>77.87%</td>
<td>71.11%</td>
<td>69.32%</td>
<td>71.72%</td>
<td>57.14%</td>
<td>40.31%</td>
<td>39.58%</td>
<td>33.05%</td>
<td>31.60%</td>
<td>30.15%</td>
</tr>
</tbody>
</table>

14 Submission 179 Family & Youth Services.
RE-NOTIFICATIONS

Whilst the number of notifications have been rising steadily over the period, another concerning aspect is the rising rates of re-notifications in respect of the same children and young people. Analysis of FAYS’ data indicates that a significant proportion of notifications are re-notifications.

The total of number of re-notifications has risen dramatically over the 20 year period so that today the percentage of notifications that relate to new children is only 33%. Or put another way 67% of notifications relate to children or young people who have already been notified before. The figure 3 below visually demonstrates the significance of the problem.

Of even greater significance is that many children are being repeatedly notified, as is evident in Table 10 below.

Figure 3: Re-Notifications

![Graph showing re-notifications](image)

**Table 10: Notifications per Child**

<table>
<thead>
<tr>
<th>Year</th>
<th>1997-98</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total No. of Notifications</td>
<td>11,651</td>
<td>18,681</td>
</tr>
<tr>
<td>Notifications per child:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 or more</td>
<td>585</td>
<td>2017</td>
</tr>
<tr>
<td>20 or more</td>
<td>30</td>
<td>226</td>
</tr>
<tr>
<td>30 or more</td>
<td>0</td>
<td>45</td>
</tr>
<tr>
<td>45</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

The data on re-notifications reveal that many children and young people are being ‘recycled’ through the tertiary welfare system.

The phenomena of re-notifications is not just a problem for South Australia and is reflected in many other jurisdictions around Australia.

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15 Source: DHS Data Warehouse
16 Ibid
Research undertaken on re-notification rates by the Victorian Department of Human Services (2001) revealed the following:

Renotification rates vary, depending on definitions, thresholds and service system characteristics, but most jurisdictions report high renotification rates. All forms of maltreatment are renotified. Repeat neglect is the most common type, and repeated sexual abuse the least... The availability of effective services (perhaps especially where these are time-limited) is no guarantee that families will not be re-notified where needs are great or problems chronic.17

It is acknowledged that a high level of re-notifications for children and young people is just one social health measure that highlights the difficulty that many agencies face in the human service area when dealing with intractable, long-term problems. Issues such as poverty, substance and alcohol abuse, mental health issues and domestic violence require long-term comprehensive and flexible approaches, that are coordinated and focused on increasing levels of safety and wellbeing for children, young people and their families. Residual, short-term approaches will not do and do not often work.

FAYS describe it as thus:

The high and increasing level of re-notifications reflects that many families face long-term problems that are poorly dealt with by the forensic approach of investigation, without subsequent intervention to build capacity. Many families are dealing with difficulties such as low incomes, substance abuse, mental disability and domestic violence. Such complex cases require a longer-term, comprehensive and more discriminatory response.18

Proportionally the group of children and young people currently being provided with a ‘service’ is becoming ‘smaller’ within each year. This has significant implications for the long-term future outcomes as they and their families become further entrenched in a tertiary welfare more geared to ‘investigation’ rather than support and assistance and long-term change.

Undoubtedly general socio-economic conditions have a connection with the incidence of child abuse and neglect, but circumstance alone does not explain such a high re-notification rate. The re-notification rates are a general indication of the ineffectiveness of a child protection intervention system.

One of the glaring deficiencies in the child protection process is the extent to which the pressure of work and stretched funds results in less use of the follow-up social work services previously offered by FAYS.

CHILD ABUSE REPORT LINE

Often the first point of entry to the child protection system is through the Child Abuse Report Line (CARL). This is a 24-hour call centre staffed by social workers who take incoming calls from community members and mandated notifiers. Yaitya Tirramangkotti is a specific Aboriginal call centre located with CARL which receives calls from the community in regard to Indigenous children and young people. Both services are co-located with Crisis Care and together make up what is known as the Crisis Response and Child Abuse Service (CRACAS).
At present CARL receives in the vicinity of 2200 calls a month to its dedicated 13 14 78 number. In 1997-98 there were just under 20,000 calls received or an average of 1655 calls a month. During the year 2001-2002, nearly 27,000 calls came into CARL an increase of approximately 7000 calls and represents an average of 2500 calls a month. It is apparent from these figures that the increase in calls is significant.

There are three shifts of Child Abuse Report Line staff. At a minimum each shift has 6 social workers, one Senior Practitioner and one Supervisor. Yaitya Tirramangkotti, the dedicated Aboriginal report line, has three staff senior practitioners and one supervisor. Crisis Care Workers have a minimum of four social workers, one senior practitioner and one supervisor plus two extra staff for night shift who can provide an after-hours investigation response if required.

With the staffing component as currently arranged, the amount of time that is being spent on each call is between approximately 10 and 15 minutes. In relation to CARL each month approximately 320 calls ‘drop out’ meaning those calls cannot be answered. This has significant implications for the agency.

The call system operates by workers taking information from callers and making a number of decisions in conjunction with supervisors. These decisions include whether the information received is considered to meet the criteria of child abuse and neglect as set out in the *Children’s Protection Act 1993*.

If the information is considered a child protection matter then:

- a determination is made on the immediate safety of the child or young person
- a classification based on the initial risk assessment as to whether the child or young person is:
  - Tier 1 - in immediate danger
  - Tier 2 - at serious risk
  - Tier 3 - in need

Those ranked Tier 1 and 2 receive an investigation and those ranked Tier 3 receive what is known as a ‘non-investigatory response’ – which is stated in FAYS’ procedures as intervention based on looking at the needs of the family and the child rather than on any defined ‘incident’ of abuse.

Those that do not meet any of the three Tiers, but where there is some concern relating to a child, are rated ‘notifier concern’ and no further action is taken.

**GENERAL COMMENTS**

Overall there appears to be considerable support for the concept of a 24-hour call centre to receive intakes of child abuse and neglect. It has shown to have considerable benefits for callers and provides a more effective service response than was previously in place, when callers were required to ring local District Centre offices and talk with duty social workers about their concerns.

*The current system of central coordination through the child protection reporting hotline is seen as the more effective model. Professionals who are mandated to report are clear about to whom they report the response to, and assessment of notifications can be managed more consistently within one unit. Clearly, however, there are considerable concerns about the high number of reports made to the Child Protection Unit (sic), and the stress this places on the notification system.*

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19 Submission 68 Lutheran Church SA/NT.
The increasing demand on the service, and the rate of dropout calls, is evidence that the system is stretched past its capacity. It requires a significant injection of funds to enable it to continue to provide a service response at a minimum standard: for instance, each call responded to within a reasonable time limit.

The increase in number of incoming calls has resulted in reduced capacity to carefully assess the information. Staffing resources at the Child Abuse Report Line and Yaiya Tirramangkotti have not increased since their inception, yet calls have increased by 30%.

Bearing the general overall acceptance of the report line by the community, the following concerns have been raised:

- calls not answered or people having to wait a considerable length of time on hold before a call is answered
- thresholds on determining abuse and neglect too high
- other professionals’ expertise and opinions on situations are being ignored or discounted
- suspected child sexual abuse allegations, in particular those that relate to child-to-child sexual abuse or sexual abuse involving older children 15 years and older not being taken seriously
- jurisdictional issues between the Family Court and FAYS
- discounting risk to adolescents and concerns not being recorded as child protection issues
- pathway to services (Child Protection Services, respite services, family preservation services) restricted to only those cases which are assessed as child protection matters – if CARL does not assess the matter as a Tier 1 or 2, families cannot get access to specialist and support services
- inconsistent information being provided at the point of intake resulting in confusion for notifiers and no requirement on CARL or the Department to provide a response to mandated notifiers on the outcome of a notification.

The perception of the Child Abuse Report Line is that staff have a sense of being swamped by ‘low-key’ matters that may be preventing them from responding to more serious matters.

It would appear that many of these criticisms indicated to the Review stem from a burgeoning increase in workload and no concomitant increase in resources or staff. As well a high staff turnover it has been asserted that there is a practice of placing workers with less experience than is desirable to service a specialised and critical intake entry point to the child protection pathway.

A number of recommendations are made to improve the responsiveness of the service and develop mechanisms for diverting calls of ‘concern’ for referral to other agencies.

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20 Submission 179 Family & Youth Services.
21 Submission 1 Professor Freda Briggs and Verbal Consultations.
22 Submission 149 South Australian Law Society – Family Law Committee; Submission 33 Name Not For Publication; Submission 68 Lutheran Church SA/NT; Verbal Consultations.
23 Verbal consultations with Reviewer.
24 Submissions 1 Professor Freda Briggs; Submission 38 SPARK Resource Centre; Submission 193 Name Not For Publication.
25 Submissions 149 South Australian Law Society – Family Law Committee.
26 Submissions 33, 45, 53, 54, 127 and 181 (see Submissions Received Appendix for names)
28 Submission 54 Western Domestic Violence Service.
29 Submission 67 Anglicare SA.
30 Submission 179 Family and Youth Services.
RECOMMENDATION 46

That the 24-hour central intake telephone service (Child Abuse Report Line) for receiving all reports of suspected child abuse and neglect be continued and improved.

That consideration be given to increasing staff and specialised equipment to ensure that all calls are answered or provided with a phone ‘call back’ service for those calls that drop out.

That all workers receiving calls have a minimum of two years’ field experience in child protection with an optimal level of experience being five years or more.

That DHS give consideration to analysing the potential for diverting calls about general concerns of children and young people or those seeking broader family support services, to other more appropriate help lines or support services.

That DHS in conjunction with the non-Government sector develop funding and service agreements (including protocols and confidentiality provisions) with ‘specified and accredited’ non-Government agencies to offer services to families not classified as needing a FAYS service by the child abuse report line.

That DHS consider the feasibility of providing a mechanism to give ‘feedback’ to notifiers who wish to know the outcome of a notification.

Reason

The Child Abuse Report Line is seen as an effective service for receiving, recording and assessing all ‘notifications’ of child abuse and neglect. It provides clarity in the community about where to ring if a person has a concern about a child or young person and provides a consistent response based on risk and safety considerations.

It receives many calls that do not fit the current criteria for abuse and neglect. There are concerns that these reports are taking up valuable assessment time from situations of abuse and neglect. It is also clear that the incoming calls are reaching a crisis point, reducing the capacity and effectiveness of the service. There are considerable benefits to be gained from diverting calls about ‘concerns’ to other support lines or services.
**THE TIER SYSTEM**

There are two possible types of investigation in South Australia, a Tier 1 or a Tier 2 investigation.

**TIER 1 – CHILDREN IN IMMEDIATE DANGER**

A Tier 1 response classification is given to children and young people assessed as being in danger at the time of the notification. Some cases falling into the Tier 1 range include reports of major injuries, severe physical abuse of younger children, current intra-familial sexual abuse, life-threatening neglect and abandonment. The key issue is determining whether any child is in danger or at imminent severe risk.

Children admitted to hospital with severe injuries such as fractured skulls, broken bones, burns or severe failure to thrive would fall into such a category.

In 2001-2002 Tier 1 investigations made up approximately 7% of FAYS’ work, an increase of nearly 2% on the previous year. Confirmation of abuse in this category was high with approximately 50% of cases confirmed compared with around 36% of cases confirmed in the Tier 2 category.

For Tier 1, case consultations (or strategy discussions as they are known) take place between FAYS, SAPOL and with the hospital-based Child Protection Services (CPS) at either the Flinders Medical Centre or the Women’s and Children’s Hospital. The purpose of the strategy discussion is to coordinate the assessment processes for the child and young person and if necessary, conduct a joint investigation with SAPOL, if there is a likelihood of criminal charges being laid. (See also Chapter 7 Interagency Coordination and Relationship)

*Table 11: Tier 1 Notifications*

<table>
<thead>
<tr>
<th>Tier 1</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Screened in Tier 1</td>
<td>378</td>
<td>419</td>
<td>358</td>
<td>500</td>
<td>778</td>
</tr>
<tr>
<td>Tier 1 as a percentage of all screened in</td>
<td>4.6%</td>
<td>4.6%</td>
<td>3.7%</td>
<td>5%</td>
<td>6.9%</td>
</tr>
</tbody>
</table>

*Table 12: Tier 1 Notifications by type of abuse*

<table>
<thead>
<tr>
<th>Tier 1 x Type of Abuse</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>41.3%</td>
<td>37.9%</td>
<td>34.1%</td>
<td>33.2%</td>
<td>32.3%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>19%</td>
<td>21.2%</td>
<td>24.3%</td>
<td>18.8%</td>
<td>11.9%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>5.6%</td>
<td>10%</td>
<td>3%</td>
<td>6.6%</td>
<td>9%</td>
</tr>
<tr>
<td>Neglect</td>
<td>34.1%</td>
<td>30.8%</td>
<td>38.5%</td>
<td>41.4%</td>
<td>46.8%</td>
</tr>
</tbody>
</table>

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31 *Tier classification system introduced in November 1997 (hence part year data) cited in Submission 179 Family and Youth Services.

32 Ibid
As indicated in Table 11, the number of cases in the Tier 1 category has increased by 400 since 1997-98, representing a substantial growth in the need for an emergency response. While these cases only make up a small proportion of children and young people reported to FAYS, the serious levels of risk and potential harm that may occur warrants a significantly strong statutory response.

The majority of cases reported as set out in Table 12 were allegations in respect of neglect and physical abuse. Note that notifications for sexual abuse have dropped significantly over the period. (see also Table 21)

As indicated in Table 13, the type of abuse alleged for Aboriginal children, which is the most significant, is neglect. In relation to sexual abuse the apparent swings are in part an aberration among small numbers.34

In 1997 FAYS undertook a reform of child protection to target scarce resources to families at greatest risk and provide a 'non-investigatory' response to those in need rather than at high risk.

The rationale for this ‘differential response’ was, at the time, based on research evidence that suggested that traditional child protection services had sometimes failed to protect severely abused children, and had tended to become overly intrusive in low-risk families where inadequate parenting skills and inappropriate controls were the major issues rather than abusive behaviour.35 It was based on the premise held, nationally and internationally, that ‘forensic investigation’ was drawing resources away from a more preventative and supportive approach.

The assertion that a ‘forensic investigation’ was occurring unnecessarily had wide spread carriage with many statutory welfare agencies. Many introduced a variety of mechanisms to deal more flexibly with situations. In South Australia the differential response system introduced a more sophisticated response based on ratings of safety and risk, to enhance social work professional judgement.

It would appear that while the investigatory end of child protection has seen improvement (as evidenced in the high level response of Tier 1 cases) the more preventative and/or supportive approach – namely Tier 3’s have not been effectively managed and the concomitant support services required not being available within the community.

One could argue that this has resulted in the development of a culture more geared towards ‘forensic investigation processes’ rather than less, with the system now dealing with those cases of greatest risk and not adequately dealing with notifications that have high support needs (see further comment below on Tier 3).

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33 Ibid.
34 Submission 179 Family & Youth Services.
That said, it would appear there is considerable high-level support for the way in which Tier 1 cases are currently being dealt with by the three key agencies involved – FAYS, SAPOL and Children’s Protection Services. Whilst there are some areas that require attention (see Chapter 7 Interagency Collaboration and Relationships) overall it would appear that this part of the system is working effectively and efficiently, at least in the initial stages.

In particular the recording of Tier 1’s through the Child Response and Child Abuse Service (CRACAS) and the subsequent initial response at the District Centre level since the reform in 1997, is working well, with all Tier 1 cases being investigated within a 24-hour period. It is also a significant improvement on the previous system where intake was recorded at the local District Centre and where there was wide variability in decision making.

**TIER 2 – CHILDREN AT SIGNIFICANT RISK**

Reports assessed as Tier 2 involve children and young people who are at high or moderate risk of significant harm. Cases include serious physical, sexual and emotional abuse and neglect of young children, as well as vulnerable young people at high risk. Tier 2 cases made up around 57% of cases screened for the year 2001-2002, a slight decrease on the previous year, and make up the bulk of FAYS’ child protection district centre work.

As can be seen in Table 14, Tier 2 matters have increased substantially from 3344 cases in 1997-98 to 6382 cases in 2001-2002. This represents an increase of approximately 91%.

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### Table 14: Tier 2 Notifications*

<table>
<thead>
<tr>
<th>Tier 2</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Screened in Tier 2</td>
<td>3344</td>
<td>5884</td>
<td>5961</td>
<td>5821</td>
<td>6382</td>
</tr>
<tr>
<td>Tier 2 as a percentage of all screened in</td>
<td>54.8%</td>
<td>64.5%</td>
<td>62.1%</td>
<td>58.3%</td>
<td>57%</td>
</tr>
</tbody>
</table>

### Table 15: Tier 2 Notifications by type of abuse**

<table>
<thead>
<tr>
<th>Tier 2 x Type of Abuse</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>36%</td>
<td>35%</td>
<td>32.1%</td>
<td>33.6%</td>
<td>28%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>14.4%</td>
<td>11.8%</td>
<td>11.4%</td>
<td>11.1%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>11.5%</td>
<td>14.0%</td>
<td>14.6%</td>
<td>16.1%</td>
<td>21.4%</td>
</tr>
<tr>
<td>Neglect</td>
<td>38%</td>
<td>39.2%</td>
<td>42.0%</td>
<td>39.0%</td>
<td>41.3%</td>
</tr>
</tbody>
</table>

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36 Submission 179 Family and Youth Services.  
37 Ibid.
Table 16: Tier 2 Notifications – Aboriginal Children

<table>
<thead>
<tr>
<th>Tier 2 X Aboriginal children</th>
<th>97-98*</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>24.9%</td>
<td>27.8%</td>
<td>25.1%</td>
<td>28.1%</td>
<td>21.0%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>13.8%</td>
<td>7.4%</td>
<td>6.4%</td>
<td>5.6%</td>
<td>5.3%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>7.8%</td>
<td>12.7%</td>
<td>12.9%</td>
<td>16.1%</td>
<td>23.5%</td>
</tr>
<tr>
<td>Neglect</td>
<td>53.5%</td>
<td>52.1%</td>
<td>55.6%</td>
<td>50.2%</td>
<td>50.1%</td>
</tr>
</tbody>
</table>

While Tier 2 notifications increased dramatically between 1997-98 and 1998-99 the numbers have remained relatively stable since that time. Again, Tables 15 and 16 indicate that in Tier 2 (as well as in Tier 1) neglect is the predominant category for both non-Indigenous and Indigenous children, with physical abuse allegations also a significant issue.

Many families are suffering considerable economic disadvantage and are often socially isolated. Problems are often long-standing and interventions to deal with them require considerable input and services from a number of agencies. An investigatory approach, which enables broad assessment of not only the allegation but also the family circumstance, is necessary. Due to significant increases in demand and a paucity of service responses available in many disadvantaged communities, the capacity of FAYS to work to long-term issues with families has diminished. Families who are investigated in this category often present with a range of complex factors such as drug and alcohol abuse, domestic violence, mental health issues or intellectual disability.

TIER 3 – CHILDREN IN NEED

Tier 3 cases are those reports assessed as being at low risk of harm but in ‘high need’. Tier 3 notifications have increased in number from 1243 in 1997-1998 to 2712, which represents about 24% of all screened in notifications for 2001-2002.

A typical example of Tier 3 is where the action or inaction of a caregiver might result in long-term detrimental effects on the child. Other examples involve situations of ongoing neglect and emotional abuse of children where the report is concerning but not of sufficient severity to pose immediate risk to a child’s safety and wellbeing.

The FAYS’ Child Protection Manual of Practice states that “the preferred means of inviting families to a meeting is by way of a letter”. As a consequence the District Centre writes a letter to the family, stating that certain allegations have been reported, that the family is not being investigated as such, but is requested to attend an appointment at the District Centre to discuss how they may be assisted. Of the families classified as Tier 3, 1236 families attended a ‘family meeting’ at the District Centre while 829 declined to attend.

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38 Ibid.
39 Submission 179 Family & Youth Services.
For those families that failed to attend the general practice is that no further follow-up takes place.

**Table 17: Tier 3 Notifications**

<table>
<thead>
<tr>
<th>Tier 3</th>
<th>97-98*</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Screened in Tier 3</td>
<td>1243</td>
<td>1915</td>
<td>2308</td>
<td>2533</td>
<td>2712</td>
</tr>
<tr>
<td>Tier 2 as a percentage</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>of all screened in</td>
<td>20%</td>
<td>21%</td>
<td>24%</td>
<td>25%</td>
<td>24%</td>
</tr>
</tbody>
</table>

**Table 18: Tier 3 Notifications by type of abuse**

<table>
<thead>
<tr>
<th>Tier 3 x Type of Abuse</th>
<th>97-98*</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>31.3%</td>
<td>30.2%</td>
<td>24.3%</td>
<td>21.9%</td>
<td>18%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>3.9%</td>
<td>1.8%</td>
<td>2.9%</td>
<td>2.6%</td>
<td>2.8%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>19.7%</td>
<td>20.2%</td>
<td>22.2%</td>
<td>25.3%</td>
<td>31%</td>
</tr>
<tr>
<td>Neglect</td>
<td>45.1%</td>
<td>47.8%</td>
<td>50.7%</td>
<td>50.0%</td>
<td>48.2%</td>
</tr>
</tbody>
</table>

**Table 19: Tier 3 Notifications – Aboriginal Children**

<table>
<thead>
<tr>
<th>Tier 3 x Aboriginal children</th>
<th>97-98*</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>17.8%</td>
<td>20.5%</td>
<td>13.5%</td>
<td>12.3%</td>
<td>10.2%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>3.1%</td>
<td>2.2%</td>
<td>2.6%</td>
<td>2.5%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>12.3%</td>
<td>10.2%</td>
<td>15.9%</td>
<td>20.4%</td>
<td>29.2%</td>
</tr>
<tr>
<td>Neglect</td>
<td>66.6%</td>
<td>57.0%</td>
<td>57.7%</td>
<td>64.7%</td>
<td>50.1%</td>
</tr>
</tbody>
</table>

Table 18 demonstrates that neglect and emotional abuse is the predominant type of abuse reported. Table 19 indicates the same is true for Indigenous children.

The current minimalist response, that of a letter requesting the family to attend a meeting and stating that the allegation will not be investigated, has serious implications for the agency.

One submission put it this way:

*Tier 3 cases are those cases where real child abuse is suspected, but the child is seen to be a lower relative risk than those cases which are accorded Tier 2. ...The department generally notifies parents and offers assistance but parents have the right to tell the Department its services are not wanted, which ends the matter. But overload issues mean that many Tier 3 families actually get no response at all from the Department, available resources being consumed on the more serious Tier 1s and 2s.*

It is asserted in the same submission that this current model is ‘storing up trouble for the future’.

*Under-investigated Tier 2 and Tier 3 cases tend to ‘bounce’ back. That is, the same cases re-emerge at a later date as a case where subsequent abuse, perhaps in a more serious form, has been reported. In other words, the current model is based on a false economy, which will lead to ever higher rates of child abuse.*
A number of changes to the way Tier 3 notifications are dealt with at the District Centre level are being proposed. These include a proper assessment in all Tier 3 matters of the situation of the family and concerns of the child. The circumstances of any allegation require some level of inquiry and a determination or outcome of the allegation is required in the principles of fairness and justice, but the real focus should be on the assessment. The family can still be approached by letter, telephone or home visit, whatever is deemed appropriate in the circumstances, but cases where significant issues are substantiated must be case worked and case managed appropriately.

It is fully acknowledged that a different approach is required for families who are thought to be neglecting or emotionally abusing their children after a determination is made as to the extent and seriousness of the circumstance. When a family needs more support and services, a heavy handed ‘forensic’ style of investigation would be seen as unproductive. However, until a proper assessment of the situation is undertaken, there is no way of knowing the extent to the problems facing the children and the family. It may not be necessary to send out two workers to undertake the initial assessment and investigation; however, this would have been agreed in consultation with staff and staff representatives, before any change in work practice was initiated.

**CONFIRMATIONS OF ABUSE AND NEGLECT**

Each State and Territory collects important information on the number of children and young people who are confirmed as abused and neglected in Australia each year. They do this in order to measure whether welfare agencies are effective in targeting their investigation services to those most at risk. Decisions on targeting must weigh up the costs of an investigation with the cost of failing to investigate where harm has occurred.  

The substantiation or confirmation rate provides information on one aspect of targeting, that is, the proportion of investigations that are found to have substantiated harm. It provides no information on the cases that were not investigated but for which an investigation may well have substantiated harm.

Tables 20 and 21 show the confirmation rates for South Australia over the period 1997 to 2002.

**Table 20: Confirmed Investigations**

<table>
<thead>
<tr>
<th>Confirmation</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total confirmations</td>
<td>1871</td>
<td>2114</td>
<td>2085</td>
<td>1998</td>
<td>2230</td>
</tr>
<tr>
<td>Children subject of a</td>
<td>1574</td>
<td>1764</td>
<td>1708</td>
<td>1660</td>
<td>1753</td>
</tr>
<tr>
<td>confirmation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confirmation as percentage</td>
<td>40.3%</td>
<td>41.10%</td>
<td>41.9%</td>
<td>39.0%</td>
<td>40%</td>
</tr>
<tr>
<td>of finalised investigation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 21: Confirmed Notifications by type of abuse**

<table>
<thead>
<tr>
<th>Type of abuse</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
<th>01-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical abuse</td>
<td>37%</td>
<td>35%</td>
<td>34%</td>
<td>30%</td>
<td>38%</td>
</tr>
<tr>
<td></td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>8%</td>
<td>14%</td>
<td>8%</td>
<td>13%</td>
<td>6%</td>
</tr>
<tr>
<td></td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
</tr>
<tr>
<td>Emotional</td>
<td>17%</td>
<td>21%</td>
<td>13%</td>
<td>16%</td>
<td>17%</td>
</tr>
<tr>
<td></td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
</tr>
<tr>
<td>Neglect</td>
<td>38%</td>
<td>30%</td>
<td>46%</td>
<td>27%</td>
<td>46%</td>
</tr>
<tr>
<td></td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
<td>Other</td>
<td>Ind</td>
</tr>
</tbody>
</table>

---

46 Ibid.
It is to be noted in Table 21 that the confirmation rate for sexual abuse for non-indigenous children has substantially dropped from 14% in 1997-98 to 8% in 2001-2002. These figures need further investigation.

As a comparison with others States/Territories\(^47\) in 2001-2002 Queensland had the highest substantiation rate at 69% then Victoria at 60%, WA at 49% and SA at 40% with Tasmania, NT and the ACT all in the 40%–42% range. NSW had the lowest substantiation rate at 33%.\(^48\) This is indicated in Table 22.

Table 22: Outcomes of finalised investigations, by State and Territory 2001-02

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantiation</td>
<td>8,606</td>
<td>7,687</td>
<td>10,036</td>
<td>1,187</td>
<td>2,230</td>
<td>158</td>
<td>220</td>
<td>349</td>
</tr>
<tr>
<td>Carer/Family issues (a)</td>
<td>5,944</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>19</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Not Substantiated</td>
<td>11,705</td>
<td>5,181</td>
<td>4,602</td>
<td>1,240</td>
<td>3,385</td>
<td>219</td>
<td>302</td>
<td>475</td>
</tr>
<tr>
<td>Total finalised investigations</td>
<td>26,255</td>
<td>12,868</td>
<td>14,638</td>
<td>2,427</td>
<td>5,615</td>
<td>396</td>
<td>522</td>
<td>824</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantiation</td>
<td>33</td>
<td>60</td>
<td>69</td>
<td>49</td>
<td>40</td>
<td>40</td>
<td>42</td>
<td>42</td>
</tr>
<tr>
<td>Carer/Family issues (a)</td>
<td>23</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Not Substantiated</td>
<td>45</td>
<td>40</td>
<td>31</td>
<td>51</td>
<td>60</td>
<td>55</td>
<td>58</td>
<td>58</td>
</tr>
<tr>
<td>Total finalised investigations</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

(a) In NSW this category comprises investigations where no actual harm occurred but there were carer/family issues. In Tasmania the category was used where there were reasonable grounds to suspect the possibility of previous or future abuse or neglect and further involvement of the department was warranted.

In SA substantiating abuse or neglect is viewed as a critical point in the decision-making process.

*Social workers use professional judgement in arriving at a decision that a child has in fact been harmed. This decision is based on information, observations, assessments and will often entail a complex weighing up of medical, legal, social work, psychological and child development considerations. The decision is often made in consultation with other professionals from within and external to Family and Youth Services.*\(^49\)

The point of confirmation is a critical stage within the child protection process as the ‘confirmation’ decision provides the gateway for further FAYS services. Families ‘confirmed’ are eligible for ongoing intervention. However ongoing interventions are usually restricted to those confirmed cases where the risk of re-abuse is deemed relatively high. Cases that are ‘not confirmed’ are generally closed at that point.

This means those families, where there may be concerns for the ongoing safety and care of children but where specific instances of abuse or neglect have not been confirmed, are very unlikely to receive further FAYS services.

The substantiation rate which sits at 40% means that 60% of those cases where an investigation occurs may result in no services being given even though the circumstances of the family may otherwise warrant them. Instead of the investigation being used as a trigger for assessment of needs and subsequent services it is usually the confirmation of the investigation which results in assessment and services.


\(^48\) NSW has a category of carer/family issues where 23% were classified as reasonable grounds to suspect the possibility of previous or future abuse.

\(^49\) Submission 179 Family & Youth Services.
The ‘either/or’ confirmation decision is often too simplistic to capture the complexity of child protection issues within families, particularly as this decision determines the eligibility for ongoing services. The Review supports the expansion of outcome decision choices following investigation to comprise choices of ‘Confirmed’ – for those where on the balance of probability abuse or neglect has in fact occurred, ‘Not Confirmed’ – where on the balance of probability abuse or neglect has not occurred and ‘Risk of Serious Harm’ - where although there is not currently enough evidence to confirm the allegation of abuse or neglect, workers hold serious concerns about the ongoing safety and care of the child within their family. Therefore in such cases the risk assessment tool would be applied to families where the outcome decision is both ‘confirmed’ and ‘risk of serious harm’.

CONFIRMATION OF SUBSEQUENT ABUSE (RE-SUBSTANTIATION)

The major objective of a child protection intervention is to prevent where possible, the recurrence of further abuse or neglect. Circumstances do change within many families (such as change of partner, parental illness, unemployment), which can make this goal impossible to be fully realised.

National agreement has, however, set as one indicator of a ‘quality outcome measure’ the confirmation of subsequent abuse that is re-substantiation rate within a 3 month and/or 12 month period, as being a reasonable measure of effectiveness for all statutory welfare agencies.

This is measured by counting the proportion of children who were the subject of a substantiation in the previous financial year and who were subsequently the subject of a further substantiation within the following three and/or 12 months.

Table 23: Re-abuse 90 days

<table>
<thead>
<tr>
<th>YEAR</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent %</td>
<td>13.7%</td>
<td>13.7%</td>
<td>15.4%</td>
<td>17.22%</td>
</tr>
<tr>
<td>No</td>
<td>1332</td>
<td>1522</td>
<td>1445</td>
<td>1374</td>
</tr>
<tr>
<td>Yes</td>
<td>212</td>
<td>242</td>
<td>263</td>
<td>286</td>
</tr>
<tr>
<td>No. of children substantiated</td>
<td>1543</td>
<td>1764</td>
<td>1708</td>
<td>1660</td>
</tr>
</tbody>
</table>

Figure 4: Re-abuse in 90 days

Table 23 and Figure 4 indicate that for SA in 2000-2001 the proportion of children who were the subject of re-substantiation within three months after an initial substantiation was 17% (an increase of 2 percentage points from 1999-2000).
Table 24 Re-abuse in 12 months

<table>
<thead>
<tr>
<th>Year</th>
<th>97/98</th>
<th>98/99</th>
<th>99/00</th>
<th>00/01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent %</td>
<td>21.84%</td>
<td>21.94%</td>
<td>23.89%</td>
<td>24.16%</td>
</tr>
<tr>
<td>No</td>
<td>1206</td>
<td>1377</td>
<td>1300</td>
<td>1259</td>
</tr>
<tr>
<td>Yes</td>
<td>337</td>
<td>387</td>
<td>408</td>
<td>401</td>
</tr>
<tr>
<td>No. of children substantiated</td>
<td>1543</td>
<td>1764</td>
<td>1708</td>
<td>1660</td>
</tr>
</tbody>
</table>

Figure 5: Re-abuse 12 Month

Table 24 and Figure 5 indicate that also in 2000-2001 the proportion of children who were the subject of re-substantiation within 12 months after an initial substantiation was 24% per cent, which was similar to the previous year 1999-2000.

FAYS’ data indicate that re-substantiation of abuse is higher within the neglect and emotional abuse categories rather than cases of physical or sexual abuse as indicated in Tables 25.

Table 25: Re-abuse by type of abuse

<table>
<thead>
<tr>
<th>Re-abuse x type of abuse</th>
<th>96-97</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>29.6%</td>
<td>29.1%</td>
<td>35.3%</td>
<td>27%</td>
<td>22.9%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>12%</td>
<td>5.6%</td>
<td>5.9%</td>
<td>4.2%</td>
<td>5.5%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>8.1%</td>
<td>16.6%</td>
<td>18.3%</td>
<td>13%</td>
<td>19.6%</td>
</tr>
<tr>
<td>Neglect</td>
<td>47%</td>
<td>48.7%</td>
<td>45%</td>
<td>55.9%</td>
<td>52%</td>
</tr>
</tbody>
</table>

Table 26: Re-abuse – Aboriginal Children

<table>
<thead>
<tr>
<th>Re-abuse rates – Aboriginal children</th>
<th>96-97</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportion of children re-confirmed within 12 months</td>
<td>41.50%</td>
<td>36.80%</td>
<td>28.40%</td>
<td>39.40%</td>
<td>36.10%</td>
</tr>
</tbody>
</table>

Aboriginal children are over-represented in the group of children subject to further confirmations of abuse. While Aboriginal children comprised some 16% of all children notified in 2000-01, the proportion of Aboriginal children amongst all those re-abused was some 36%. Table 27 above demonstrates the percentage of Aboriginal children subject to a confirmation decision in the previous financial year who were subject to a further confirmation within 12 months.

Of this group, 65% of the reconfirmation decisions related to neglect.
Table 27: Re-abuse by type of abuse – Aboriginal Children

<table>
<thead>
<tr>
<th>Re-abuse - Aboriginal children</th>
<th>96-97</th>
<th>97-98</th>
<th>98-99</th>
<th>99-00</th>
<th>00-01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Abuse</td>
<td>16.9%</td>
<td>20%</td>
<td>26.1%</td>
<td>19.8%</td>
<td>14.7%</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>5.1%</td>
<td>4.3%</td>
<td>4.3%</td>
<td>1%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Emotional Abuse</td>
<td>3.4%</td>
<td>11.4%</td>
<td>24.6%</td>
<td>19.8%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Neglect</td>
<td>69.5%</td>
<td>64.3%</td>
<td>44.9%</td>
<td>59.4%</td>
<td>65.6%</td>
</tr>
</tbody>
</table>

The reform undertaken in 1997-98 was specifically designed to focus on statutory intervention on children in danger, being children at the greatest risk in order to minimise re-notification and re-abuse.\(^{50}\)

The re-notification and re-abuse data would indicate that clearly within this time frame that this has not been achieved. Unfortunately, the three tier system, in spite of its laudable aims, has tended to lead to interventions not based on individualised assessments of the need of each child and their family, but rather interventions geared more to meeting legalistic and investigatory requirements.

USE OF ASSESSMENT TOOLS/INSTRUMENTS

At the point of substantiation or confirmation a risk assessment instrument is used to assist workers to determine the level of intervention required. The risk assessment instrument cannot predict whether a particular family will re-abuse their child(ren). It is intended to classify families in terms of the likelihood of re-abuse happening.\(^{51}\) Investigating caseworkers are permitted to override the risk classification based on their own professional judgement and observation of the family.

It would appear that there is a general acceptance of the value of these tools amongst FAYS social work staff to assist them with their practice - with a qualification. The qualifier being a belief that the tools have replaced professional judgement rather than being an adjunct to professional decision making providing workers with estimates of future behaviour based on a limited set of observable factors.

Even so, the use of risk assessment tools has provided FAYS with a valuable process to assist workers, in particular new workers to determine critical cases for services.

The Risk Assessment tool was developed following analysis of South Australian confirmed abuse cases over a 12 month period which determined family characteristics associated with re-notification, re-abuse, injury and placement away from home. A further evaluation occurred 12 months later, which confirmed the validity of the Risk Assessment tool to estimate the likely re-abuse of children. It appears that in comparison to risk assessment tools used in other jurisdictions, the risk assessment tool used in South Australia is simpler for workers to use, risk is easily reassessed and it provides a point to usefully determine where scarce resources are most needed.

As previously indicated two aspects are concerning. They are that the risk assessment tool is not used on Not Confirmed cases where there are serious concerns for the child and which are therefore mostly excluded from FAYS services, and that the use of risk assessment has replaced good social work practice.

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51 Ibid.
Studies undertaken on use of actuarial risk assessment tools on Not Confirmed cases show that they can be as usefully applied to situations where abuse or neglect was not confirmed as where the abuse was confirmed. The results of these studies suggest that incident-based substantiation is not the best criterion on which to provide services but that more intense, greater frequency services should be given to families with the highest levels of risk and need, regardless of whether a substantiation occurred. 52

In support of the use of risk assessment tools FAYS points out that across child protection systems, there is an inherent tendency for workers to want to continue working with families when a positive engagement can be facilitated and to close the difficult cases where families are hostile and rejecting of services - but where the children may be at greatest risk. In such instances actuarial instrument have proven to be more consistent than professional judgement in identifying the situations that pose the greatest risk of further harm to children. They state they provide greater accountability and clear rationales for decision making, reduce judgement errors and provide the system with the capacity to screen, gate keep and prioritise work.53

It is also acknowledged by FAYS that in addition to investigating whether or not abuse or neglect has occurred more emphasis must be placed on working alongside families to support them.

They are aware that some critics argue that child protection systems have invested too heavily in risk management at a time when there has been an overall contraction of resources across the whole family support sector – effectively diverting resources from family support54 and resulting in a tool being applied with little capacity for follow-up services.

The Review has observed that generally both in FAYS and in the community there is a belief that the system has become one focused on processes rather than the building relationships with families and strengthening family capacity. The processes of ‘investigation and assessment’, implementing tools, recording on file and CIS, court work, for example, leaves little time to work with families in relation to the identified needs. A range of recommendations are suggested that will provide vulnerable children, young people and their families with improved service responses.

52 Wagner, D Meyer, B 12th National Roundtable on CPS Risk Assessment Using Actuarial Risk Assessment to Identify Unsubstantiated Cases for Preventative Intervention in New Mexico.
53 Submission 179 Family & Youth Services.
54 Ibid.
RECOMMENDATION 47

DHS/FAYS regularly review all Tier 1 cases to determine whether existing procedures and protocols are efficient and effective, and to make findings on whether any action could have prevented serious abuse or neglect. See also Chapter 18 Child Death and Serious Injury Review.

That FAYS will add a further Outcome Decision category on the Client Information system to allow for a category ‘risk of serious harm’.

That FAYS will apply the risk assessment tool at the point of confirmation where abuse and neglect has been confirmed as well as those situations where the child/ren is assessed to be ‘at risk of serious harm’.

That FAYS cease the current response to Tier 3’s by letter only. All Tier 3’s are to be appropriately investigated and assessed. Initial contact with the family can be made by phone to determine the most suitable place and time of visit or by letter, but a home visit where each subject child is interviewed or seen and a proper assessment of the child and family circumstances is taken into account.

That all Tier 3 cases require a determination as to whether the circumstances of the allegation are confirmed and an appropriate classification of type of abuse for instance, neglect, emotional abuse applied.

That all Tier 3 families assessed as requiring further intervention (on-going risk) will be ‘encouraged’ to attend locally contracted family support services or other services that may be deemed appropriate.

That a FAYS worker facilitate referral and link family with service.

That all Tier 3 cases remain open, with FAYS maintaining a case management responsibility until further assessment of risk factors indicates higher protective capacity within the family.

Reason

Child protection processes in FAYS whilst similar in many respects to those employed in other States and Territories have their own uniqueness and particular qualities. FAYS has spent considerable effort and energy devising a system for ‘differentiating’ the type of responses needed and, in doing so, has ensured that children and young people at highest risk receive some type of response.

FAYS has supported field workers through the development of tools and instruments to assist and guide practice and aid decision making, in an area of particular complexity and changeability. FAYS needs to be commended on these innovations in practice and service.

Further improvements are required in response to cases classified as Tier 1, Tier 2 and Tier 3, to ensure vulnerable children, young people and their families receive appropriate support and timely intervention. A significant number of these children are likely to be suffering from emotional abuse or neglect which is an area increasingly being recognised as having the poorest outcomes for long-term of the welfare.
RECOMMENDATION 48

That DHS/FAYS develop a research agenda with the field and other relevant service providers and partners, including universities.

That the development of such an agenda will include a range of research and analysis activities at both an operational and broader service level.

That in order to for this to occur serious and urgent consideration be given to establishing within DHS/FAYS a dedicated Research and Evaluation Branch which focuses principally on FAYS clients and data collection.

Such a branch would have responsibility for

- analysing FAYS data
- developing research and evaluation proposals internally or with external stakeholders
- assisting in the production of regular reports for DHS and FAYS Senior Executive, assist in monitoring and enhancing best quality practice.

One the first tasks will be to undertake a comprehensive analysis of cases classified as ‘notifier concern’ to ensure all cases assessed in this category do not require further intervention.

Reason

The DHS/FAYS data collection system (DHS Warehouse and Client Information System) enables the aggregation of data held in a variety of program areas including child protection. While FAYS has undertaken a number of research projects in the past which have made use of this aggregated data and provides data nationally on child protection, a discrete unit whose sole responsibility is research and evaluation would have considerable benefits in providing analysis and tracking of child protection outcomes within the FAYS system. It would provide senior management with an effective means of determining the effectiveness of the system in the protection of children and young people.

FAYS has undertaken evaluation and research on practice without having a designated branch to undertake activity. In order for it continue to keep abreast of the latest models of practice, have a greater understanding of its own system through the timely and accurate reporting of data and analysis FAYS must have the resources to put in place a proper system for analysing, reporting and monitoring data. It needs to also do this in a transparent and accountable manner that can be readily accessible to the broader community.
ALLEGATIONS OF ABUSE OUTSIDE OF THE FAMILY

The Children’s Protection Act 1993 provides the legal mandate for child protection work in South Australia, however, the current legislation does not differentiate between abuse or neglect of a child or young person happening within or outside of the family (the former called ‘intra-familial’ or and the latter ‘extra-familial’).

The Act does not define the alleged perpetrator relationship to the child except in the following situations:

Section 6 (2) (b), where a person with whom the child resides (whether a guardian or not)

- has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or

- to situations of ‘threat’ and ‘likelihood’ where the alleged perpetrator

- has killed, abused or neglected some other child or children and there is reasonable likelihood of the child in question being killed, abused or neglected by that person.

Mandated notifiers are legally required to report suspicions of child abuse or neglect to FAYS pursuant to Section 6.1 and 6(2)(a) and (b), whether or not the alleged perpetrator is within or outside of the family, and whether or not the alleged perpetrator is an adult or a minor.

FAYS Current Approach to Extra-Familial Abuse

FAYS classifies in policy extra-familial abuse (EXF) as being those notifications cases where:

- the alleged perpetrator is outside of the family and
- there is no indication that the parents have failed to protect the child from harm and
- the alleged perpetrator is a person other than a foster carer or FAYS employee/volunteer.55

The extent of FAYS investigation/intervention currently depends on the particular circumstance of the case; the role to be taken by police; and if relevant, the capacity of another agency to take appropriate action to deal with apparent abuse or neglect and protect other children to whom it may owe a duty of care.

The Interagency Code of Practice on The Interviewing of Children articulates the role of SAPOL and Child Protection Services (CPS) in response to allegations of sexual abuse with case-management responsibility to SAPOL where the allegation constitutes a criminal offence and either the CPS or Sexual Assault Unit taking responsibility for interviewing the victim depending on the age of the child.

According to FAYS, in situations where the alleged perpetrator is outside of the family, but there is concern about the parent/s’ ability to protect the child from harm, the notification is currently not classified as extra-familial abuse by FAYS but receives a tier classification and FAYS take the case management responsibility.
Any subsequent investigation/intervention focuses on the parent’s capacity to protect the child or young person from future harm.

FAYS point out that in response to the increasing workload of allegations regarding family members, it has implemented a policy of reduced involvement in reports of abuse and neglect where the alleged perpetrator is not a family member.  

It states that there are a variety of models used in other States to deal with these types of allegations.

Essentially all States and Territories deal with EXF in a similar manner to SA when it relates to the stranger down the street, babysitter etc – some assessment is made about the protectiveness of parents and then the matter is referred to police. NSW is slightly different because they have Joint Investigation Teams of Police and DOCS (FAYS) who deal with these matters.

In relation to allegations against teachers and child care workers, this varies from place to place. Tasmania has a joint protocol with the Education Department. In SA, Victoria, WA the ACT and NT the Education Dept deals with all except the most serious which are referred to police. In Queensland all matters of EXF including teachers are referred to police. In NSW agencies investigate their own complaints/allegations but report to an Ombudsman.

FAYS state they are aware that a number of Government and community organisations hold the view that they should resume a more active case-management role in cases alleging extra-familial abuse. They offer the following reasons as to why this is the case:

- the need for external scrutiny and the requirement for accountability of ‘agencies investigating their own’
- the tension for agencies between their responsibilities for the children in their care and their obligations to their staff/volunteers and
- the need for a stronger advocacy to ensure children’s protection and therapeutic follow-up.

This Review agrees with the general concerns expressed by Government and community organisations and with FAYS comments on the arguments for more active case management for extra-familial abuse.

The Review has heard of particular cases, both historical and current, which involve the abuse of children and young people outside of their family network. Persons who made comment feel confused, unsure and often angry about the how the system ‘manages’ these cases. In particular, there is confusion as to who has the case management responsibility.

It would appear that cases which require SAPOL to investigate are being appropriately referred to that agency by FAYS at the point of intake but then closed on the FAYS system, meaning that no further intervention by FAYS is required. Whilst this may well be entirely appropriate at that point, as SAPOL is proceeding to investigate and determining whether criminal charges are to be laid it does not mean that the case should be regarded as permanently closed.

For those cases which are not followed up or proceeded with by SAPOL (which happens in a considerable amount of situations) there would appear to be no agency at that point to assume a case management role and ensure the family and child receives adequate support and appropriate referral to services.
The impact on families and children when matters do not proceed often leave them feeling vulnerable, frustrated and angry. If a parent is unable (or unwilling) to negotiate the service system and seek out the services for the child, families and children may run the risk of receiving little if any intervention and children may never have the matter of their abuse appropriately dealt with.

**Sector-Wide Policy Issues**

There would appear to be concerning issues regarding cases of abuse when the person is outside of the family and a lack of clear policy direction for how these matters are to be dealt with. This Review has heard that cases which do not proceed through the criminal system are not always referred back to FAYS for follow-up. As to how SAPOL and other agencies could refer cases back to FAYS when they are not proceeding, considerable further exploration needs to be done.

In response to this type of concern, one submission suggested that:

> FAYS (needs to) integrate 'extra-familial abuse' into the current tier system to ensure that if a child is abused beyond their family they are provided with a coordinated response from all components of the child protection system.59

Within the agency of FAYS there is a variety of views as to what the role of the statutory agency should be in extra-familial abuse matters. Some express the view that FAYS should have no involvement with extra-familial cases at all; that essentially it is the business of the employing agency to manage the quality of care which their staff/volunteers provide. They believe a majority of allegations of abuse involving community organisations such as religious and sporting bodies are allegations of sexual abuse and that these are criminal matters and as such need to be investigated by police.

The Review would agree that cases alleging criminal acts are the responsibility of SAPOL. However, many cases do not proceed and families and children are thus left sometimes with little support and assistance. Those that do proceed through the system are given assistance through the Victims Support Service.

**FAYS Data**

In 2001-2002 there were a total 762 cases recorded on FAYS’ client information system that were classified as extra-familial abuse (EXF) and 639 cases in the previous year 2000-2001.

Of those classified as extra-familial abuse in 2001-2002, 507 cases were referred straight to SAPOL and case closed at that point on the FAYS system while another 76 were referred to another agency for follow-up.

Extra-familial cases may also be Tier rated and therefore are not classified extra-familial. It is not known how many cases these represent.

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59 Submission 163 Child Protection Services, Flinders Medical Centre.
Case Management Responsibility

It is not disputed by FAYS that it has a responsibility to assess protectiveness of parents and that when situations involving abuse or neglect occur outside of the family situation the parents are appropriately supportive and protective of the child/ren.\(^\text{60}\) There is also an Interagency Code of Practice - Interviewing of Children and Caregivers (Child Abuse and Neglect) that provides considerable direction on roles and responsibilities and guidance of all the key agencies involved.

However, as FAYS point out, issues of parental protectiveness are assessed at the point of intake at the Child Abuse Report Line where it may be very difficult to determine how families are dealing with the situation. Aside from protectiveness, there is also an issue of support to the child and parents concerned, and how they negotiate through a complex service system.

FAYS states that there are ‘feedback loops’ with other agencies to advise them of protection/support issues when other agencies investigate the matter or provide therapeutic or other services to the child/family. FAYS also states that it has a mandate to become involved in these and other situations on a case-by-case basis where families are deemed to be unprotective.\(^\text{61}\)

It is unknown how this is working in practice and whether agencies/SAPOL refer matters back to FAYS if there are concerns for the child and family. Anecdotally, it would appear that this is not happening effectively and requires considerable attention to determine whether the ‘feedback loops’ are effective and whether other agencies investigation of these matters is appropriate.

Child-to-child sexual abuse

The Review has also heard of concern by professionals and community members relating to children who sexually abuse other children and how the authorities are currently dealing with these children.\(^\text{62}\) A considerable level of expertise and sensitivity is required when handling of matters relating to allegations of child-to-child sexual abuse.

There are a number of issues for agencies to consider, including whether in the first instance the situation is one in which sexual abuse is occurring, or whether this case of ‘normal’ sexual exploration, depending on the age and power deferential of the child and victim. A proper assessment of all the circumstances surrounding the allegations needs to occur to determine the most appropriate action. At a minimum, it is appropriate for contact to be made with both families to ensure any/or all of the following:

- assessment as to whether the child still has contact with the ‘alleged perpetrator’ and the level of risk to this child and other children
- what supports are required for the families
- whether a referral to Child Protection Services for the ‘victim’ is needed
- SAPOL involvement if alleged perpetrator is over 10 years
- assessment as to whether the ‘alleged perpetrator’ is a victim themselves of sexual abuse and/or what intervention is required
- referral to treatment services for the ‘alleged perpetrator’.

The overall recommendations made with regard to FAYS’ involvement in extra-familial sexual abuse will also apply to this sub-category.

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60 Submission 179 Family and Youth Services.
61 Ibid.
62 Consultations and Interviews.
Recommended Approach by FAYS to Extra-Familial Abuse

Extra-familial abuse allegations must be handled in a highly coordinated, sensitive and careful manner due to the specialist nature and complexity of these cases. At the centre of any investigation the child or young person’s right to safety and protection and assessment of the risks to other children, as well as support of the family through the service system, must be the central consideration.

There would appear to be a need for a stronger overarching case coordination/case management mechanism for cases of extra-familial abuse, as well as greater review and accountability mechanisms. Central to this is a need for a fully independent and transparent process to overcome any issues of conflict or bias.

The Review is proposing a number of structural reforms that will ensure that proper interagency collaboration occurs and the child and family receive a coordinated and supportive response. All areas are briefly described below as they are dealt with in detail in other chapters.

The development of an **Interagency Case Management process** will at a local level require participation with all key agencies when children and young people are deemed to be at risk of significant harm. The interagency forum will provide important coordination and case planning for all cases including matters where children are thought to be at risk from persons outside the family, including other children (see Chapter 7).

Another significant recommendation of this Review is the proposed development within DHS of a **Specialist Review and Investigation Unit** to investigate allegations of ‘abuse in care’ – foster carers, secure care, residential care etc. The potential for this unit developing strong working relationships with SAPOL and other special investigations units such as within DECS, has considerable merit.

**RECOMMENDATION 49**

That FAYS assume a case management responsibility in all matters of extra-familial abuse except for those which are still proceeding through criminal justice process with SAPOL. All matters that do not proceed must be referred back to FAYS for investigation and assessment and referral to the Interagency Case Management process.

**Reason**

The community is demanding a transparent, accountable and fair process for persons who are alleged to have sexually abused children outside of the family system. Without such a system in place, the community loses faith and trust in the processes which are set up to protect its most vulnerable citizens. It is concerning that many children and young people who are being abused outside of their home environment, usually by persons known to them, are not having their cases dealt with consistently through a coordinated, case-managed approach. While there have been achievements in the development of interagency codes of practice, further work is urgently required, to ensure that all children, young people and their families have the support they require and access to the services for their recovery.
Chapter 10
Mandatory Reporting for Child Protection

INTRODUCTION

This chapter deals with:

- mandatory reporting for child protection
- current issues related to mandatory notification
- factors for an effective system including training and
- recommendations for improving the current system.
Mandatory reporting forms one of the central pillars of the child protection system in South Australia. Under the Children’s Protection Act 1993, the following persons are required to notify the Department of Human Services (Family and Youth Services) when they suspect on reasonable grounds that a child is being abused or neglected:

- a medical practitioner; nurse; dentist; pharmacist; psychologist; police; probation officer; social worker; teacher; family day care provider; and
- any other person who is an employee of, or a volunteer in, a Government department, agency or local or non-Government agency that provides health, welfare, education, childcare or residential services wholly or partly for children any person who is engaged in the delivery of services
- or holds a management position that includes direct responsibility for, or direct supervision of, the provision of service to children.

In South Australia, some form of mandatory notification in relation to child protection has been in place since 1969. Progressive legislative changes have resulted in the extension of the range of persons required by law to make a child protection notification. Compared with similar provisions in States and Territories’ child protection legislation, the South Australian legislation continues to provide one of the widest captures of professionals and others involved in providing services to children who are mandated to notify.

All States and Territories have legislation requiring the compulsory reporting of child maltreatment, child abuse and neglect to child protection authorities with the exception of Western Australia, which recently commissioned a review of the effectiveness and impact of mandatory reporting of suspected child abuse in connection with the Gordon Inquiry. The report concluded that mandatory reporting would not be effective in that State in identifying children in need of protective services nor in delivering support and services to children and families identified as being in need. A number of States that have introduced mandatory reporting systems have done so in response to recommendations made by inquiries or child death reviews often on the basis that there was a failure to report a child at risk.

Waldfogel1 reports that in the US where there have been mandatory notification laws in place since the 1970s, there have been increased reporting rates associated with the imposition of legal requirements to report and the creation of systems to receive the reports. She also noted that there may have been an increase as a result of improvement in the recognition of abuse and neglect by reporters because of the training and education received as well as increased attention to the issue of child protection.

However, Waldfogel also notes that the causal linkage between reporting laws and reporting rates is not straightforward and that the passage of laws in the 1970s cannot account for dramatic increases in later years. The US situation appears to run more in parallel with South Australia’s situation given the introduction of mandatory reporting laws in the 1970s and the dramatic increases in notification that have occurred in more recent years. Waldfogel considers that the increases may be attributed to an increase in the actual level of child maltreatment (associated with use of illicit drugs and illicit use of prescribed drugs) and more stringent societal definitions of abuse and neglect that include disciplining.

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GROUNDS FOR INTRODUCING MANDATORY REPORTING SYSTEMS

Mandatory reporting has been introduced into many jurisdictions on the grounds that children require the assistance of adults to convey to child protection authorities that they are in need of protection and that there are many reasons for their inability to transmit to appropriate persons that they are being abused, such as:

- incapacity to communicate the fact of harm
- incapacity to recognise their situation of harm and to recognise that such acts are wrong, immoral and illegal
- reliance and dependence on adults for whatever care and nurture they receive
- the limited visibility of children outside the home resulting in few or no witnesses to the abuse.

As a minimum, mandatory reporting gives expression to the broader community view on the need to protect children from maltreatment, abuse and neglect. Secondly, mandatory reporting forms an essential basis for the community’s response to child abuse and neglect on the basis that ‘child protection is everybody’s business’ and can be regarded as the first line of support for the protection of children in the community.

LEGISLATIVE REQUIREMENTS

Mandatory notification is a requirement by law that a person who is covered by the class of persons listed in the Children’s Protection Act 1993 must notify the relevant authority such as the Child Abuse Report Line where:

- a person suspects on reasonable grounds that a child has been or is being abused or neglected
- the suspicion is formed in the course of the person’s work (whether paid or voluntary) or carrying out official duties.

The person is required to notify the department of that suspicion as soon as practicable after he or she forms the suspicion that a child is being abused. This section of the Act provides the grounds on which a person is required to make a notification.

ROLE OF MANDATORY REPORTING IN CHILD PROTECTION

The principal role of mandatory reporting is to provide a confidential system so that the community, particularly professionals, can make a notification of a child where there are reasonable suspicions of abuse or neglect on the basis of which the State can seek to intervene to protect the child and establish support to the family to minimise further risk of harm to the child.

From the FAYS’ perspective, mandatory notification is critical. A number of reviews into this issue have been held, with the following findings:

- mandated notifiers provide more detailed and accurate information
- have an increased substantiation rate
- provide a higher level of consultation
- have an increased understanding of the responsibilities of FAYS and other agencies and
- have a commitment to working in partnership.

3 Ibid pp 2 - 3, 53.
SUMMARY OF SUBMISSIONS

The following is a summary of a variety of observations made in the submissions:

- there was strong and unequivocal support for the mandatory notification provisions in legislation
- there was a widely held view that the classes of professionals and individuals who should be included as mandated notifiers should be widened
- training on mandatory notification needs to be more readily available
- the training that is available needs to be upgraded to reflect professional and other requirements
- the current system for notification creates difficulties for providing differential responses that do not necessarily involve formal investigations being conducted, especially where children and families were already well supported by services
- the current system for making reports is not viewed with any degree of confidence by mandated notifiers.

SUPPORT WITHIN THE COMMUNITY

The majority of submissions received by the Review gave strong support for the continuation of the mandatory reporting system and there were no submissions received expressing the view that mandatory reporting should be abolished.

This support reflects the level of support for mandatory reporting that was reported in the Final Report of the Task Force on Child Sexual Abuse. This community support for the retention of mandatory notification incorporated the perspective of children’s rights and the vulnerability of children’s position in the community and society. There was also generally widespread support for the principle behind the current legislative provision for mandatory notification in South Australia.

As noted in one submission:

Anglicare welcomes mandatory notification as it provides a legislative imperative to respond to child abuse, ensuring that it does not become an individual decision. This protects those legally required to notify as well as sending a clear message to the community that the State is committed to the protection of children.

Another view was that mandatory reporting was strongly supported as:

…a positive tool for child protection. We believe that mandatory reporting is a simple and effective way to ensure adults who work with children have a clear professional obligation to report concerns of suspected abuse…In our opinion, child protection considerations outweigh other public interest grounds for withholding relevant information.

Further, that mandatory reporting should be retained as it:

…provides a powerfully important symbolic message to the community about the importance of children’s safety and wellbeing.

Whilst the majority of submissions received by the Review gave strong support for the continuation of the mandatory reporting system, there is still some controversy around whether this should be required by law.

5 Submission 67 Anglicare SA.
7 Submission 130 Ms Anne Nicolaou.
Concerns about the effectiveness of mandatory reporting within the wider child protection system need to be separated from the philosophy that underpins it, the development of appropriate skills for reporting among people who are mandated notifiers and creating a more effective child protection system.

**INCREASES IN NOTIFICATIONS**

It has sometimes been asserted that mandatory reporting has directly resulted in the dramatic increases in notifications currently evident across a number of jurisdictions in Australia and overseas. However, Associate Professor Dorothy Scott notes the following:

- mandatory reporting by professionals is not directly a major driving factor escalating notifications but it has reinforced the fundamental assumption... that the State can protect most at risk children by exercising statutory power
- the introduction of mandatory notification resulted in a huge under-estimated increase in notifications in Victoria when introduced in the early 1990s, primarily driven by notifications from the community, not from professionals.
- doubling notifications every decade or less is completely unsustainable and poses great risks to children caught up in... machine bureaucracy not a professional bureaucracy.
- intervention is not based on an individualised assessment of each child but increasingly based on processing cases along an assembly line of legalistic procedures focused on threshold assessments.

Scott further argues that mandatory reporting results in system overload forcing either long waiting lists for investigation or the triage system, the latter approach which results in high false positive rates complicated by the fact that “statutory intervention is based on actual evidence of significant harm, not a statistical measure of risk”.

There was a view in one submission that:

> Whilst important to ensuring early intervention in child abuse, mandatory reporting as it is currently used/acted upon is resulting in the “fish net” being cast so far and so wide as to now be useless in catching predominantly/exclusively those persons who are a genuine risk to children.

Whilst this view is acknowledged, the majority of child maltreatment, abuse and neglect occurs in the family context. Current knowledge about the forms and impact of abuse and neglect on children within families and the private nature of families, requires a wider net to be established in order to identify children who are at risk of abuse, but would not otherwise attract attention.

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11 Submission 125 Richard Hillman Foundation.
RECOMMENDATION 50
That mandatory reporting be retained in child protection legislation.

Reason
Mandatory reporting has significant support within the community across all professional groups as well as the wider community. The statutory requirement to report is seen as an obligation that should be upheld in law as part of broader social and community responsibility and is an effective means of ensuring that vulnerable children and young people are assessed, protected and supported.

FACTORS FOR AN EFFECTIVE SYSTEM

CONFIDENCE IN THE SYSTEM

One of the key issues pervading many of the submissions was professional confidence in making a mandatory notification. The findings of the recently released research into the reporting behaviour of community professionals by Australians Against Child Abuse and the Family Violence Research Unit at Monash University indicated that, for Victoria, there were grave concerns about the impact of not fully implementing the mandatory reporting laws to cover all professionals who come into contact with children.12 This survey confirms submission findings and also provides additional useful information on the views of mandated notifiers in a variety of areas. In relation to building confidence in the mandated reporting system, there were some findings that have been supported by submissions to the Review:

☐ A lack of confidence by community professionals in the statutory reporting system leading them to sometimes feel reluctant to make a child abuse report. The study indicated that 54% of respondents stated they would not report children whom they judged to be at considerable or extreme risk.
☐ For 88% of respondents, their decision about whether or not to report a child was influenced by their view of the anticipated outcomes for children. Over half the respondents believed the outcome would not be positive for the child (56%) or for the child’s family (63%).13

Confidence in the system was related to several issues:14

☐ recognition of the skills of the mandated notifier
☐ confidence of Child Abuse Report Line (CARL) in the skills of the professional making the notification
☐ the role of CARL staff in providing appropriate recognition of professionals making reports
☐ whether any action would be taken in response to the notification and, if action is taken, the quality and appropriateness of the intervention
☐ whether confidentiality of the notifier would be ensured
☐ the provision of feedback to the notifier on any action that would be taken as a result of the notification and
☐ the quality of interventions and outcomes for children.

13 Ibid p 2.
14 Submission 44 Carers Association of SA.
As one submission noted:

Sometimes participants are quite angry and resistant to encouragement to contact FAYS and make notifications if they observe or suspect abuse, as they have in the past and nothing has happened. Particularly where there has been a very bad outcome and the child/children have either died or been badly affected. The participants in these instances have been very vocal about their belief that FAYS will not offer timely or effective intervention.  

RESPONSIVENESS

Many of the submissions to the Review highlighted the need for greater responsiveness, feedback and communication with notifiers.

Feedback is seen as particularly important especially where the professionals regard themselves as having some expertise but perceive that FAYS has given a Tier 3 or notifier concern rating to the report which will not result in an investigation. Feedback is also critical where there is also an ongoing relationship with the child and family.

This relationship may be with a teacher, a doctor or other health professional who is working with the child and where knowledge of the details of the protective intervention may be relevant to future interaction with the child and family, treatment and therapy or educational support. The Victorian Audit of Child Protection noted that:

Professionals interviewed by the audit indicated that a decision to make a notification requires a lot of thought as to the justification and likely impact of such an action. The absence of effective feedback can significantly diminish the confidence of both mandated and other professionals in the child protection system and encourages a reluctance by professionals to make notifications in the future, if they cannot be assured of action taken.  

Professional confidence in making a notification and in the system needs to be carefully nurtured.

Many professionals regard themselves as part of the child protection system and whilst deliberately making a decision to report, seek to also advise FAYS of actions that they are taking to provide ongoing protective support to the child and the family. In some instances, they indicate their preference for FAYS not to institute investigative proceedings even if the report may warrant a Tier 2 rating because of the role of the service already providing high level support to the family.

In making notifications, some submissions drew attention to the fact that mandated notifiers, particularly those providing accommodation services, are advised that:

Because a young person is in our service s/he is safe and therefore no further action is necessary. We often have to argue strongly on behalf of other siblings still at home or for the need to “build the picture” of the alleged perpetrator.  

Similar comments were made about notifications made whilst a child was in a safe situation but in the care of a school or hospital. These mandated notifiers are conscious of the fact that they have no capacity to keep the child beyond a certain time or episode of service. In these situations, there is a need to reassure mandated notifiers of the action planned and the time proposed for such action if confidence in the system is to be maintained.

15 Submission 33 Name Not For Publication. 
17 Submission 137 Managers of Youth SAAP Services in South Australia p 2.
The view that mandatory reporting played a critical role in building a picture not only of the alleged perpetrator but also of the situation of the child or their siblings was commonly held. The strong impression given by a number of submissions is that many people believe that, as mandated reporters, they need to give this information so that an emerging picture of the situation for a child can be recognised over time or that action may be taken for other children.\(^{18}\)

Mandated notifiers considered this extremely important. This view of the system appears to be one of the inadvertent consequences of the focus on each report as a separate episode, and both a lack of understanding and distrust of the tier classification system. In other words, mandated reporters may feel obligated to keep on making reports because they feel that there is not a sufficient basis to warrant action by FAYS but they feel that the child’s situation still warrants monitoring and reporting.

The research indicates that mandated notifiers are generally regarded as fairly expert and that their substantiation rates are generally significantly higher than that of the general population. There is a need to ensure that FAYS acknowledges the skills levels of mandated notifiers and provides adequate recognition of the importance of other professionals in the child protection system.

Concern was raised that, under Section 11 of the *Children’s Protection Act 1993*, which deems that a person must make a notification when there is a suspicion that a child or young person under the age of 18 ‘has been abused’:

- the abuse may have occurred some time ago
- the young person concerned may not want to proceed with a notification to FAYS and
- the child or young person may be safe.

This issue needs to be addressed in the training on mandatory notification from the perspective of examining the rights of the child or young person and how this may intersect with mandatory reporting requirements.

**RECOMMENDATION 51**

That DHS/FAYS promote and ensure the confidence of mandated notifiers in the mandatory reporting system by establishing a survey-based monitoring process as part of a quality assurance program. Such a process is to provide qualitative feedback on a regular basis to FAYS and other relevant agencies on perceptions of mandated notifiers in making mandated notifications in order to improve responses to mandated notifiers.

**Reason**

There is currently no basis to systematically assess the views of mandated notifiers on their own skills or their perceptions of how well the mandated notification system is operating and responding to notifications.
PRESERVING CONFIDENTIALITY OF NOTIFIER

Section 13 of the Children’s Protection Act 1993 provides for the protection of the identity of the notifier. This protection is vital if people are going to feel confident about making a notification, given that it involves a very real risk for teachers, social workers, medical practitioners, friends and neighbours who notify and may be subjected to threats of or actual violence and anger from the family concerned. One submission noted that:

…the focus needs to remain with the needs of the child and the effects on the child, rather than anyone else. It is often likely that the notifier is discovered or suspected; for example, in a small country town with one school. I find that even though families may initially be affronted, they listen to the rational child protection arguments and accept the mandated nature of reporting.19

Some professionals and other workers working with children and their families often choose to discuss their concerns with the family and advise them of their intention to make a notification. In many cases, they indicate their preparedness to provide assistance to the family even though they have a legal obligation to report their suspicions about a child being at risk of abuse. Clearly, the nature of the relationship between a service provider and the family will influence the decision to disclose intention to make a notification.

In some cases, the families may just make a good guess and confront professionals with whom they have had recent contact. Many submissions, however, noted that FAYS or some other agency had breached the requirement to keep information about the identification of the notifier confidential.

Police have also reported concerns about the response of FAYS in refusing to provide the names of notifiers in order that they may pursue their separate investigations on a report of child abuse and neglect, particularly where this involves extra-familial abuse. However, notifiers have also expressed concern about their identity being released.

The legislation provides protection for confidentiality to be preserved but allows the release of the identity of the notifier on certain grounds. The circumstances of release of the identity of the notifier can be potentially dangerous for notifiers. It has been revealed to this Review that the release of information regarding the identity of notifier:

Current legislation protects identity of informants prior to court action being taken, but unfortunately identity of informants is not withheld during any court process. The discovery of identity has, unfortunately resulted in abuse of an informant staff member… which is a regrettable and preventable consequence of the mandatory reporting process. We believe that such a mandatory reporting process must confer absolute anonymity and protection to any informant.20

19 Submission 31 Ms Jen Tranter.
RECOMMENDATION 52

That DHS/FAYS develop clear guidelines for advising notifiers of the implications of section 13 of the Children’s Protection Act 1993 that FAYS may be required to disclose their identity in the course of “official duties” to another person acting in the course of “official duties”. Such disclosure may extend to police or the courts.

Reason

Mandated notifiers and members of the community who notify are not necessarily aware of the full provisions relating to confidentiality and disclosure of the Children’s Protection Act 1993. They may also not be aware that FAYS’ child protection investigation officers may wish to speak to the notifier as part of the investigation. Notifiers should be advised of the scope of the confidentiality provisions and of the possibility that disclosure may be required.

RECOMMENDATION 53

That an additional protocol be developed by the Crown Solicitor’s Office in conjunction with FAYS with State and Family Courts to provide improved guidance on the release of information on the identity of a mandated notifier.

Reason

Confidentiality of notifiers needs to be maintained both in principle and as a matter of policy. A clear protocol is required to ensure this principle and policy is vigorously maintained.
RECORDING SYSTEMS

The Review has been made aware of a number of organisations developing systems for recording or documenting the making of a notification to FAYS by individual members of staff.

These methods are diverse and range from a detailed report that is held separately from the client file (where the client is a person other than the child) which is then held with other highly confidential files, to a note made in a personal file or case notes. The Act places emphasis on an individual being mandated to make notifications. It appears that it was not envisaged that there would be an organisational record other than that made by FAYS as the statutory organisation and this practice could be considered to be in breach of the confidentiality provisions under the Act.

While there may be confidential provisions applying through other legislation to such notes or records, the issue of such records being subpoenaed does mean that the incidental discovery of the identity of the notifier is made easier and is outside the control of FAYS. Clearly, there is a need for agencies to make a record of the fact that a notification was made on a child’s record or in another appropriate place as part of continuity of care and to ensure that other staff do not make a notification for the same child or young person. However, the practice of recording the notifier’s identity as such should be amended to indicate that notification is made as a responsibility of the agency.

EXTENDING THE CLASSES OF PERSONS REQUIRED TO NOTIFY

The South Australian legislation involves a wide capture of professionals and other people required to notify and is one of the broadest in Australia. Comment was invited on the question of whether the provisions identifying the professions and people involved in services that are primarily for children as mandated notifiers needed amendment. Many individuals and organisations have sought extension of persons required to notify suspected child abuse and neglect. The following suggestions have been put forward as recommendations for change to the legislation as mandated notifiers of child abuse and neglect:

- the clergy
- all church personnel
- all volunteers who work with children
- cover all areas of children’s lives, for example, religious, sporting, voluntary organisations, etc and
- legal professionals.

All church personnel including the clergy, with the exception of confessionals, are proposed for inclusion as mandated notifiers. This position is strongly supported by a number of major churches in light of the disclosures of abuse that have been made within Australia and overseas and the view that the public interest and the relationship of the church personnel to children and the wider community warrants this.

The issue of incorporating volunteers who work with children raises the issue of whether a distinction should be made in relation to those volunteers working with children in supervised settings and those working with children in unsupervised settings and the implications this will have for determining who qualifies and who does not qualify as a mandated notifier within organisations where both types of volunteers provide services directly to children.

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21 Submissions 1, 12, 37, 66, 95, 100, 139, 143, 196. (For names see Appendix on Submissions Received)
22 Submission 31 Ms Jen Tranter.
23 Submission 37 Ms Annie Leo.
In view of this difficulty, it was considered preferable to adopt a streamlined approach and support the inclusion of all volunteers who work with children, given the difficulty that is presented in determining which volunteer qualifies and which volunteer does not. A further reason for adopting this approach is the consideration of the relationship that volunteers may develop with children irrespective of whether they are working in supervised situations or not and the opportunity that this may present for liaising with children outside the place of service.

YACSA has specifically recommended that South Australia follow the provisions of the New South Wales Children (Care and Protection) Act 1987 to include as mandated notifiers anyone who:

(a) in the course of his or her professional work or other paid employment delivers health care, welfare, education, children’s services, residential services or law enforcement wholly or partly to children under the age of 16 years or
(b) holds a management position in an organisation the duties of which include direct responsibility for or direct supervision of a person referred to in (a) and that person has reasonable grounds (that arise as a consequence of their employment) to suspect that a child is at risk of harm.

This proposed amendment would exclude volunteers who are currently included within the South Australian Children’s Protection Act 1993 where they are employed in settings providing services to children, although it eliminates the requirement to separately list each profession required by law to make a report. However, it clearly excludes other classes of persons such as ministers of religion and people supervising children in recreational, sporting or other bodies that would not fall within the scope of the NSW legislative provisions but for whom there has been strong endorsement for their inclusion in the provision from submissions.

It was also noted that some service providers in before-school, after-school and vacation care were not necessarily incorporated as mandated notifiers under the current legislative provisions. This exclusion appears to be one made on technical legal grounds rather than the principle of employment within an organisation providing services to children.

**LEGAL PROFESSIONALS**

A number of submissions suggested that legal professionals be included as mandated notifiers. However, legal professional privilege and public interest principles which are the foundation of the privilege, prohibit this from being feasible.
**RECOMMENDATION 54**

That the *Children’s Protection Act 1993* be amended to include:

- all church personnel including ministers of religion (except in confessionalss)
- all individuals in services providing care to or supervision of children
- all volunteers who are working with children (including both volunteers working in a supervised and unsupervised settings)
- all people who may supervise or be responsible for looking after children as part of a sporting, recreational, religious or voluntary organisation as mandated notifiers.

**Reason**

It is preferable to adopt the broadest approach to mandated notification because of legal technical issues associated with determining who is a mandated notifier and who is not.

**COMMONWEALTH OFFICERS**

The issue of Commonwealth public servants such as Centrelink social workers who have regular contact with families with young children and young people who may be at risk being made mandatory notifiers was raised in two submissions. These workers come into contact with many of the same individuals and families who constitute FAYS or Housing Trust clients. For example, their clients are often young people who may disclose child abuse or sexual abuse and women with young children seeking financial support for reasons of domestic violence.

Whilst social workers are specifically identified as a profession mandated to notify under the *Children’s Protection Act 1993* social workers employed by the Commonwealth consider that the provisions of the *Commonwealth Privacy Act 1988* prevent disclosures. However, this view is regarded as a misinterpretation of the *Privacy Act 1988* that does not necessarily prevent disclosure made in accordance with the law or legislative regulatory provisions. However, regulation 7 (10) of the *Public Service Regulations 1935* would appear to present some difficulty

> An APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head’s express authority, give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

Under the Australian Constitution, where there is a clear inconsistency between Commonwealth and State law, Commonwealth law overrides State legislation. A special protocol has been developed to overcome this difficulty between Centrelink and FAYS on homeless young people but the application of this protocol is complicated by the variation in definitions of homeless young people used by Centrelink and FAYS. Commonwealth officers may seek to notify under State law but must seek special permission from a designated Commonwealth officer or their manager before they make a disclosure or they can choose to do so anonymously.

25 Submissions 133 Youth Affairs Council of SA; Submission 143 Office of Youth.
This matter of coverage of Commonwealth officers as mandated notifiers was raised in the South Australian Government Task Force on Child Sexual Abuse 1986 that noted:

Commonwealth legislation, as it stands, prohibits Commonwealth public servants from reporting.26

It made the following recommendation:

The Task Force recommends as a matter of urgency a national working party should be established comprising Commonwealth and State representatives to address the issue of reporting by Commonwealth public servants and to formulate practical solutions. The Task Force recommends that such a working party be convened by the State Attorney-General.27

The limited progress on this issue since 1986 is a concern.

RECOMMENDATION 55

That the DHS in conjunction with the Attorney-General’s Department pursue the issue of establishing an appropriate agreed policy position between States, Territories and the Commonwealth on the exchange of information where there is a child protection concern ensuring appropriate coverage of relevant Commonwealth employees.

Reason

Whilst there are avenues for Commonwealth public servants to make disclosures on child protection concerns to State child protection authorities, the current legislative situation does not facilitate an adequate focus and clear role in child protection for Commonwealth service providers. The Commonwealth is a signatory to the UN Convention on the Rights of Children and under the Convention has obligations to protect children. The recurrent difficulties faced by Commonwealth public servants in taking action on a child protection concerns can be redressed through an agreed policy between the relevant parties. Any agreed policy should also take into account relevant classes of Commonwealth employees who should be subject to the agreed policy, such as social workers employed by the Department of Defence.

RECOMMENDATION 56

That consideration be given to developing a protocol between FAYS and Centrelink with the objective of improving child abuse reporting arrangements.

Reason

Until such time as the legislative issues regarding Commonwealth employees are determined there is a need to develop a protocol between FAYS and Centrelink to address improved communication about child abuse and neglect.

27 Ibid.
RECOMMENDATION 57

That guidelines be developed by DHS/FAYS which provide guidance to organisations about how to record the fact that a notification has been made about an individual child or young person in a way that does not reveal the notifier's identity but ensures the child and their family receives appropriate care and support from the organisation. Training on these guidelines be incorporated into mandated notifier training.

Reason

Appropriate confidentiality of a notifier's identity is important but at the same time the child and family need support which includes recognition of this factor.

RECOMMENDATION 58

That DHS/FAYS develop a policy for Government, non-Government and community organisations on how they will record that a notification has been made about a child and young person without disclosing the identity of the notifier and for ensuring the confidentiality of such records.

Reason

Whilst confidentiality in making a notification relates to individuals, many are often undertaking an organisational service provider response as part of the service's responsibility in caring and protecting. The Act itself does not deal with either the reality or the necessity of this approach.

There should also be a guideline developed by FAYS that provides guidance to organisations about how to record the fact of a notification so that the notifier's identity is not revealed as such. Such an approach will ensure that Government, non-Government and community organisations are able to provide appropriate community-based protective support and care to the child or young person.
PENALTIES

Few submissions made comment on whether the penalty of up to a maximum of $2500 was sufficient to ensure those persons mandated to notify do so. One submission response was as follows:

Fining people who do not notify or increasing the penalty is NOT the solution to notification – many legally mandated reporters do NOT notify because they feel NO action will be taken … or they will be involved in “unpleasant court battles”. Recently, I referred a parent to a child psychiatrist – who informed the parent he was not prepared to be involved in legal battles. The child had already disclosed (sexual and physical) abuse on numerous occasions. The child had even run to the police station for protection … he was returned to his abusive father and on each occasion was further abused because of the disclosures. FAYS had been notified on 12 separate occasions. Twice they had investigated and not proceeded… FAYS’ workers often receive reports in an adversarial fashion, which also means people are “put off” rather than encouraged to report! Reporting abuse is not an easy process… The level of frustration, dismay and disappointment in mandatory reporters is, I feel, a consistent factor in mandatory reporters making the decision not to report suspected abuse.28

The current system has clearly given rise to frustration and concern experienced by some persons about the effectiveness of the mandated notification system. This has relevance to the issue of penalties for non-compliance. One submission, however, indicated that the maximum penalty was not adequate. In stating this, the submission noted that all the circumstances needed to be examined in determining penalties and where some omissions were possibly deliberate and could have severe implications for the child, the present penalty was inadequate in these most serious cases.29

There is an increasing concern that civil action may be brought against mandated notifiers who fail to make a report of suspected child abuse. In the case of the Medical Board of South Australia v Christopoulos (No 1)30 which went before the Medical Practitioners’ Professional Conduct Tribunal, it was found that there was a failure to properly medically assess a child leading to a subsequent failure to notify the child protection authorities. This then deprived the child at high risk from a timely intervention. Liability was found on the basis of professional misconduct and not on the basis of civil liability proceeding from the Children’s Protection Act 1993.

In another case, the Ringwood Victorian Magistrates Court dismissed a charge brought against a primary school principal under the Victorian child protection legislation’s mandatory provisions for failing to report on the basis that whilst he had become aware of the allegations and investigated the matter, he was unsure of their substance and had not formed the necessary belief that the child had been abused. In this case, the civil liability of the notifier to notify was therefore dismissed for another reason.31

There is a view that the ultimate purpose of the legislation is not to prosecute people for failing to report but to protect children from the harm or risk of abuse. This view appears to be supported by a decision of the Holden Hill Magistrates Court when the court did not record a conviction against a social worker who pleaded guilty to failing to report her suspicion of child abuse to the child protection authorities32. Nevertheless, the case also demonstrates the real risk for mandated notifiers being prosecuted for failing to make a notification where the case is beyond just “reasonable suspicion”.

28 Submission 38 SPARK Resource Centre.
29 Submission 139 (1) SA Commission for Catholic Schools on behalf of Catholic Schools.
RECOMMENDATION 59

No changes to the penalty for failure to notifier by those mandated to notify, are deemed necessary.

Reason
An increase in the penalty is not proposed but mandated notification training should highlight the potential adverse outcome for children if there is a failure to notify as well as any liabilities which may arise from a failure to make a notification – including the statutory penalty and those that may also arise from professional conduct tribunals.

RECOMMENDATION 60

That all mandated notifier training give appropriate emphasis to the consequences of failure to make a notification covering any case law, penalties and the significance of such failure under any codes of professional conduct or practice.

Reason
The provision of detailed information on law to professionals often enhances their understanding of the seriousness of identifying child abuse and neglect and making notifications.

TRAINING QUALITY AND AVAILABILITY

The system of mandatory notification depends on two factors: how well those persons who are mandated notifiers understand their responsibility to notify their suspicions that a child is at risk of abuse and their capacity to identify child abuse and neglect. This approach ensures that mandated notifiers improve the quality of the information they provide, are clearer about the grounds for reporting and that fewer reports are made over time but with a greater substantiation rate. The cases cited in the section of this report dealing with the liability of notifiers highlight one or all of these issues.

The availability and uptake of mandated training by mandated notifiers remains of fundamental concern. It is apparent that there are a significant number of mandated professionals who have not received training nor is this training sufficiently updated on a regular basis and to the extent required to promote skillful quality reporting.
The NSW Report on *Fatal Assault of Children and Young People* noted in its findings that there were instances where children were not notified to the child protection authorities, "*despite clear warning signs that the child’s safety was in jeopardy*". These cases involved a failure by health professionals to notify because they did not "*focus on the ongoing safety of the child*" or did not "*appear to have considered the social context of the mother and her child’s safety*". It also noted the failure to identify children at risk in certain communities, particularly multicultural communities, because of the failure of services to reach many people in these communities.

Under section 8 of the *Children’s Protection Act 1993*, the Minister responsible for the Act (the Minister for Social Justice) must endeavour to ensure that the following occurs:

Provide, or assist in the provision of, education to persons who are required to notify the department on forming a reasonable suspicion that a child is being abused or neglected.

The accessibility and availability of training remains a significant issue for mandatory notifiers and was raised in many submissions. The key issues included:

- provision of training to all mandated notifiers
- coverage of training for all mandated notifiers and
- adequacy of training.

The impact of training on the behaviour of mandated notifiers has been an area that has received some focus in the research literature. As noted by Stanley, Goddard, Saunders and Tucci:

*The formal system of child protection is almost totally reliant on the identification of children in need of protection by the general public and especially professionals who come into contact with children. ...there is, as yet, little understanding about how community professionals make the decisions about initiating protective services for a child.*

There is no current legislative requirement for professionals working with or in contact with children to undergo training in identifying or reporting suspected child abuse and neglect. One of the issues raised in submissions is that if the law requires mandated notifiers to make reports of suspected child abuse, then the law should equally make it a requirement that those individuals be advised of their legal responsibilities as mandated notifiers and be required to undergo training. The Review notes that the person making this comment noted that although she was a health professional working with children, she had only realised that she was a mandated notifier through the Child Protection Review Discussion Paper. One of the most significant areas where there are low levels of training for mandated notifiers is in health services.

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34 Ibid.
35 Submission 135 Name Not For Publication.
38 Submission 135 Name Not For Publication.
Another issue highlighted in the submissions was training for volunteers. Training for volunteers in some organisations can be a significant challenge. For example, the Playgroup Association of South Australia which supports playgroups organised through community based volunteers (who are usually parents themselves of very young children), raises serious concerns about accessing training for this geographically widespread group and delivering training to people who have varying skills, knowledge and qualifications.

It was also noted that:

Training for mandatory notification is inadequate, in as much that many mandatory reporters (eg. child care workers) believe that reporting will cause “people to go to jail” when the reality is the opposite. It would be more honest and transparent for all training to include the legal loopholes that allow perpetrators to escape and children to remain vulnerable… The child’s view is negated in the present process.  

**RECOMMENDATIONS 61**

That DHS/FAYS expand the capacity of its Mandated Notification and Consultancy Services to provide:

- an upgrading of the training content and retraining of registered trainers in South Australia
- additional targeted training to new groups of mandated notifiers and to volunteers
- additional support for the coordination, marketing and monitoring of the provision of training in liaison with service providers and other agencies
- more flexible delivery methods to ensure that mandated notifiers in Aboriginal services and communities, rural and remote areas and multicultural community organisations are able to access appropriate mandatory notification training and
- appropriate support during training for participants.

That all mandated notifiers receive training that is both multi-disciplinary and also tailored to their particular service context.

**Reason**

There are several objectives in ensuring the provision of mandated notifier training to all mandated notifiers. They include:

- develop the skills of the mandated notifier to identify when child abuse and neglect is occurring and to make a report to child protection authorities
- create an understanding of the role of mandated notifiers in the child protection system as a whole and where the process of notification fits within this system
- promote understanding of the value of informal or formal community based support for a child who may be at risk of abuse and neglect and their family as an important part of early intervention in child protection and the need to build this community based child protection focus in all settings such as Schools, general practice, local Government, childcare services, etc. and
- develop a focus on the ongoing safety of a child within their particular service context and practice, particularly where this service may focus primarily on adults who constitute the principal client for the service.
RECOMMENDATIONS 62

That FAYS develop a model policy to support all employers providing services to children whose staff would be required to make a notification under the *Children’s Protection Act 1993*. This policy is to provide guidance on developing and implementing policies and procedures to ensure that all staff, paid or volunteer, who are covered by the mandatory reporting provisions:

- are aware of their responsibilities as mandated notifiers
- ensure mandatory reporting training is available for all staff
- have undertaken training on mandatory reporting
- a register of all staff that have undertaken mandatory reporting training and those that have not yet received training.

**Reason**

If adopted, the Recommendations made in this Review will widen the scope of individuals that will require training. A process of advice and support to agencies on mandatory reporting requirements employing these individuals will be required.

RECOMMENDATION 63

That DHS expand the availability of mandated notifier training and increase its affordability to non-Government community agencies.

**Reason**

The expansion of mandated notifier status among professionals and members of the community will require an expansion in the availability of mandated notifier training. The current training system cannot adequately meet current need and demand or respond to the new demand that will emerge.
INTRODUCTION

This chapter:

- summarises the general nature of submissions
- acknowledges the Semple Report with its associated recommendations
- makes further recommendations.

This chapter should be read in conjunction with Chapter 12, Children and Young People Under the Guardianship and Custody of the Minister.
GENERAL DISCUSSION

In March 2002, just prior to the announcement of this Review by the incoming Government, Des Semple and Associates released its report of the *Review of Alternative Care in South Australia*.1

The Semple Review had been commissioned by the previous Government with a discussion paper released in November 2001. This report was the culmination of submissions and comprehensive discussions held with key persons and organisations, resulting in a series of recommendations.

The Semple Review of the alternative care system in South Australia was timely. South Australia, like other States, had seen a significant upsurge in demand for alternative care services. Recent history in South Australia includes a substantial restructure of alternative care services in December 1997. The restructure resulted in the contracting out of almost all Aboriginal and non-Aboriginal alternative care services to the non-Government sector through competitive tenders. The competitive tender process lead to Anglicare SA and Aboriginal Family Support Services (AFSS) being the sole non-Government suppliers in the metropolitan areas.

In the country regions, the contracts of services were supplied by Anglicare Community Care, AFSS, Pt Pirie Central Mission, Centacare Whyalla, and Pt Lincoln Aboriginal Health Service located in particular country regions. These contracted organisations are referred to as Alternative Care Service Providers (ACSPs).

After December 1997, the process of placement was that FAYS, through its District Centres, referred all children requiring a placement in alternative care to the Central Alternative Care Unit (CACU) located in the DHS. That unit would in turn liaise with ACSPs in order to obtain an appropriate placement or alternatively provide an appropriate Family Preservation Service. The primary case manager role for the child and family remained with FAYS.

The range of alternative care services required to be provided included emergency, short- and long-term care and respite care.

The ACSPs were responsible for providing a placement, recruitment of carers, their assessment, training and ongoing support. In addition to liaison, CACU was responsible for managing data monitoring, children’s payments and the brokerage funds used to support the development and maintenance of placements and family preservation services.

Following this restructure an evaluation was conducted in 1999. This followed earlier research undertaken by DHS and Flinders University commencing in 1997. The research was conducted in two parts. The first involved a quantitative study of evaluation over a three-year period. The second involved the participation of focus groups. In 2001 an article based on the research was published 2 which included consideration of the purchaser-provider model and difficulties with its application to the alternative care demands and pressures in South Australia.

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The combination of the evaluation and the published article have identified common problems with the current alternative care system in South Australia. They include:

- an increase in placement demands for Aboriginal children coupled with a decreased ability to provide culturally appropriate care for most referrals
- an increase in the demand for placements particularly for children with high needs
- a growth in demand for placements but at the same time a scarcity of appropriate placements
- increased breaking down in placements resulting in instability for children
- difficulties in accessing family support services leading in turn to an increase in placement demand
- reduced communication between FAYS caseworkers and carers
- inadequate information transfer to ACSPs and significant increase in the workloads of staff for FAYS and ACSPs.

The Semple Review found that many of these issues continued to apply in 2001.

The report made 40 specific recommendations. Without detailing each of them a number of thematic recommendations were made:

- Establishment of a peak Alternative Care Advisory Committee to undertake responsibilities as outlined in the report.3
- Establishment of an Aboriginal Family Advisory structure to ensure that FAYS’ policy planning and service development is culturally relevant and sensitive to Aboriginal communities, families and individuals. This process was linked to the establishment of Aboriginal Family Care Committees and Aboriginal Family Care Workers.4
- Clarification of responsibilities and communication strategies between the Department and all stakeholders.5
- Training of FAYS staff, and stakeholders.6
- Priority to be given to family preservation and placement prevention.7
- Setting up of collaborative strategies to develop a Statewide foster care recruitment project.8
- Provision of more flexible services for alternative care including individual service packages, small group care services and additional specialist services for children and young people.9

Not surprisingly, in view of the timing of this Review with the Semple Review, many of those themes were reflected in submissions received and consultations conducted in this Review:

- Foster carers do a “heroic job”10 but they do not receive sufficient support and training.11
- There are insufficient placements available for all the out-of-home care needs such as respite, emergency, short- and long-term care.12
- Many children who are the most vulnerable in the community have suffered “system abuse” as a result of multiple placements, inappropriate placements and lack of adequate financial support.13
- A realistic innovative approach is required to be taken to ensure successful foster care recruitment and retention strategies.14
- There is a need for a professional status for foster carers recognising that historical reliance on volunteers is inadequate to deal with complex and significant needs of children requiring care. This is to include specialised skilled and appropriate foster carers for the highly complex and disturbed children.15

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3 Recommendation 3.
4 Recommendations 6 and 7.
5 Recommendations 8, 10, 12, 16, 17, 23, 28, 30.
6 Recommendations 13, 14, 33.
7 Recommendations 21, 22, 23, 24.
8 Recommendation 36.
9 Recommendations 37, 38 and 40.
10 Submission 80 Dr Nigel Stewart.
11 Submissions 52 UnitingCare, Port Pirie Central Mission; 61 Infant Mental Health Association (SA Branch); 99 Ms Julie Modra; 101 Association Major Community Organisations SA (AMCO); 192 Not for Publication.
12 Submission 58 Nina Weston, Foster Care Consultant.
13 Ibid.
14 Ibid.
15 Ibid.
There should be preparedness to pay foster carers as professionals rather than relying solely on voluntarism.\(^{16}\)

The best interests of the child should be the primary consideration in case management. There is a need for intensive support to assist with access arrangements with parents, so long as that remains in the best interests of the child\(^{17}\).

There is an over-representation of Aboriginal children in alternative care.\(^{18}\) In addition, concerns were raised as to the quality of some of the placements in Aboriginal care.\(^{19}\)

There is no compulsory established training module regarding multicultural issues in relation to foster care placements for both foster carers and social workers.\(^{20}\)

There is a need to listen to children's views in considering the approach to be taken in general and in specific cases of alternative care placement.\(^{21}\)

There is a need to provide a broad flexible range of alternative care.\(^{22}\)

There is a need to promote, encourage or undertake research into alternative care.\(^{23}\)

There is a need to ensure that structures are in place for independent monitoring and accountability of the Minister's functions when providing alternative care services to children and young people.\(^{24}\)

Respite care is to be combined with parenting classes, financial support and emotional support.\(^{25}\)

The Semple Review has made findings and recommendations which appear to be apposite and provide practical solutions to some of the dilemmas faced in providing alternative care.

**RECOMMENDATION 64**

That this Review in general endorses the principles and concerns expressed in the Semple Review and recommends implementation of its recommendations.

**Reason**

The Semple Review was comprehensive and was specifically targeted to Alternative Care and recommendations in that Review appear apposite.

\(^{16}\) Ibid; Submission 192 Not for Publication.

\(^{17}\) Submission 61 Infant Mental Health Association (SA Branch).

\(^{18}\) Submissions 95 South Australian Council of Social Services; 113 Public Service Association; 192 Not for Publication.

\(^{19}\) Submission 175 Women’s & Children’s Hospital, Child Protection Services.

\(^{20}\) Submission 58 Nina Weston, Foster Care Consultant.

\(^{21}\) Submission 61 Infant Mental Health Association (SA Branch); Submission 131 Children’s Interest Bureau Advisory Committee; Submission 192 Not for Publication.

\(^{22}\) Submission 58 Nina Weston, Foster Care Consultant.

\(^{23}\) Ibid.

\(^{24}\) Ibid.

\(^{25}\) Ibid.
In this review, there was distrust expressed by a number of persons and organisations about the overall appropriateness of the funder-purchaser-provider split and the competitive tender process. It was expressed in the following manner in one submission:

*Competition in real markets drives down prices but in quasi-markets in welfare services the effect is to break communication between the key players. The customer in quasi-markets is the Government not the consumer of the services. Competition has the perverse effect of distorting communication between the contractors, who want to have their contracts renewed, and the department, which has to rely on the contractors to find out what is happening at the coalface because it does not ‘sell’ or provide its services directly to its customers. When things go wrong both contractors and the department have every incentive to shift the blame on the other.*

The Semple Review report referred to this same problem as

*Relationships have deteriorated and a culture of blame has developed between the different stakeholders.*

The Semple Review did not recommend that the funder-purchaser-provider model be abandoned in the light of the difficulties expressed, but instead recommended an approach of inclusiveness, collaboration and transparency in the arrangements through mechanisms such as the establishment of the Alternative Care Advisory Committee. The Report also stated that the submissions from both foster carers and the non-Government sector “were clear” that the responsibility for family care should not return to the FAYS District Centres.

However, the difficulty is that the model itself is significantly responsible for a culture of blame. If there is not to be a return to FAYS taking prime responsibility (which in all the circumstances is understandable), there may need to be a variation in the methodology for the tender process coupled with clearly articulated performance requirements which are monitored and assessed, which would allow delivery of the services through a broader range of ACSPs. Further the responsibility for the provision of services to children in high need and whose requirements demand specialised care, should not be automatically delegated to non-Government ACSPs but through Individual Packages of Care (IPCs) to appropriately qualified and paid carers which may not be necessarily identified through current ACSPs.

**RECOMMENDATION 65**

That the current process of competitive tendering be modified in the future to encourage realistic quality participation by an expanded number of Alternative Services Care Providers (ASCP’s) in conjunction with prescribing and monitoring of performance standards for those selected as an ASPC.

**Reason**

The significant distrust expressed to this Review about the funder-purchaser-provider split, appears to merit modification to the competitive tendering process. In addition, consistent concern expressed to this Review was the need to expand the pool of foster carers and encourage them to see their role as being not only committed, compassionate people but also performing a professional quality service to children in need.
THE STATE AS PARENT

Of particular interest to the Review is the notion put forward by Diamond and Ash (2000) regarding the difficulties of the State in providing a parenting role.

They contend that:

...whilst the State has an obligation to support those who parent, the State itself cannot ‘parent’. This raises questions about the meaning and usefulness of the recently coined ‘corporate parent’ terminology... State resistance to fully handing over to carers the reasonable activities of parenting and associated adequate resources results in children in care, for whom the State is responsible, often being inadequately recognised in all their ecological environments. The carers are not really able to provide parenting and the State never recognises its own critical role is not being a parent but in supporting parenting by others.30

Carers are part of the complex system of people who undertake some or all of the parenting, however, in an environment of ‘purchased services and contracts’ this role is often reduced to cover the provision of accommodation and nutrition only,31 rather than the more intangible ‘services’ such as providing a child with a sense of belonging, enhancing their self-esteem and providing nurturing:

It is as if children in care somehow managed to have these met, when no one in the care system is resourced or acknowledged to meet these needs.32

Research undertaken by the University of New South Wales Social Policy Research Centre The Costs of Caring (2002) found that the low levels of subsidy, paid by States/Territories to foster carers, were not meeting the costs of children in care. The concerns of carers surveyed ranged across a wide spectrum of issues including:

- inadequacy of standard subsidies to meet basic care costs
- difficulties accessing, arranging and obtaining additional funding for services
- high levels of stress experienced by both carers and agencies in attempting to meet the needs of children
- reliance on public health services to meet child’s needs resulting in long delays for services (six to 12 months) for obtaining specialist services
- high turnover of people caring for children with substantial numbers of carers coming and also leaving fostering over a 12-month period
- nature of foster care being not only arduous but also at times hazardous for both carers and their families
- lack of acknowledgment, respect and support for carers
- difficulties in rural and regional areas in accessing and arranging additional services.33

Submissions to this Review were equally concerned about the adequate resourcing to alternative care.

There is an urgent and critical need for realistic funding to be made available as to ensure children/young people and their families are provided with an effective team of skilled and knowledgeable foster carers and social workers when family-based care placements are required.34

31 Ibid.
32 Ibid.
34 Submission 58 Ms Nina Weston.
Currently, funding to service providers, Family and Youth Services... and the advocacy bodies (including CREATE, SAFCARE and the Carer's Advocate) are under-resourced, which has a direct impact on the quality of care received by children and young people. Further, the amount allocated carers and specialist services when they care for individuals is far under the actual cost of care.35

Increase the pool of foster parents to eradicate the current practice where children are moved from one temporary foster home to another for an extended period...36

The need for proper supports and training was also raised as a concern:

All too often the community sees foster children as being outside the ‘norm’. The children carry a social stigma that causes the community to condemn them without hearing, in situations ranging from school performance to sporting achievements. Foster parents are variously seen as frustrated people who are unable to find ‘worthwhile’ employment and justify their existence by interfering in the lives of normal families...37

Support structures for foster carers in the alternative care system and monitoring of placements need to be increased, so as to ensure that any issues or risks are addressed through early intervention strategies prior to crisis. Crisis can lead to abuse of children and placement breakdown – both of which, we believe, can be avoided. Our experience has also been that new carers ...need access to intensive support structures.38

The needs of children who are unable to live at home have become more complex in our society. Many are already in a traumatised state by the time of placement and have significant behavioural problems. It is too simplistic to think that these difficulties can be managed without training and support. The preparedness to take on the custody of a foster child should be treated as conducting a professional service and be appropriately reimbursed.

Analysis of the system by J Barber in The Slow Demise of Foster Care in South Australia, points to critical fractures in the system that need urgent and high level attention.

The State is not the only party withdrawing from care, so too is the community at large. The supply of volunteer carers, which is already critical, will shrink still further as this generation of carers enters old age. It is an irony of the purchaser-provider model, with all its talk of quasi-markets and commercial contracts, that its application of out-of-home care ultimately relies on volunteer labour.

As the supply of this labour shrinks, the State has only a limited range of options before it. Either it provides more support services and higher levels of remuneration to potential carers, it reverses the decline in residential care, or it reduces the numbers of children accepted into care.39

A consistent concern expressed in this Review is the need to expand the pool of foster parents and encourage them to see their role as being not only committed compassionate people but also performing a professional quality service to children in need. Gone are the days when all that was perceived to be required of a foster care was a “big heart”.

35 Submission 167 Create Foundation.
36 Submission 52 UnitingCare, Port Pirie Central Mission – foster carer’s comments.
37 Ibid.
38 Submission 67 Anglicare.
RECOMMENDATION 66

That the Government acknowledge the increasingly specialised nature of family-based foster care and increase the current subsidy payments to carers in recognition of this.

That the Government urgently consider further development of the pool of specialised professional carers for children and young people with significant and high care needs.

That specialist training and education be provided on a regular basis for all carers and that this training be compulsory.

Reason

Many children and young placed in care have significant needs which over time places not only emotional, but financial stress on many foster carers. Current subsidies often do not meet the high costs of care. Subsidies need to be increased commensurate with expenditure.

Further, that for some children and young people who have very complex needs, family based foster care is not an adequate option. In these situations the State must provide the type of care that meets the specific needs of the child or young person in question. South Australia must urgently extend its range of care options including extending the pool of specially trained professional carers and developing residential or cottage type facilities staffed by specifically trained carers.

All carers must receive adequate and specialised training to ensure carers are equipped to deal with a variety of care situations.
Chapter 12
Children and Young People Under the Custody or Guardianship of the Minister

INTRODUCTION

This chapter provides:

- a brief overview of current arrangements for children and young people under the custody or guardianship of the Minister
- addresses some of the issues that have arisen during the submission and consultation process
- makes specific recommendations to improve outcomes for children and young people in these circumstances.
Children and young people under the Custody or Guardianship of the Minister require special attention. Every year a number of children and young people unable to be cared for by their family of origin are placed under a ‘guardianship or custody’ order. For a child or young person to be under such an arrangement, an application for a care and protection order must be made in the Youth Court. If the Court finds that the grounds for the application are accepted and an order should be made, the Court may grant custody or guardianship to the Minister (and others). (See also Chapter 23).

The Minister then assumes particular responsibilities and powers and may make provision for the care of a child in any of the following ways:

- placing the child, or permitting the child to remain, in the care of a guardian of the child or some other member of the child’s family
- placing the child in the care of an approved foster parent or any other suitable person
- placing the child in a home or in any other suitable place
- making arrangements for the education of the child
- making arrangements for medical or dental examination or treatment of the child or for such other professional examination or treatment as may be necessary or desirable
- making other provisions for the care of the child as the circumstances of the case may require.

In making provision for the care of a child, the Minister must have regard to the desirability of securing settled and permanent living arrangements for the child.

As at 30 June 2002 there were 1286 children and young people under a guardianship or custody order. Of those, 557 children and young people were placed under an order for first time during that year.1

The State has a significant legal mandate to ensure appropriate care of, and a responsibility for, children in these circumstances to ensure they receive optimum levels of support and care. However:

...it is widely recognised that children and young people removed from their family of origin have much higher levels of need compared with others and many are likely to have suffered significant trauma associated with physical or sexual abuse, neglect or have experienced serious dysfunctional family relationships or abandonment.2

The evidence suggests that children who rely most heavily on State care, are most likely to have disorganised and unstable families and most likely to have disrupted and unreliable attachments to these families.3 Additionally, children who are in and out of care, or who remain in care for longer periods, are likely to suffer repeated placement breakdown. Diamond and Ash (2002) point out that:

These two scenarios, of fractured families and multiple placements, means that the vulnerable children do not have the dependable microsystems where, so necessary to healthy development, the child is treated as an individual with individual needs, and not as a generic child.4

In various reviews5 including this one, foster carers, social workers, education specialists and health workers have often expressed frustration at the perceived incapacity of the system to provide the level of support required.

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1 DHS Data Warehouse.  
4 Ibid.
It is of significant concern that there is a crisis in the alternative care system. ...Children and young people under the guardianship of the Minister do not have priority access to health, dental or other specialist care. ...There is quite simply insufficient resources available to ensure quality of care.  

The goal of alternative care should be to approximate as near as possible the nurturing and protecting environment of the family. In its interaction with the medical and psychiatric systems it should mirror the level of interaction expected of parents. It is frequently and repeatedly the case that children under the guardianship of the Minister who present for such treatment and assessment, a process which is often occurring after hours, do not have the level of available information, basic to a medical assessment by a known responsible adult.

This Review supports the Semple Review Recommendation No 9, that:

DHS with stakeholders establish a project to examine the special needs of children in care and develop specific strategies to ensure they receive priority access to the range of relevant services provided/funded by the portfolio...

and also agrees with the Social Welfare Services Planning Framework recommendation that DHS:

...adopt a 'whole of department approach' to providing adequate care and services for the children and young people under the Guardianship of the Minister as a matter of high priority.

Further this Review recommends that children and young people under the Guardianship or Custody of the Minister are a 'whole of Government' responsibility and, as such, demand priority attention across all relevant sectors. It is for this reason that one of the first areas of priority funding recommended for attention by the Child Protection Board, is for Guardianship of the Minister children and young people.

Further it is suggested that funding for this specific group of children and young people must be used in flexible, sustainable and practical ways to reach the key objectives of improving outcomes across all the life domains.

**RECOMMENDATION 67**

That the proposed South Australian Child Protection Board facilitate and promote a 'whole of Government' approach in recognition of the State's responsibility and duty of care to children and young people under the Guardianship or Custody of the Minister. Priority access to services across all relevant sectors is seen as an essential first step.

**Reason**

Children and young people under the care of the State are some of the most vulnerable and disadvantaged. The State cannot separate children and young people from their families of origin on the basis of inadequate care and then fail itself to provide appropriate care and supports. Failing to commit resources and provide timely services compounds deficits and marginalises further those already disadvantaged.

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6 Submission 155 Children’s Protection Advisory Panel.
7 Submission 35 Name Not for Publication.
8 Life Domains include 1) Education & Employment 2) Health 3) Relationship with Caregiver Family 4) Connect with Family/Kin 5) Identity 6) Emotional/Behavioural 7) Social Skills/Peer Relationships 8) Life Skills
REUNIFICATION, LONG TERM CARE, PERMANENCY AND ADOPTION

There were legislative changes contained in the Children’s Protection Act 1993 which emphasised the reunification of children and young people with their families, as well as placing a major focus on family preservation.

Many welcomed this change in direction, believing efforts to preserve and strengthen family attachments would in the long term be in the child’s best interest. Advocates for this shift pointed to research that suggested that children often returned to their family of origin once leaving care. Further, that fragmented and disrupted alternative care placements did not provide children with the emotional and psychological wellbeing required for healthy development and the outcomes for many children in care were poor. This added greater weight to the need to preserve families and ensure reunification.

Whilst the need to preserve and strengthen families is fundamental to a broad child protection agenda, those children who by dint of birth find themselves in abusive, destructive and dysfunctional households, have a right to protection, and they must take precedence over parent’s right to remain principal carer.

Efforts at reunifying children with their families of origin have been actively pursued, often as a result of short-term orders being issued by the Youth Court. Reunification and family preservation efforts have resulted in a significant increase in activity for FAYS9 however, there have been questionable results in such attempts.

As one submission states:

Many would argue that the legislation saw a diminution of children’s rights and the inappropriate empowerment of abusing parents... The child’s right to protection from harm and to adequate development should supersede all else, including family ties.10

Many studies undertaken in Australia and overseas point to difficulties with attempts to reunification. Studies undertaken by FAYS in 1999 indicate that

- most children (82.5%) are reunified within two years
- a significant proportion (37%) do not remain at home permanently
- outcomes are mixed for those who do return home and
- a child’s chances of returning diminished significantly when parental problems are complex and entrenched and court action is required.11

Scott (2001) commented that the reduction of large numbers of children coming into care and more returning home was a positive move. Nevertheless, she argued where reunification has repeatedly failed or cannot occur within a time frame for the child’s adequate development there should be no further delay in securing stable alternative care for the child.12

Children and young people for whom reuniting with their family of origin is not possible need stable, secure and long-term placements. This is particularly the case for small children who must have secured placements within 12 months and where families cannot make the necessary changes to ensure the child is not at risk of further harm.

9 Submission 179 Family & Youth Services.
10 Submission 130 Ms Anne Nicolaou.
The planning processes associated with establishing and maintaining secure permanent care is referred to as ‘permanency planning’ and can be defined as follows:

The process of taking **systematic, prompt and decisive action** to maintain a child in a permanent and stable living arrangement with his or her own family, or if that is not possible, to secure for the child a permanent living arrangement through placement with relatives or placement with an adoptive (foster) family. Permanency planning recognises and responds to the critically important need of children to establish permanent bonds and nurturing family relationships.\(^{14}\)

Many submissions were concerned about the lack of proper long-term permanent care placements and the high levels of placement breakdown.\(^{15}\)

*Priority (needs) to be given to securing of settled and permanent living arrangements.*\(^{16}\)

**A greater focus on permanency planning as a measurable case management tool, is needed. Children must be freed from continual returns to a long-term dysfunctional family. With the slow but sure demise of adoption, the large number of foster care breakdowns and lower number of foster parents, ...a greater focus on long term care would produce better outcomes for children at risk.**\(^{17}\)

The issue of long-term permanent placement is recognised as critical to the emotional wellbeing of children. Others referred to a need for adoption and other permanent placement options to be placed on the agenda for discussion\(^{14}\), (particularly in relation to older children who may have been living with one foster family for many years but also for infants and young children where early planning for their future is warranted).\(^{19}\)

*There are significant difficulties in providing continuity of care for children in longer-term placements where the carer is supported by one agency and the child by FAYS. Consultation and feedback indicated that children in more stable long-term care in reality received little support or visits from their FAYS workers.*\(^{20}\)

**Unless the child has returned home, or there is a very high potential for the child to be returned to the care of the birth family in the near future, the court should proceed to guardianship order to 18 years. The emphasis should be placed on the requirement to provide a clear rationale why a long-term order should not be issued after two years in placement (slightly longer perhaps for an older child).**\(^{21}\)

**There needs to be a stronger emphasis on permanency for the child. A range of Permanent Care orders should be introduced, from Guardianship to 18, Guardianship to Other Person, and adoption. Adoption should be given serious consideration where it is very clear that a parent will never be able to safely care for the child.**\(^{22}\)

**Adoption should be an option available to a judge to consider when granting long-term guardianship order in the case of young children. It should not be required that reunification always be considered in children for whom long-term Care and Protection Orders are being sought.**\(^{23}\)

Recommendations in relation to securing permanent care arrangements are dealt with in Chapter 23.

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\(^{15}\) Submission 143 Office of Youth; Submission 26 Mr Vic Symonds; Submission 155 Children’s Protection Advisory Panel.

\(^{16}\) Submission 143 Office of Youth.

\(^{17}\) Submission 26 Mr Vic Symonds.

\(^{18}\) Submission 153 South Australian Law Society - Criminal Law Committee; Submission 179 Family & Youth Services.

\(^{19}\) Submission 155 Children's Protection Advisory Panel.

\(^{20}\) Submission 58 Ms Nina Weston.

\(^{21}\) Submission 179 Family & Youth Services.

\(^{22}\) Ibid.

\(^{23}\) Submission 160 Child Protection Services, Women’s & Children’s Hospital.
STABILITY OF PLACEMENT

The stability of a child or young person's placement is one important indicator of service quality, particularly for children in long-term care. Many children and young people will have more than one placement which may be entirely appropriate, as they may have an initial placement followed by a long-term placement.24

However, many children and young people in care in South Australia are not being afforded stable and secure placements, and placement breakdown is of serious concern.

Child protection systems must be committed to developing creative strategies to ensure the goal of stability and permanency is achieved effectively and early on in a child’s life in care. Various approaches can be utilised and need to emphasise the following:

- creating a non-adversarial relationship between the child, family, kin and FAYS, foster carers and other key partners
- maintaining important psychological and cultural ties between the child and the family of origin and community
- empowering birth and adoptive families, kin and foster carers to make choices and develop skills to improve outcomes for their children.25

It is seen as vitally important that priority attention is given to the long-term care arrangement of children and young people under the Guardianship of the Minister. This Review supports the Recommendation in the Semple Review to form an Alternative Care Advisory Committee who could generally monitor such circumstances.

RECOMMENDATION 68

That this Review endorses the formation of the Alternative Care Advisory Committee and suggests as a matter of priority that the committee consider the long term care arrangements for all children under the Guardianship or Custody of the Minister and determine what types of care options are required over the long term to ensure children and young people receive appropriate alternative care.

It is further recommended that the Alternative Care Advisory Committee auspice research on permanent care options which are needed, including the appropriateness of adoption for children and young people under the guardianship of the Minister. In doing so, such research will need to consider culturally appropriate approaches for Indigenous children and young people.

Reason

Children and young people need a family and there is no adequate substitute for stable, permanent family ties. Children who do not grow up in families where they have a sense of security often experience lifelong, detrimental consequences.26 Early separation and abuse/neglect may affect children's ability to securely attach to carers and further disruptions place these children at risk of developing insecure and disorganised attachments to foster parents.27 It is therefore critically important for children and young people to be provided with secure, permanent and nurturing environments, where carers are supported and specially trained to deal sensitively with children's needs. Planning for permanency is essential and consideration of the appropriateness of adoption in some circumstances may be considered to be in a child or young person's best interest.

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26 Ibid pp 5-9.
LEAVING CARE AND AFTER CARE

In 2001-2002 in South Australia there were 1286 children and young people on some type of care and protection order (for instance, custody order, guardianship order). Of those 223 were Indigenous children. There were 557 children admitted to orders and 646 children who were discharged from orders. The majority of the children discharged had been on an order of less than 12 months. Of those that left care by dint of turning eighteen this Review has been advised that there are often particular issues for this group of young adults.

Although technically adults, when children reach 18 and leave care there is evidence that many after-care issues remain after children and young people have been under the Guardianship or Custody of the Minister. Every year there are considerable numbers of children and young people who enter and exit care.

While all children who have been in care are of interest, it is particularly those children and young people who have been in care for long periods of time and their subsequent progress after leaving care, which is concerning. Submissions raised the following concerns:

For those who have left care, the lack of planning and proper transition out of care has resulted in a large number of ex-foster children, including those with intellectual disability, fending for themselves without support or the ability to look after their lives. They are among the homeless and forgotten young people. They are in refuges, emergency accommodation, second-rate boarding homes, nursing homes and psychiatric wards.

It is CREATE’s hope that this Review can draw attention to the unacceptable level of homelessness, and risk of homelessness, experience by young people after they leave the care of the State.

It is crucial that new provisions/strategies are introduced to properly address this problem that many young people are currently facing. Strategies need to go beyond simply putting them ahead of the line for public housing... as the wait at the head of the line is sometimes more than six months, which is six months too long.

Too many adults who are homeless have a guardianship background as a child. Four years ago, I conducted a formal study for FAYS, which showed that a third of homeless people had previously been in guardianship now had no job and next to no contact with family. Other studies show similar results.

Research undertaken by CREATE Foundation reported that young people experience anxiety and in some situations a sense of abandonment when beginning the process of leaving care. Some reported that they would be forced into independence before they felt ready and not be a part of the decision-making process regarding when and how they would leave care.

What is apparent is the capacity of FAYS to meet minimum standards for this group of young people, is often restricted by resource constraints. Some young people are provided with excellent support and transition planning, making their move from care to independent living successful. Others have not had similar success, and require high-level support, planning and coordination with other agencies.

28 DHS Data Warehouse.
29 Submission 58 Ms Nina Weston, (reproduced letter by Barb Smith, President, SA Foster Care Association).
30 Submission 167 Create Foundation.
31 Ibid.
32 Submission 26 Mr Vic Symonds.
33 Submission 133 The Youth Affairs Council of SA.
34 Consultation with Create Foundation young people.
It is a matter of priority that the Government provides this group of young people with appropriate resources and recognition of their particular circumstance. It is also critically important that young people are involved in transition planning and decision-making and that this is done recognising their capacity and developmental stage, not just their chronological age.

We are seeing young people being allowed to make life-changing decisions they do not have the experience or intellect to make. Uninformed decisions that no responsible parent would condone are encouraged as the ‘child’s right’ even though the (foster) family who have cared for them for many years can foresee the dire consequences of their actions. We are letting children and young people down badly...

...The sad part about these unfortunate young people is that many had stable foster homes and could have remained with their foster families or part of the family network, had the system not driven a wedge into relationships and failed to support them and their foster families with the provision of necessary resources, services and ongoing planning.35

In addition there are special needs for those children and youth who are intellectually disabled.

These youth are best served if FAYS and IDSC work collaboratively, with families in which abuse of children with intellectual disability has occurred... 17 year old people with intellectual disability in foster care need FAYS and IDSC staff to jointly develop a transition plan in preparation for the time when the person is no longer under the guardianship of the Minister and obliged to remain living in foster care.36

Cashmore and Paxman’s *Longitudinal Study of Wards Leaving Care* (1996), in NSW found that young people leaving care vary considerably in their circumstances and therefore their needs on leaving care will vary greatly. They do, however, require preparation and ongoing support. Support includes financial support, emotional support and information about their background.37

The study found some of the following issues:

- There needed to be flexibility in the age at which young people are discharged from care to take account of their needs, maturity, personal wishes and circumstances.
- Young people leaving care need to be able to do so as part of a gradual process.
- Within 12 months of leaving care, only one in four were still living where they had been just before they were discharged from care. On average they had moved three times.
- Just under half were unemployed 12 months after being discharged. Nearly half said they were having problems ‘making ends meet’ financially.
- Nearly one in three of the young women had been pregnant or had a child soon after leaving care.
- Just over half had completed only Year 10 or less of schooling.
- Many needed assistance and support to develop skills for successful relationships in adulthood. Over half of those formally in care had thought about or attempted suicide.38

In Britain, *The Children (Leaving Care) Act* was enacted in 2000. The thrust of the Act is to ensure that each child who is ‘looked after’ will have a personal adviser and a pathway plan by their sixteenth birthday. The plan is to be informed by an assessment based on need and cover the child’s transition to adulthood. The plan is to be subject to regular review irrespective of whether the child remains ‘looked after’ or has left care.
The Act provides for the continuation of the plan and contact by a personal adviser until the young person reaches the age of 21 and, where they were undertaking higher education and training, up until the age of 24 years.\textsuperscript{39} The adviser role is to coordinate services, provide support and formulate a pathway plan with the young person, which is reviewed every six months.\textsuperscript{40}

In NSW the \textit{Children and Young Person’s (Care and Protection) Act 1998}, outlines the Minister’s duties to assist young people in making the transition from care to independent living. Specifically, the Minister is to provide or arrange assistance for children of or above the age of 15 years and young persons who leave care until they reach the age of 25 years.

It is noted that there are no specific legislative obligations for young person leaving care in South Australia. This Review supports the notion of introducing specific legislation for children and young leaving care. This is dealt with in Chapter 23 (Child Protection Legislation).

Collaborative partnerships must be developed for children and young people exiting care. Transition planning, availability of post care packages of funding and ongoing review of are seen as priorities.

**RECOMMENDATION 69**

All children and young people under the Guardianship of the Minister leaving long-term care must have appropriate transition planning involving all key agencies and stakeholders including significant others and the young person. (See also Recommendation 183).

That specific funds be made available for planning transitional arrangements including an option of extended care payments to foster families if the young person remains in their care.

**Reason**

A comprehensive approach is required to address the poor outcomes of young people leaving care and to develop responses and services to improve outcomes. Models that incorporate permanency planning to adulthood are needed. Broadening the concept of ‘leaving care support’ involves redefining service delivery and expanding resources. It also necessitates a reorientation of existing systems and policies across Government to recognise the State’s responsibility for facilitating transitional care in a way that parallels parental responsibilities in the rest of the community.\textsuperscript{41}

\textsuperscript{40} Ibid.
INTRODUCTION

This chapter discusses:

- the nature of the risk
- the special needs of adolescents
- the views of adolescents
- recommendations for improvement.
The needs of adolescents at risk have been a constant theme of concern. Adolescence is a critical transition point in child and youth development and can be particularly challenging for many young people and their families. It is a time when young people push boundaries and explore ways of finding independence. For some young people it can lead to situations where risk taking becomes dangerous not only for the young person but also for the community.

Most young people manage the transition to adulthood without significant incident; however, this is not the case for some. The pathway leading to problems can have a number of origins. Simply stated, adolescents who have had histories including long-term welfare involvement, poor educational attainment, significant offending, for instance, are seen as a highly vulnerable group. There is also another group who upon reaching this transitional stage become highly vulnerable as a result of a range of behaviours or events including experimentation with drugs and alcohol, risky or harmful sexual activity, mental health problems, involvement in criminal activity thereby creating situations of risk which require high levels of intervention. Many of these young people find themselves homeless through behaviours or events and are at significant risk. It is vital to view this vulnerable group of young people from within the broad context of child protection.

Statistical evidence reveals that there are many children and young people who have great needs. During 2001-2002, there have been 1624 young people assessed as ‘adolescents at risk’ by FAYS, presenting with problems that included parent/child conflict; runaway; homelessness; drug and alcohol abuse; and mental health issues including suicidal tendencies. In the previous year, there were 1552 young people assessed in this category. There is also a significant number who come through other FAYS’ pathways (child protection, young offenders, alternative care) which may also be ‘classified’ as adolescent at risk.

Common concerns raised are that this group of young people do not have appropriate services targeted to their needs nor the high level of case management required to deal with the complex presenting issues. Services are either non-existent, uncoordinated, inappropriate or waiting lists are too long. There are also inconsistent responses and confusion as to roles and responsibilities of various agencies such as FAYS, schools and SAPOL. There are issues about confidentiality and information sharing between young people and their families as well as conflicts over their capacity to make critical decisions given their developmental age and stage.

There is a tendency to view this group of young people as ‘stand alone’ individuals, outside of a family or extended family context and, as a result, many young people may be inadvertently cut off from valuable support and care which their families can provide.

Comments mentioned during the Review include:

Where notification comes from agencies which are working with adolescents, FAYS very rarely accepts responsibility for the case, leaving the agency to carry the responsibility alone…Community agencies are frustrated in that they are unable to access a case management service for clients (both parents and adolescents at risk) from FAYS.1

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1 For example, those from abusive and neglect home environments, those that are predisposed to mental illness, and those that have difficulty working through this development stage.
2 Data supplied through DHS Data Warehouse.
3 Submission 53 Adelaide Central Mission.
In the same submission it is said there is an urgent need for resources to be dedicated to:

…responding to notifications involving adolescents.¹

State intervention in the family should be conducted without creating unnecessary conflict within families. Adelaide Central Mission Streetlink service works with young people aged 16 to 25 years and their children, who are street dependent. When notifications are made in regard to these children, often the result is that the child is removed from the nuclear family.²

Western Domestic Violence Service has found it difficult when working with youth: children aged between 13 and 18 years are often not responded to by State agencies. This is a vulnerable age group, not just in relation to juvenile justice but to a high level of relationship abuse and homelessness. An example of this is those in destructive intimate relationships. This group is often not responded to due to their age, consensual sexual activity or when there is violence involved. It is not seen as a child abuse issue, but rather a domestic or family violence issue.³

Known paedophiles target young people under the guardianship of the Minister by placing themselves in accommodation near FAYS’ residential unit accommodation. There is no authority for police to act and young people become enmeshed in relationships with these paedophiles largely because of their vulnerability and authorities are unable to act.⁴

We know that FAYS is increasingly reluctant to place children under the guardianship of the Minister – and rightly so. When a child is placed in a care facility, albeit FAYS or SAPP, unless there is a protection order in force, the custodial responsibility still remains with the parents. Experience has shown, however, that workers staffing these facilities, because of lack of direction from the department, are confused about the parent’s rights to direct their child (and the facility) in regard to issues such as schooling, curfews etc. This is also the case when a minor resides outside the home in other arrangements.⁵

There is no holistic child protection system at the present time and there are larger gaps for children over 12 years of age...often family reconciliation to family settings is not the appropriate model for adolescents. Many of the family settings seem to offer programs that offer food, beds and a regime which does not actively involve emotional awareness, self-responsibility and people skills. Even though the staff may have counselling skills and backgrounds in social work their work is more akin to ‘warders’ than skilled adolescent workers. There also needs to be more ready access to youth shelters and possibly more specialised youth shelters – culturally focused / gender preferences / trauma survivors etc.⁶

It is understood that currently in South Australia, family preservation services are often provided on a repeated basis to chronically dysfunctional families with no tangible or lasting outcome. At the same time, it is understood that other families who may genuinely benefit are being placed on waiting lists to receive services. Children and young people can consequently be left at risk of harm in both situations. Family preservation services need to be recognised as just one tool in response to child care and protection issues rather than one simple cure-all panacea.⁷

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¹ Ibid.
² Ibid.
³ Submission 54 Western Domestic Violence Service.
⁴ Submission 55 Family & Youth Services, Noarlunga Adolescent & Family Team.
⁵ Submission 127 Parents Want Reform.
⁶ Submission 38 SPARK Resource Centre.
⁷ Submission 143 Office of Youth.
REQUIREMENTS OF ADOLESCENTS

With regard to adolescents, there is a requirement for a multi-model approach which is attractive, accessible and accommodating to youth. The delivery of such services should be not only informed by consultation with young people through organisations such as CREATE and Youth Views as to the nature and delivery of the services\(^\text{11}\) but should include young people participating in the delivery of services.

In a study undertaken by Bastian (2002) on service delivery to adolescents in South Australia found deficiencies in policies, procedures and practice responses to adolescents.\(^\text{12}\)

Services are required in the following areas:

- drug and alcohol education and treatment
- safe places where drug addicted or vulnerable adolescents can be sent for a short period of time from which they will be unable to leave whilst receiving treatment
- specific targeted services for counselling, psychological and psychiatric assessment and also mental health services
- school-based social worker program to assist adolescents to continue with their education
- drop-in centres which naturally attract youth such as those providing computers with Internet access
- parenting information regarding behaviour of adolescents and effective communication techniques and
- increasing public awareness of the incidence of adolescent abuse.

There are already a number of frameworks for youth services such as frameworks in FAYS and DHS which have been implemented, but an overall State framework is required with an holistic approach across all sectors.

With regard to relationships between parents and adolescents there is also an urgent need for a variety of service responses including a crisis response service to assist parents and young people requiring intervention during situations such as:

- family disputes and/or violence
- running away
- serious drug and alcohol abuse
- when in police lock-up
- when in particularly risky or dangerous situations such as living on the streets, with inappropriate persons, at risk of prostitution or committing criminal acts and
- homelessness.

A crisis response service could be developed to provide a range of intervention responses including:

- an initial telephone assessment during business hours and an after-hour back-up service through Crisis Care
- information about possible actions, rights and responsibilities under the law
- development of a case plan primarily focused on short-term outcomes which would include:
  - assistance with the type of intervention best suited for the parent and the young person
  - an immediate Community Support Youth Worker home visit if necessary and visiting young person if not at home
  - mediation, counselling and negotiation services

\(^{11}\) Submission 173 Department of Human Services Early Intervention Advisory Group.

\(^{12}\) Bastian, C (2002) An Evaluation Study - Service Delivery to Adolescents who are the Subjects of Child Protection and ‘Adolescents at Risk’ in South Australia.
referral to appropriate other agencies for a variety of issues (drug and alcohol counselling, accommodation services, SAPOL, FAYS, health services etc) and
follow-up services, such as telephone and home visiting for up to three months.

Such a service response, in conjunction with longer-term and readily available family preservation services to provide resources to families, where they will have a greater chance of achieving a good outcome, could provide optimum benefits in preventing young people and families becoming further entrenched in welfare systems. See Recommendation 21 in Chapter 6.

Family preservation services are currently predominantly provided through non-Government Agencies, however, these services tend only to be available through a FAYS pathway and usually after very serious issues have presented and there is a very high likelihood of family breakdown.

A range of longitudinal studies of family preservation services have found that these services are most effective when families with recent histories of dysfunction are targeted.13

For those families where there are:

- high levels of substance abuse
- a high level of repeated criminal offending
- ongoing domestic violence and
- serious and sustained levels of dysfunction relating to parental mental health issues,

family preservation services have, in these situations, been shown to have consistently poor outcomes.14

THE VOICE OF YOUNG PEOPLE

In consulting with young people as to what they wanted, their overwhelming request was that they be listened to and have their views taken into account. Their criticisms and comments included that there is:

- a great need for participation in all decisions which are made about their life and welfare
- a need for an opportunity to be spoken to by themselves, and not in front of family members or carers
- a need for consistency of social workers and a proper handover process if there is a need to have a change
- a need for facilitated access to services and continuing support on leaving care at the age of 18 years, particularly for the acquisition of life skills, accommodation and medical health care
- a need for flexible accommodation that does not place two highly at risk adolescents together, in the same accommodation, particularly if there are drug and alcohol problems
- criticism about the length of waiting lists for CAMHS
- considerable criticism of the alternative care placements, inappropriateness of match, temporary nature of placements, multiple placements, and in other cases lack of placements
- no after-hours crisis services and, in particular, mental health intervention (ASIS will not do anything until the person reaches almost 18 years)
- delay in removing young people from their family or carer once abuse is known sometimes only one child/young person is removed and siblings remain (this is a real source of anxiety to the removed person who fears potential abuse occurring to the siblings)

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14 Submission 143 Office of Youth (DETE).
a need for services in the country, particularly through FAYS’ offices and these services to be more accessible for young people located in very remote areas and a problem of confidentiality in rural towns.

Specific requirements which were highlighted by the young people which they would like to see met were:

- A Commissioner for children and child advocates and
- free on-line service when in need or crisis.

**RECOMMENDATION 70**

That a Commissioner for Children and Young Persons and a Guardian for Children and Young Persons be statutorily mandated. (See Recommendation 1 and 4 in Chapter 5).

That a Statewide framework be developed across all sectors to deliver holistic services for adolescents by the proposed South Australian Child Protection Board. This package, of services to be group together as ‘Youth Help’ (See Recommendation 11 in Chapter 6).

**CHILD SAFETY AND PROTECTIVE INFORMATION**

In relation to their own circumstances, many of the young people interviewed did not realise that they were living in an abusive family situation and thought that their situation was ‘normal’. It was only when they stayed at other children’s houses that they came to appreciate their circumstances. They indicated that the ‘Protective Behaviours Programs’ in schools were not universally communicated and needed to be done at all levels and regularly reinforced. This program should also include information which would allow them to understand what a non-abusive family looked like.

They also feared the consequences of disclosure and needed assurance about what potential outcomes could be. They also said that when an investigation was instituted it was very difficult for them because there was often pressure from family to either say nothing, or to lie. They needed personal support in this situation. Many indicated that when they managed to finally bring their problems to the attention of anyone, it was through a trusted person such as a member of the family, a teacher, a school chaplain, or a friend at school who assisted them to talk to a trusted person.

**RECOMMENDATION 71**

See Recommendations in Chapter 19 regarding protective behaviour programs and school counsellors.
ALTERNATIVE CARE

The topic of alternative care has been discussed generally in Chapter 11.

A number of issues were specifically raised by young people which indicate a lack of understanding of children’s and young people’s needs and therefore the provision of inappropriate service response. Their requests were for:

- appropriate information beforehand about the processes for placement
- permission for them to take their clothes and personal belongings
- assistance with the process of settling in with a new family, explaining house rules (including expectations) discussion of their food and lifestyle requirements and those of the family
- agreement on the information needed to be shared with the carers about their problems and circumstances
- follow-up by social workers
- assistance to say goodbye to their friends, family or carers when placements are changed or breakdown
- permission where possible to continue on in the school in which they have settled
- opportunities to speak with new schools to assist in the transition and determination of how they want to be described
- maintenance of contact with siblings and with appropriate family members
- assistance with conflict resolution when in alternative care, and
- avoidance of the hurtful process of being relegated to respite care while the rest of the family go on holiday or provision to financially support their participation in these major undertakings.

On a positive note, the young people consulted said that the key to successful placements was “the preparedness of the foster carers to go the extra mile” and make them feel welcomed and loved.

RECOMMENDATION 72

That account be taken of the issues raised by young people for improving the circumstances for alternative care arrangements. (See recommendations in Chapter 11 regarding alternative care).

PARENT’S VOICE

In South Australia, there are a number of parents who have joined together to present their views and, in doing so, gave detailed case histories in relation to their children and youth. Many parents have experienced tragic situations, which have led them to believe that the ‘system’ (FAYS, SAPOL, DECS etc) is ineffectual in protecting children and young people. They would like to see the following:

- child protection viewed in a broader context of support for families
- a recognition of the dual role of child protection and family rights and support of them as being two sides of the one coin
- a move away from an approach which focuses on investigating whether or not abuse or neglect occurred towards a focus that assesses harm to the child and whether the child can be protected from harm in their present environment
- the SA legislation to be replaced by the Queensland model
- the establishment of institutions, admission centres, homes, assessment, remand and treatment centres, training centres, hostels, etc
when there is evidence that a child is involved with drug abuse, placement of the child in protective custody in an appropriate institution for treatment

an Investigation Unit that investigates allegations independent of FAYS to consist of a police officer and a social worker who have been trained specifically to deal with child abuse and child development and have had extensive experience in this field.15

A number of these concerns expressed by both young people and parents, are relatively easily remedied by minor changes in practice and more sensitive approaches based on best practice.

There are also a number of recommendations suggested in the Review which address many of these concerns. In particular the greater focus on assessment of child and family needs is referred to in Chapter 9; the legislative amendments suggested in Chapter 23; and the complaints mechanisms and accountability referred to in Chapter 9 and Early Intervention and Prevention Framework and Services referred to in Chapter 6.

**THERAPEUTIC SAFE KEEPING ARRANGEMENTS**

A strong plea has been made for a secure form of accommodation in a centre where drug addicted or highly vulnerable adolescents can be placed for a short period of time whilst they undergo intensive treatment. A number of very moving accounts of have been provided to the Review detailing young people who are caught in a vicious cycle of drug addiction, sex abuse and prostitution and the need for those persons to have a place where they can be taken to give them a chance to “dry out” and assess their future lives with professional assistance. Such a service would be worthy of consideration.

Whilst ‘voluntariness’ is a desirable goal, the age of these young people, their addicted state and their state of physical and mental health dictates that some enforcement may be initially required to help them. The economic and social costs of this highly needy group are already significant. It is acknowledged that safe keeping arrangements are a significant and intensive interaction but, for some young people, there are no other choices and all options which may alleviate the spiralling down of young people should be explored.

Special legislation will be required to determine how young people in this situation can be legitimately ‘detained’. Exploration regarding ‘safe keeping arrangements’ in other States/Territories is required, plus any evaluations available. The usage of such arrangements must be strictly monitored and assessed to prevent ‘systems abuse’. Agencies must demonstrate that they have made all attempts to put in place other more appropriate services before safe keeping arrangements are sought. These arrangements cannot be seen to be a ‘dumping ground’ for difficult adolescents because the service system has failed to provide proper supports and assistance at early stages. It is highly recommended that ‘safe keeping arrangements’ be enacted with a requirement for sanction by the Youth Court, thus providing high-level scrutiny of system decision making.

Prior to the enactment of such legislative change, full consideration is also required of the service models and in community supports required for transition from safekeeping to community.
RECOMMENDATION 73

That therapeutic safe keeping arrangements with secure short-term accommodation and appropriate services be made available for young people. These arrangements to be developed in conjunction with transition processes back into the community. See Recommendation 174 in Chapter 23.

Reason

There is a clear need for such services and many young people are in serious conditions of risk when they need protection and therapeutic treatment.

Long and short-term case management for adolescents at risk

There has been some rigorous work undertaken on the need for a case management planning process with short and long-term goals\(^*\) for adolescents who are assessed as being at risk. The Collaborative Service Delivery Framework: Family and Youth Services and Child and Adolescent Mental Health Services, if implemented, is an excellent model for casework requirements for young people.

ACCESS TO COUNSELLING, PSYCHOLOGICAL ASSESSMENT AND MENTAL HEALTH SERVICES FOR ADOLESCENTS AT RISK.

One of the most frequent criticisms of services concerned those provided by Child Adolescent and Mental Health Services. CAMHS was criticised for being too limited in its methods of delivery, for having long waiting lists with hospital services too restrictive and insufficient to meet the needs of adolescents.

Whilst there has been a recent innovation through the Northern CAMHS to provide a service outside of offices and in homes in relation to child protection concerns for all children, this is not the usual form of service delivery. There are times when it is appropriate (and indeed may be required) for services to be provided in alternative locations, rather than the client having to go to the provider. Greater flexibility is required and DHS in conjunction with CAMHS should review its delivery of services and also assess what additional staff is required to meet the needs of ‘adolescent at risk’ in a timely manner, with priority to be given where possible to adolescents under the Guardianship of the Minister.

There is also a need to provide other forms of delivery of inpatient mental health services. It is acknowledged that the Brentwood Unit at the Glenside Hospital is not an appropriate facility for adolescents, yet they continue to be admitted to this unit because there is no other secure unit available for adolescents with high security treatment and support requirements. The Boylan Ward facility should also be expanded in some way to permit a broader admission of adolescents who have a need for those services or to provide some other facility to deliver services to those adolescents who do not meet the criteria but still need special intensive assistance for a short period.
RECOMMENDATION 74
See Recommendation 11 in Chapter 6 relating to counselling and mental health services.

School based counsellors/social workers

As is discussed in more detail in Chapter 19, there is criticism of the lack of facilities for adolescents to raise life or education problems with a school-based counsellor or social worker. Not all schools have such a dedicated person or sometimes the person is a teacher, part of whose duties include that task. There was also concern expressed that school counsellors were not perceived as sufficiently independent and that confidentiality of information was not necessarily kept but became part of the teachers’ common room gossip.

Further discussion and assessment should occur within schools to better articulate a service which can be provided to adolescent students which is independent, confidential and provided and promoted in a manner which attracts adolescents to use it. This would include more flexible methods of delivery other than making an appointment and overtly going to an office which is obvious to all. It may also include proactive contact with all students at some time to ask how they are going.

RECOMMENDATION 75
See Recommendation 139 in Chapter 19 regarding School-based counselling/social workers.

Yarrow Place

At the present time young people under 16 years of age are not able to access services provided by to Yarrow Place, which provides counselling and forensic assessment and medical treatment of adults who are the victims of sexual assault. Instead, adolescents who are in need of such services are seen by hospital paediatricians who may not be familiar with the forensic requirements nor with the treatment and counselling needs of this age group, and consider it is in the better interests of these traumatised young people to be examined by those specially trained for this type of work.

At the present time, Yarrow Place is not able to provide services to this group partly due to resource constraints and pressures on adult services and partly due to the consent to medical treatment provisions.

17 Subject, of course, to mandatory notification.
18 Submission 154 Dr David Everett, Flinders Medical Centre.
RECOMMENDATION 76

That Yarrow Place be provided with more resources to enable them to provide services to adolescents between the ages of 14 and 16 years.

That there be complementary legislative amendment if the consent to medical treatment legislation would be an impediment to the provision of such services.

Reason

This group of traumatised adolescents should be examined through services already available to adults at Yarrow Place.

ADVOCACY SERVICES

One of the important roles of the Commissioner for Children and Young Persons is discussed in Chapter 5 to promote and provide an advocacy service for children. This is particularly required for adolescents.

One of the problems which has always existed is to find ways in which children can be heard and to have a person whose sole focus is for the interests of the child. A role for a child/young person’s advocate may occur in a number of situations including case management meetings, dealing with concerns of the child about their alternative care placement, and a support or a resource at a time of crisis etc.

A further concern of adolescents is the issue of truancy. This is a whole-of-Government issue which is currently being targeted through Social Inclusion Unit.

SECOND STORY

The Second Story Youth Health Service at the present time is provided in only three locations: Adelaide, Elizabeth and Christies Beach. These youth health services provide an excellent holistic approach to the needs of adolescents and young adults between ages 12 to 25. The overall service description is short-term assessment and referral, the provision of a community health worker or nurse as well as a resident doctor, community and professional education and group programs. Services vary but include:

- information and referral
- short-term counselling and referral
- clinical services from either a doctor or a nurse
- HIV screening
- antenatal Share Care Clinic
- Family Planning Association Clinic
- needle exchange and free condoms
- living skill program
- gay and bisexual youth program
- student education and community information sessions
- young women’s program and
- peer education program.

Adolescents find the centres user-friendly and consider that they need greater publicity such as in schools.
RECOMMENDATION 77

That consideration be given to extending facilities such as the Second Story Health Service to areas other than the three present locations at Adelaide, Elizabeth and Christies Beach.

Reason

These particular service facilities could be incorporated as part of the ‘Youth Help’ package referred to in Recommendation 11 of Chapter 6.

COMPLAINT/FEEDBACK MECHANISMS

The establishment of proper complaint processes and feedback mechanisms has been raised as a particular issue that requires further consideration. With the important establishment of advocacy groups such as CREATE and Youth Views and Multicultural Youth Network the ‘system’ has had greater opportunities to meet some fundamental requirements in the development a proper consumer/client focus. Many of the Review recommendations will provide a number of quality governance mechanisms to provide an avenue for children and young people to participate and voice their concerns. Agencies who provide services to young people will need to be involved in informing young people about how they may avail themselves of such processes.

It has been noted that improvements within the DHS, particularly the introduction of consumer rights and complaints policies, are seen as positive initiatives; however, there is still no mechanism for appeal if young people disagree with a decision.

For agencies that provide services to young people it is important to ensure that greater emphasis is placed on:

- encouraging young people to participate in client satisfaction processes
- explaining to young people their rights and responsibilities
- explaining to young people how to make a complaint if they feel their rights are violated and to support them to do so and
- reassuring young people that confidentiality is assured, what this means, and ensuring that it occurs.

RECOMMENDATION 78

Mechanisms to improve handling of complaints and ensuring appropriate feedback should flow from the Recommendation 43 contained in Chapter 9 Section A.

DIVERSIONARY PROGRAMS AND TREATMENT

With regard to adolescents who have sexually abused, that the current program offered at Mary Street, be known and available as a legitimate diversionary option from court and detention for those young people who participate in treatment. (See also Chapter 16)

RECOMMENDATION 79

See Recommendation 129 in Chapter 16 on diversionary program for adolescents who sexually offend.

HOMELESSNESS

There is a need for specific homeless projects that target young people. Homeless young people are less likely to be linked into protective and educational services commensurate with their needs.

This issue has been particularly raised in relation to young people from non-English speaking backgrounds, who may not participate or be known to mainstream and/or FAYS services.

One service that is available from the non-Government sector is SideStreet Counselling Service, provided through Adelaide Central Mission. This service was specifically set up to assist young homeless people who have experienced childhood sexual abuse. This service arose out the recognition that up to 75% of the young homeless population had experienced sexual abuse. There are difficulties in meeting demand for this and other types of services.20

A research study is being conducted currently by the Department of Human Services into homeless young women aged 25 and under with children, which will endeavour to identify the impacts of homelessness on the developing child and explore service, systems, issues and strategies.21

In addition to this the Social Inclusion Unit also has homelessness as one of its focal points to consider the issues influencing homelessness among young adolescents.

It is therefore essential that there be an overall assessment made, particularly of the homeless young people, that existing services providing appropriate services be extended or, alternatively, another service provided through the Department of Human Services.

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20 Submission 53 Adelaide Central Mission.
21 Submissions 173 Early Intervention & Prevention Advisory Group.
Chapter 14
Children and Young People with Disabilities

INTRODUCTION

This chapter provides:

☐ an account of the concerns raised in submissions and consultations
☐ statistical information regarding the incidence of child abuse and neglect for children with disabilities
☐ information on the types of safety and protection mechanisms required and
☐ offers the specific recommendations for consideration.

The chapter does not address concerns that may arise for young people 18 years and over with disabilities but acknowledges the importance of the need to examine legal and other issues of vulnerability for people with disabilities over the age of 18. Nor does the chapter define ‘disability or special needs’ but takes a broad inclusive view of disability.
GENERAL DISCUSSION

A child or young person who has a disability is firstly a child who needs to be accorded the same treatment as any other child, including access to the same services and care that would be provided to any other child or young person. A child or young person with disabilities also requires additional support in recognition of their special needs and the particular forms of vulnerability arising from their disability.

The United Nations Convention on the Rights of the Child provides guidance and standards in respect to children who have disabilities:

- **Article 2** of the Convention stresses that all rights apply to all children without exception and it is the State’s obligation to protect children from any form of discrimination, including discrimination on the grounds of disability.

- **Article 19** directs State parties to the Convention to protect children from all forms of maltreatment by parents or others responsible for their care and to provide services to assist with the prevention of abuse and neglect.

- **Article 23** recognises the right of a child with disabilities to enjoy a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

It is within the context of these rights that the protection of children and young people with disabilities must be considered.

Significant advancements have occurred in the area of awareness, rights and equity for people with disabilities during the past 20 years. Many children and young people with disabilities are now well integrated in the community, participate in mainstream as well as specialised schooling and access a wide range of services and supports that are generally available to all children and young people.

The majority of children and young people with disabilities are lovingly cared for within their families and communities, however, two major themes have arisen throughout the Review which require attention:

- ensuring that children with disabilities are adequately protected from all forms of abuse, and in particular sexual abuse and

- ensuring that families are fully supported in their role as carers, so that children and young people with disabilities remain safely supported and protected within their home environment.

OVERALL COMMENTS

Submissions expressed concern that the Review may have a narrow approach by only requiring information about sexual abuse of children with disabilities rather than abuse in all its forms. The submissions requested that the Review look more broadly and take account of that fact that disabled children are ‘at risk’ of all forms of child abuse. This view has been noted and taken into consideration.

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1 Includes a range of physical and intellectual disabilities that impair children and young people including such conditions as Aspergers Syndrome, Attention Deficit Disorder.
2 As outlined in the Child Protection Review Discussion Paper (2002.)
3 Submission 134 NAPCAN; Submission 53 Adelaide Central Mission.
Many submissions were concerned about the level of safety and protection afforded to children and young people with disabilities:

We are parents of an eight-year-old girl with a disability. We have been moved to provide you with our thoughts, in an attempt to protect her from the risk of future sexual assault, of which she is at increased risk due to her disability.4

The present system is not effective, nor sufficient in its coverage and protection of children with disabilities from sexual abuse; they are the most vulnerable victims in our society.5

…we see families desperate for their children to have normal life choices, but instead facing situations where they find themselves without choices, without proper supports, without information and education, without proper counselling. And when trying to negotiate a legal system to get justice for their child they find themselves negotiating a system that is funded and controlled by officials and professionals in a bureaucratic and legal system which is not transparent and/or helpful to them. The formal system itself becomes an ongoing source of systems abuse6…

The Child Protection Review is timely due to recent events regarding children with disabilities. These children are the most vulnerable due to their disabilities, whether it be poor verbal skills, an intellectual disability or physical disability.7

Abuse of children with disabilities continues to occur pointing to the need for improved responses. All protections afforded other children should also be extended to children with disabilities with additional concern to support their safety despite their disability.8

Much of the debate on prevention of abuse has centred on screening out unsuitable people… however, most screening tools are notoriously unreliable, particularly police checks. There is much to be learned from the UK about prevention of abuse in institutions, as a result of a number of high profile enquiries.9

Generally children and young people with a disability have complex care needs and greater dependency on carers. Their vulnerability can make them subject to a far broader range of abuse/neglect; for example, withholding care, forced feeding, inappropriate use of medication, restraint, and poor or inadequate supervision. Many authors have suggested that children and adults with disability are especially vulnerable to sexual abuse.10

There has also been a number of statements made to the Review that indicate a high level of dissatisfaction or cynicism amongst parents in regard to whether any positive changes for children with disabilities will occur:

Cynicism was based on the fact that parents had been consulted on previous occasions about child protection issues but there was no evidence that parent recommendations had been acted on.11

Information concerning our children has been hidden and dealt with behind closed doors. We as parents have not been informed of what is happening.12

A major concern is that the reports are not followed up by the Department. It is imperative that where there is suspected abuse the Department acts promptly. It is also imperative that preventative strategies or programs are put into place to address the needs of both the child and family.13

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4 Submission 13 Mr & Mrs Lehmann.
5 Submission 100 Ms Annette Aksenov.
6 Submission 44 Carers Association of SA.
7 Submission 116 Name Not For Publication.
8 Submission 66 National Council of Single Mother & Their Children Inc.
9 Submission 130 Ms Anne Nicolaou.
10 Submission 155 Children’s Protection Advisory Panel.
11 Submission 186 Department of Education & Children’s Services Advisory Group.
12 Ibid.
13 Submission 96 Parent Advocacy Group.
Once abuse has occurred there is a lack of resources to support the victims and their families. Most distressing has been the discounting of victims and their families because they supposedly have ‘mental incapacity’.

Of particular concern to parents and many professionals working in the disability sector is the application and interpretation of the Children’s Protection Act 1993 in situations where parents need to place their disabled child in long-term alternative care:

The interpretation and implementation of child protection legislation within the current framework of child protection is insufficiently flexible for families with disabilities. The family of a child with a disability who requires State intervention to provide care is subject to the stigma (or perceived stigma) of being in the child protection system and labelled as “abusive and neglectful parents”.

…part of the process that we find very hard to understand is the legal and formal path of the court proceedings. The process of placing (our child) into custody of the minister is the same for us as it is for someone who neglects or hurts their child.

Sometimes, the burden of care of children and young people with disabilities with high support needs is so great that parents request alternative living arrangements for their child. Many parents/caregivers do not want to give up caring for their child and pursue this option as a ‘last resort’, usually after all other avenues of additional service support options for enabling continuing home care have been exhausted:

After pursuing every avenue of help from FAYS and IDSC in regards to respite and financial help it came to the hardest decision a parent can ever make about one’s child: is to place that child in someone else’s care for a long period of time.

VULNERABILITY OF CHILDREN AND YOUNG PEOPLE WITH DISABILITIES TO CHILD ABUSE AND NEGLECT

The research evidence indicates that two overarching factors may be implicated in the increased vulnerability of children and young people with disabilities. They are:

□ that abuse may be implicated in the creation of a disability
□ that children with a disability may be differentially targeted for abuse.

One of the concerns in relation to child abuse and neglect is its contribution to the creation of disabilities in children antenatally, as babies or young children, resulting in long-term neurological and other physical damage. Not only does this early abuse result in disability, the existence of the disability may subsequently compound the child’s vulnerability to further abuse and neglect.

Children with disabilities arising from these circumstances are living in highly dangerous situations. Researchers indicate that these children and their families need to be identified early and carefully assessed. Antenatal assessment is particularly important tool to identify families for establishing early intervention where there is a high risk of adverse outcome for children. The establishment of the Child Death and Serious Injury Review Committee as proposed by this Review will also provide an effective process for determining the extent to which childhood disability arises from child abuse and neglect and subsequent risk of child abuse and neglect.

14 Ibid.
15 Submission 161 Department of Human Services Disability Services Office.
16 From a statement read in court by a parent relinquishing his child.
17 Ibid.
In relation to the second factor of the differential targeting of children with a disability, noted above, there are many reasons why these children with disabilities may be more vulnerable to child abuse. They may:

- have fewer outside contacts than other children
- receive intimate personal care, possibly from a number of carers
- have an impaired capacity to resist or avoid abuse
- have communication difficulties which may make it difficult to tell others what is happening
- be inhibited about complaining for fear of losing services
- be subject to bullying and intimidation and/or
- be more vulnerable than other children to abuse by their peers.  

Others researchers have suggested factors that increase their level of vulnerability. They include:

- dependency on others for basic social needs
- lack of control or choice over their own life
- compliance and obedience instilled as good behaviour
- lack of knowledge about sex
- misunderstanding sexual advances
- isolation and rejection by others which increases responsiveness to attention and affection accompanied by an increased desire to please
- inability to communicate experience
- inability to distinguish between different types of touching
- the apparent childishness of many learning-disabled children which may attract potential abusers.

The issue of vulnerability has also been stressed to the Review:

Vulnerability factors include limited communication, limited mobility, limited understanding of consent issues and rights, dependency on others for personal care and support, social isolation and community attitudes towards people with a disability that mean that they many not be believed.

These issues highlight the extent to which children and young people with disabilities experience a much higher level of risk and vulnerability of being subjected to child abuse and neglect than those without disabilities and the myriad of factors that contribute to this situation. As a consequence, families, agencies and communities must improve their understanding of vulnerability and risk, increase their level of vigilance and establish appropriate safeguards for children and young people with disabilities.

INCIDENCE OF ABUSE AND NEGLECT OF CHILDREN AND YOUNG PEOPLE WITH DISABILITIES

In 1998 there were 333,330 people in South Australia with some form of disability, and 47,300 or 14.2% were under the age of 25. Approximately 1000 children and young people with a physical disability are registered with the Crippled Children’s Association and there are approximately 2800 clients aged between zero and 24 years registered with Intellectual Disability Services Council (IDSC).

Currently, there are no national statistics published on the incidence of abuse and neglect of children and young people with disabilities. Research in the UK on the extent of abuse amongst disabled children suggests that they are at increased risk of abuse, and children with multiple disabilities appear to be at greater risk of both abuse and neglect.
A review of the American and British research literature examining child protection issues and disability, undertaken by Westcott and Jones (1999), indicated that there were higher prevalence and incidence rates of child abuse amongst children with disabilities. This overview of available research, undertaken from 1960 to 1999, showed there had been consistent higher vulnerability amongst disabled children to abuse in all its forms, despite methodological weaknesses or differences within some of the studies reviewed.24

Recent prevalence and incidence studies enable us confidently to state that this vulnerability is greater than that for non-disabled children.25

Another important US study showed that the overall incidence for all types of abuse of children with disabilities was 1.7 times that of children without disabilities, with the former being:

- 2.8 times more likely to be emotionally neglected
- 2.1 times more likely to be physically abused
- 1.8 times more likely to be sexually abused and
- 1.6 times more likely to be physically neglected.26

Research by Briggs and Hawkins (1996) supports the US research findings and indicates that children with disabilities have a high vulnerability to being subjected to sexual abuse. In their study of the fifty girls categorised as having ‘learning difficulties’, 80% had been sexually abused.27

It would appear from the studies undertaken there is a clear indicator that children with disabilities are differentially vulnerable to abuse.

**RECOMMENDATION 80**

That consideration be given to a process for annually collecting and publishing information pertaining to children and young people with disabilities who are the subject of a child protection notifications. Such notifications to include in out-of-home care and whether the notification is investigated and substantiated on the Department of Human Services, Family and Youth Services Client Information System.

**Reason**

While research indicates that there is a greater vulnerability for children with disabilities to child abuse and neglect, there are no State or national reporting mechanisms currently in place to report on the incidence of abuse or neglect for this group of children. Establishing a specific data collection and reporting process on child abuse and neglect of children with disabilities is considered a necessary first step in clearly identifying the vulnerability and special needs of this group of children within the community.

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25 Ibid p 504.
MECHANISMS FOR PROTECTION

Safeguards for children with disabilities should essentially be the same as those that have been put in place for children generally. In other words, the question that always needs to be asked is whether safeguards put in place are equal to those that would apply to children without disabilities. Particular attention must be paid, however, to the promotion of a high level of awareness of the risks associated with this group of children and a willingness to ensure their rights to safety and protection are of the same standard as those applying to other children. Standards of practice for those working with children with a disability must be rigorous and include appropriate levels of supervision and support.

It is essential to the long-term care of children with disabilities that particular emphasis be placed on the provision of adequate levels of support and assistance to families. This is necessary to prevent child abuse and neglect and any consequent family breakdown as a result of pressure and stress associated with the child's care.

There should not be double standards in child protection in the community simply because a child with a disability presents a greater challenge for care than a child without a disability. Abuse and neglect should not be tolerated even if the burden of care is high:

*The same thresholds for action apply. It would be unacceptable if poor standards of care were tolerated for disabled children which would not be tolerated for non-disabled children.*

The measures required for the development of proper safeguards include:

- making it a common practice to help children with disabilities to voice their wishes, especially in relation to their personal care and treatment
- making sure that children with disabilities know how to raise concerns if they are worried or angry about a situation and, in doing so, provide them access to a range of adults with whom they can communicate
- ensuring children with disabilities receive appropriate personal, health and social education including sex education and information about sexual abuse and ‘protective behaviours’
- establishing guidelines and training for staff on the provision of intimate care, working with children of the opposite sex, handling difficult behaviour, consent to treatment, anti-bullying strategies, and sexuality and sexual behaviour among young people
- ensuring appropriate recruitment and selection criteria (including police checks, referee checks, etc) to ensure staff working with children are appropriate and
- ensuring proper supervision and support of staff.

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### RECOMMENDATION 81

That the proposed South Australian Child Protection Board and Regional Child Protection Committees develop a focus on safeguarding the interests of children with disabilities by undertaking the following activities:

- raising awareness amongst service providers in the State and in regions about disability and child protection issues
- identifying inter-agency training needs and providing access to training which encourages the pooling of expertise between professionals with specialist skills and knowledge in disability with those with knowledge and skills in child protection and
- ensuring that the development of policies and procedures for safeguarding children generally take into account and meet the needs of children with disabilities.

### Reason

Without a focus on the needs of children with disabilities, their interests and special needs can be overlooked. Greater emphasis must be placed on highlighting this group of vulnerable children to ensure their wellbeing and interests are safeguarded.

### PREVENTION OF ABUSE

A number of measures have been highlighted in the research and through submissions that will assist in the prevention of abuse and neglect of children and young people with disabilities. These include:

- increased support services for parents/carers
- improved parent and child education
- improved coordination and collaboration across Government and at the regional and local level.

### SUPPORT SERVICES

Greater early intervention and prevention services are required that comprise a range of specialist health, medical, counselling and support services, to assist families who have children with a disability or special needs. The coverage of services is often variable and there are particular difficulties with accessing appropriate services in rural and remote communities, for example:

> Current support systems are insufficient to meet the needs of protection for children with disabilities. Support systems need to provide sufficient assistance for the duration of the need of the child for protection. When a vulnerable person with a disability is identified, the support system needs to be in place for as long as the child is considered to be vulnerable. This may be throughout childhood. 30
As a number of children living within the community, live in single parent/or blended parent households, with few positive, social contacts within the community. We do need to realise, that parenting alone is not an easy task, especially if one is isolated from family support for one reason or another. Unfortunately, raising a child is not easy, especially a child with a disability, a parent with a disability also becomes isolated within the community, with very few supports. 31

Respite Care is recognised as one of the most critical forms of support to carers of a child with a disability. 32 Respite care can take a number of forms including short and long-term, regular or occasional care. Respite care needs to be readily available, consistent and reliable, of high quality and available in a range of forms that both provide respite for the family and are viewed as a positive and worthwhile experience for the child. 33

There is a need for adequate support for families, including respite as well as short and long-term accommodation options for children...with disabilities. At present there is an acute shortage and many families in crisis are left with little option but to battle on alone, or to rely on friends and family. It is important that those providing respite care be accredited and that parents be educated about the need for accreditation and its benefits. 34

Practical home support that is flexible and readily available to assist with domestic duties and personal care tasks is important in alleviating stress and the physical burden often associated with the significant care needs of disabled children.

Families require intensive home-based support programs. Holistic response is often required, but unable to be delivered because of constraints surrounding ...funding priorities and guidelines ...ie disability dollars targeted for a child with a disability, when often the problem requires broader targeting at other family members. Our view is that the community (in general) is well informed about these issues, but at community level the coordinated responses required are not present. 35

Therapy and support for school-aged children is often critical to achieving successful integration of children with disabilities in mainstream schooling environments. Adolescence can be a particularly testing time for children and parents, and additional supports are often necessary. Attention needs to be given to accessing therapy and support services that provide the minimum disruption to a child’s education.

31 Submission 100 Ms Annette Aksenov.
33 Ibid.
34 Submission 139 (1) SA Commission for Catholic Schools on behalf of Catholic Schools.
35 Submission 98 Crippled Children’s Association.
RECOMMENDATION 82

That service requirements for children, young people with disabilities and their families be improved. In particular, that greater emphasis be placed on providing timely, appropriate and accessible support services for families to ease the burden of care and to ensure that children with disabilities are not abused or neglected.

That respite care options be expanded (including before and after-school care and vacation care especially for adolescents), so that families have real choices and children and young people are provided with professional accredited care options.

That practical, regular and available in-home support be developed and/or improved to assist with domestic duties and personal care tasks, be readily available.

That the level of therapeutic and support intervention required particularly for disabled school aged children be increased to assist them in coping with any issues arising as a result of their disability and to assist them with integration into the broader community.

Reason

While there are some respite options available for families a greater expansion and flexibility of care options is essential, for instance, professional cottage respite care, in-home respite, after-school, before-school care and vacation care. Such care needs to be age appropriate especially taking into account the needs of teenagers. A paucity of options places further burden on families and increases the likelihood of children being relinquished into State care, or abused or neglected because of the stresses of caring for children and young people with significant disabilities.

Many families require very practical assistance in caring with their child. Help with dressing, feeding, using equipment, help with establishing routine and behaviour management as well as other practical help such as shopping, cleaning and assistance with attending medical appointments. Many families struggle with heavy care routines on a daily basis. As children get older this becomes increasingly difficult, and for many, it is a source of on-going stress and frustration. The toll on many families is great and includes marital disharmony and breakdown, children being placed in long term care, health and other emotional problems associated with the burden of care.

Children and young people need to feel a part of the community and acceptance by peers is vitally important to a positive self-development. Schools require practical and therapeutic supports to enable them to provide the level of care and attention that is required for children with disabilities and to assist them in increasing the level of understanding and awareness of the school community about the needs of these children.
PARENT AND CHILD INFORMATION AND EDUCATION

Children should be taught who to trust and not to trust, more parental supervision and help is required.36

Parenting can be a challenging and demanding task. For families with children who have special needs/disabilities, there are often extra challenges. Programs and services targeted to enhance carers’ knowledge and skill development should be available to assist carers to adopt and maintain good parenting, especially when children have significant behavioural problems. It is also important for parents to be provided with the information and skills to avoid ‘abusive’ practices and to recognise and report abuse if they are concerned about others who may be caring for their child.

Children require information and education that will assist them to develop skills in recognising, resisting and reporting abuse (see also Chapter 19):

Protective behaviours programs should be fine-tuned to the level of understanding of the recipient. Our view is that a child with a disability is often less informed or does not understand the material, as presented within the school curriculum. Consideration could also be given to implementing a program for parents of children with disability.37

I would like to see the Protective Behaviour Program revitalised again for pre-school, primary and high school students, including those from other cultures including children with a disability. I would also like support services introduced to support children who disclose. I would also like to see a Protective Behaviours Program aimed at parents, to explain the rationale behind the program, what is being taught to their child and why.38

Curricula should be adapted as appropriate to the particular disability and developmental stage of the child, use teaching tools such as pictures and concrete examples with adequate time for repetition; begin at an early age and include additions to existing communication systems to ensure relevant symbols and signs are available.39

RECOMMENDATION 83

That personal safety and protective behaviours programs be improved particularly in catering for children with disabilities. See Recommendation 137 in Chapter 19 Child Protection in Education.

IMPROVED COORDINATION AND COLLABORATION

Policy guidelines are an important part of a preventive strategy for organisations. They must specify how individuals and agencies should act in order to prevent harm, clarify roles and responsibilities of professionals and agencies and set out how to prevent, identify and report abuse. They must also detail how to work collaboratively with other agencies:

There is no system in place to deal with children with disabilities.40

Services provided to children with disabilities and their families need to be provided on a coordinated and co-operative basis.41

36 Submission 92 Mr Neil Hocking.
37 Submission 98 Crippled Children’s Association.
38 Submission 100 Ms Annette Aksenov.
40 Submission 15 Port Adelaide Police Child & Family Investigation Unit.
41 Submission 56 Intellectual Disability Services Council.
CURRENT GUIDELINES FOR THE INTERAGENCY COOPERATION AND COLLABORATION

Currently there is a protocol between the Disability Services Office, Options Coordination Agencies that includes CCA and IDSC and Family and Youth Services entitled: Protocol Guidelines for Coordinating the Provision of Alternative Care Services for Children with Disabilities, September, 1998.

This protocol details the various roles and responsibilities of the agencies involved including child protection intervention, access to placement subsidies, guardianship, case management, collaborative work with mutual clients, confidentiality and information sharing, referrals, etc. The protocol is clear and concise and would appear to be an appropriate platform from which agencies could work together. Nevertheless, it would appear that this is not always the reality.

Relevant State Government agencies, notably FAYS and IDSC, struggle to respond consistently and collaboratively in situations where parents of children with disabilities indicate their inability to continue to provide care in their own home.42

Obstacles include: lack of direction to operational staff; concern about costs; a shortage of willing and skilled carers; the existence of extremely challenging behaviours; discomfort arising partly from lack of experience among some key staff; narrow interpretation of the Children’s Protection Act 1993 and licensing requirements for the provision of care to children.43

RECOMMENDATION 84

That DHS coordinate an across agency working party with representatives from Disability Services Office, (DSO) FAYS, Intellectual Disability Services Council, (IDSC) the Crippled Childrens’ Association (CCA) and other relevant agencies, to develop an appropriate interagency case management model for children and young people who are notified as having been subjected to abuse or neglect or for children with disabilities requiring out-of-home care. (See also Recommendations 40 & 66 outlined in Chapters 9 Section A and 11)

That this working party also undertake a review of the effectiveness and applicability of the Protocol Guidelines for Coordinating the Provision of Alternative Care Services for Children with Disabilities, September, 1998 as it now stands, to develop further protocols or guidance as required.

Reason

While the Protocol as it currently stands may well be appropriate, its operational effectiveness requires further examination. It would appear that greater emphasis must be placed on working together at the regional and local level to achieve more effective collaboration and coordination for children with special needs and/or disabilities and their families.

42 Ibid.
43 Ibid.
GUIDELINES FOR BEHAVIOUR MANAGEMENT, CARE AND MEDICAL TREATMENT

There is concern that treatment and care practices, which may be thought to be in the best interests of the child, may potentially be harmful and in fact constitute either abuse or neglect.

*Children with disabilities (intellectual and physical) need to have their treatments, behaviours carefully monitored so they are treated with absolute respect and compassion.*

Policies need to clarify the rights of the child and specify the need to:

- seek the views and opinions of children with disabilities
- provide them with information of any procedure and enable them, where possible, to give appropriate consent, where medical treatment is required
- ensure behaviour management techniques are within acceptable standards and provide appropriate guidelines covering the use of physical and chemical restraint.

RECOMMENDATION 85

That urgent consideration be given by DHS and other relevant Departments and agencies, to the development of a service delivery policy with detailed standards and guidelines for all agencies involved in the provision of services to children and young people with disabilities to ensure their rights are upheld in accessing and whilst using services.

Reason

Children without disabilities gain greater levels of independence and autonomy as they progress through life (self toileting, self feeding, playing independently, etc). Many children and young people with disabilities, however, are often restricted by their disability in gaining the level of independence and autonomy that children without disabilities are expected to acquire. They may in fact be subjected to high levels of intervention through out their whole lives, may have strict behavioural management regimes placed on them, be subjected to high levels of medical intervention and/or treatment and be cared for by a variety of carers and professionals.

When any intervention occurs for a child with a disability it must be viewed through the perspective of ensuring the best interests of that child. Children and young people with disabilities have the same right to be treated with dignity and respect, to be involved in decision making commensurate with age, maturity and capacity, provided with appropriate information and communication of information to support informed decision-making and a right to privacy and confidentiality, as afforded other children and young people.
GUIDELINES FOR ALTERNATIVE CARE

Many parents of children with disabilities have spoken or written directly to the Review with their concerns and worries about the level of vulnerability of children with disabilities in the care of others, especially alternative care and in particular respite care.

All agencies providing services to children with disabilities, particularly residential care or out-of-home care must have in place guidelines that outline their roles and responsibilities in preventing, detecting, investigating and reporting abuse.45

We need a good mechanism that insists that all Government and non-Government agencies put the most stringent procedures in place to protect the most vulnerable of all our young people – “the disabled”.46

Many organisations reassure you saying that all their staff are police checked. While this may pick up a few people, it will by no means identify them all. Many paedophiles have tragically affected many, many children before they are caught. Therefore we need to develop a zero tolerance approach to this problem as well as develop systems to safeguard the children.47

There needs to be accreditation of respite services, especially those providing overnight care. I don’t like the idea of our daughter having 1 male worker on overnight, given a paedophile would be attracted to such a position. Maybe there needs to be either a female worker sleep over, video observation overnight, spot checks by a manager, or two workers overnight. This is a difficult area because this would increase the cost of respite and potentially mean some services could not fulfil the criteria required to become accredited and close. Government funding would need to allow for the increased cost of achieving certain standards.48

Alternative care for children with disabilities who cannot remain living at home with their parents is problematic. The foster care/alternative care system at times seems unable to cope with children with disabilities; carers are apparently difficult to recruit. Anecdotally, foster carers say they are not given adequate support to care for children with disabilities and, in particular, difficult behaviours.49

Child safe practices are needed to be built into policy, planning, protocols and practice for all carers and service providers.50

Currently in the Department of Human Services, the Carer Assessment and Registration Unit (CARS) located within the Alternative Care Unit is responsible for approving and registering potential carers who may wish to provide alternative care to children and young people, including children with disabilities. There is a three-tiered process which requires criminal record checks, assessment of any records held by Family and Youth Services Client Information System and an individual assessment process undertaken by the agency providing the service. All information is then reviewed by CARS which has the final say on the suitability of the carers.

This process is being further developed to enable greater levels of assessment, training and extended payments for carers supporting children and young people with high physical care and/or significant behavioural and emotional needs. Greater funding is required to enable the continued recruitment, training and payment of carers who are suitable and willing to provide care to children and young people who have high, multiple and complex needs.

45 See Chapter 17 Screening and Monitoring.
46 Submission 116 Name Not For Publication.
47 Submission 13 Mr & Mrs J. Lehmann.
48 Ibid.
49 Submission 56 Intellectual Disability Services Council.
50 Submission 66 National Council of Single Mother & Their Children Inc.
RECOMMENDATION 86

That DHS provide increased funding to individuals and agencies to enhance and increase the recruitment of carers who are willing and suitable to provide care to children and young people who have high, multiple and complex needs.

That such funding include appropriate payment for carers, commensurate with the levels of care required. Funding must also be available for education and training of carers.

The DHS ensure all agencies funded to provide out-of-home care for children and young people with disabilities have appropriate policies, standards and guidelines in place which outline the agency roles and responsibilities for providing competent and safe care for children including the guidelines and standards on the prevention, detection, investigation and reporting of abuse. (See also Chapter 17)

Reason

All children require carers who are suitable and competent in providing care. However children and young people with disabilities are a highly vulnerable group that have many special needs. Care must be of the highest quality and every effort must be made to ensure that they are cared for appropriately within an out-of-home care environment. There are, unfortunately, many cases of children and young people who have been abused in care, particularly in institutional care which have been reported nationally and internationally. Greater community awareness and a willingness to accept that children with disabilities can be abused has resulted in parents and the community, in general, demanding that governments reassure them, that every effort has been made to provide suitable care.

RECOMMENDATION 87

That a detailed analysis of all cases of children and young people with disabilities/special needs entering into care under the Guardianship or Custody of Minister be undertaken. Such analysis to ascertain the reasons why they are entering alternative care and through which pathway they are entering care, that is, for child abuse matters or where parents are unable to provide care. Such an analysis should include whether adequate and effective preventative and supportive measures were in place before entry into long-term care.

Reason

In South Australia currently, over 10% of all children in alternative care are classified as having some form of ‘special need’. Many children are entering the care system at later ages, between 12 years and 14 years, often due to the increasingly demanding nature of the physical care requirements and/or challenging behaviour as these children mature. A smaller proportion may enter care because of neglect or abuse reasons. Analysis is required to ascertain the extent to which system responses are working effectively to prevent those children and young people from entering care when they have family willing and able to care for them.
IMPROVING LOCAL SERVICE PLANNING AND COORDINATION

The availability of a range of flexible, accessible and appropriate regional and local services are critical factors in assisting families to care for their child with a disability and for lessening the potential for abuse or neglect to occur. It is also important that services plan and develop initiatives to prevent abuse of children with disabilities. These might include initiatives that:

- develop community awareness of abuse of children with disabilities and of the need to develop ‘child safe’ environments
- provide training for staff and the community
- promote recognition among service providers of the importance of access to services that may be required for children and young people with disabilities, that is, ensuring equitable access and not discounting need on the grounds of disability
- improve support for families.

RECOMMENDATION 88

That DHS, in particular the Disability Services Office, continue to work towards full implementation of the recommendations outlined in the Disabilities Services Framework 2000 – 2003. In particular implementations aimed at improving the responsiveness and quality of services, the level of cooperation and coordination across the sector and also encouraging a more integrated approach to service delivery. This could be further achieved through a comprehensive case management approach, where one agency takes responsibility for leading coordination of services and supports.

Reason

The service sector in relation to disability is complex, fragmented and difficult for many families and service users to negotiate. While improvements have occurred in some areas through the development of coordination models for instance, Options Coordination, further improvements are required. A comprehensive case management approach which is the responsibility of one lead agency would provide greater opportunities for collaboration and coordination. While some agencies provide some level of case management, many families are required to contact a variety of agencies, seeking assistance and services. This process is often time consuming, confusing and frustrating with families having a variety of agencies and workers involved in their lives providing discrete services that are uncoordinated with each other and having to negotiate this service delivery maze.

CHILDREN WITH DISABILITIES AND THE CHILD PROTECTION SYSTEM

Many families with children who have disabilities strive hard to ensure their child has the best opportunities and to maximise their child’s abilities so that they may have a constructive and accepted place in the community.

Nonetheless, the level of input required to provide care for children with disabilities, both mentally and physically, can over the long term be difficult for many parents to sustain. High levels of family support are needed but are often not available. Family breakdown can result with parents having to relinquish their child to the care of State. This is particularly so for families with children who have significant and multiple disabilities and/or high physical care needs.
The greater vulnerability and higher risk of children and young people with disabilities to child abuse and neglect has been previously outlined. Where children and young people have been abused and neglected, child protection intervention is required.

**Child Protection Intervention**

The same general principles of good practice apply equally to children with disabilities. The special needs of some disabled children require particular consideration and can present challenges when investigating suspected abuse. A disabled child may have problems in communicating, differences in physical care experiences, different life experiences, differences in learning and knowledge and may have limited access to information about sex and sexuality. These factors need to be taken into account when planning for intervention and assessment.

Comments received from submissions reflect the breadth of concerns and issues in child protection interventions for children with disabilities:

- There is a need for a comprehensive and collaborative approach between child protection services and disability service agencies to address the needs of children with disabilities for child protection.\(^{51}\)

- Families and children with disabilities can become isolated without means for disclosure or raising of abuse or neglect concerns. Specific training for mainstream and FAYS child protection sectors is needed, as well as, specific training in the disability sector regarding child protection indicators, interventions and appropriate notification.\(^{52}\)

- FAYS' increased acceptance of notification from professionals working in the disability sector is required.\(^{53}\)

- FAYS [need to] develop a discrete specialisation team for responding to child protection notifications that involve a child with a disability.\(^{54}\)

- …the disability sector develop child protection system specialists to assist case planning and supportive action plans including the provision of disability services.\(^{55}\)

- There is a need for strategies to improve the relationship and the communications strategies between FAYS, Options Co-ordination, service provides and the funding body. The focus should be on both improved preventative, investigative and treatment programs and should be implemented and monitored. A child first/disability second approach is required.\(^{56}\)

Considerable concern has been expressed about the lack of coordination across agencies to support victims of abuse:

- Agencies often do not understand their own policies and procedures and interagency protocols and do not always have the level of skills and resources to handle high need students…It is highly recommended that a single manager be assigned to victims of abuse with the role of coordinating across agencies and that interagency coordination should be subject to accountability processes.\(^{57}\)

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51 Submission 53 Adelaide Central Mission.
52 Submission 161 Department of Human Services Disability Services Office.
53 Ibid.
54 Ibid.
55 Submission 56 Intellectual Disability Services Council.
56 Submission 183 Department of Human Services Strategic Planning & Population Health.
57 Submission 186 Department of Education and Children's Services Advisory Group.
Children with disabilities, particularly those with communication difficulties, often express their experience of abuse through changes in behaviour for which the cause is often not readily apparent. Such training ensures that professionals and other workers are more alert to the specific ways that children with disabilities may behave as a consequence of abuse, and that they are more aware of the possibility that abuse may have occurred and respond more appropriately. This training needs to be undertaken on an inter-agency basis to establish linkages between staff in different sectors and to enable exchange of information from different sectors enriching understanding of issues for children and young people with disabilities, their child protection needs and how responses can be improved in a coordinated and collaborative manner.

**RECOMMENDATION 89**

That consideration be given to the deployment of specialised FAYS staff, trained in disability who could undertake or provide consultancy advice on the conduct of investigations for children and young people with a disability.

That a training program be developed for disability awareness as well as training to improve the recognition of abuse and neglect in children with disabilities on an inter-agency basis.

**Reason**

There is a high level of skill and time required to ensure appropriate conduct of investigations of child protection matters for a child or young person with a disability. The availability of specialised staff to undertake investigations or who can provide consultancy advice and support will ensure that investigations are conducted effectively within the context of the child’s capacity and the process focused on their best interests.

Even if specialised staffing is established, FAYS, SAPOL, health, teaching, welfare and disability services staff all require disability awareness training as well as specialised training to improve the recognition of abuse and neglect in children with disabilities.

**CHILD PROTECTION LEGISLATION**

One of the issues of concern before the Review was whether the legislation in its current form provided for effective and appropriate coverage and protection for children and young people with disabilities. The objects of the *Children’s Protection Act 1993* do not draw any specific attention to children with disabilities and/or their vulnerability. Further consideration may be warranted as to whether the objects in their current form require amendment.

The legislation, as it currently stands, is regarded as being sufficiently broad to cover and enable appropriate intervention. The interpretation of the legislation, however, has been narrowed and practice has not reflected the intent of the legislation in relation to families with disabilities.

58 Submission 100 Ms Annette Aksenov.
59 Submission 161 Department of Human Services Disability Services Office.
For example, submissions have commented on the way the Act has been interpreted in relation to the processes which families have been subjected to when seeking care and custody orders, for example:

*Procedures employed unnecessarily result in the family of a child with a disability being subjected to evidential based assessment and intervention process in order to implement alternative custody and guardianship arrangements...* A facilitative process, with placement matching and acceptance of family circumstances leading to alternative care and placement (as in adoption processes and court action) could prevent the adversarial processes which families currently experience.*

Consideration has been given to whether amendment of Section 38 of the *Children's Protection Act 1993*, pertaining to the application of care and protection orders, is required. Despite the broad intent of the legislation, the interpretation and application of the Act is perceived as stigmatising and negative. Submitters have indicated the need for amendments to reduce the negative effects of the current application of the law on this matter, for example:

*If legislation included a category of “children with disabilities whose parents are unable to continue to provide care at home”, agencies responses may be more consistent and coordinated.*

**RECOMMENDATION 90**

That consideration be given to amending legislation, so that children and young people with disabilities and/or special needs can be placed in long-term care without the need of the Minister to determine an opinion as to whether the child is a child ‘at risk’. (See Chapter 23 Recommendation 169).

**Reason**

Amendment along these lines will alleviate ‘proving’ whether a disabled child is a child ‘at risk’ under the current definition and effectively ensure that children and young people with disabilities could have long-term alternative care available to them. A proper assessment of the family and child’s circumstances would need to be undertaken and presented to the court.

*60 Ibid.*

*61 Submission 56 Intellectual Disability Services Council.*
INTRODUCTION

This chapter discusses:

- children and their direct contact with the court systems, including consideration of the Family Court (Commonwealth), the Youth Court (SA) and the Criminal Courts in South Australia
- children as witnesses, the receipt of their evidence and their participation in the court system.
GENERAL DISCUSSION

Whilst it is generally acknowledged as a matter of principle that children's best interests are paramount on matters pertaining to their welfare, this paramountcy principle does not appear to be currently reflected in the processes to which children are exposed in courts.

This is particularly so in the criminal justice system in which children may be witnesses because they are the alleged victims of criminal offences such as sexual assault. Many submissions referred to the “systemic abuse” or “re-victimisation” that is experienced by child witnesses in the criminal courts. This is not a new criticism and has been the subject of a number of studies. The systemic abuse was described in various submissions in the following way:

In the interests of seeking justice victims should not have to survive the abuse of the criminal justice system

… the end result of this is that we force children into a system that has virtually no prospect of prosecuting, punishing or effectively treating the offender. In addition to this, we systematically re-abuse children by their very contact with the system that is in place to manage these processes.

… the current system in South Australia for dealing with allegations of sexual abuse is ineffective and in need of urgent reform. Very few convictions result from prosecutions. The accused is able to hide behind the inadequate system in cases when a different approach outside the justice system may result in sex offenders more readily seeking appropriate treatment.

The current system’s unfairness and ineffectiveness in providing sufficient protection to child sexual abuse victims is demonstrated in the low conviction rate of offenders, the re-victimisation of children through the criminal justice system…

There are three main circumstances by which children come into contact with the courts.

- Where they are the complainants in relation to an alleged offence committed against them. This process is part of the criminal justice system and proceedings may be in the Youth Court, the Magistrates Court or the Criminal Court of either the Supreme Court or the District Court.
- Where they are witnesses to an offence or incident which occurs to another, such as domestic violence, which proceedings may be in any of the courts previously mentioned.
- Where they are the subject of proceedings such as Family Court proceedings, or care and protection orders in the Youth Court.

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1 Submission 103 South Australian Law Society – Children & The Law Committee.
2 Submission 115 Victim Support Service Inc.
3 Submission 103 South Australian Law Society – Children & The Law Committee.
CRIMINAL JUSTICE SYSTEM

The major concern about children is in relation to the circumstances of their involvement in the criminal justice system. This is the situation in which they are involved in the court, ostensibly in part for their own benefit, namely, to give evidence in relation to the perpetration of a crime against them and to have the offender convicted and punished.

There are a number of stages at which their interests need to be taken into account. Each of these stages will be canvassed and later there will be discussion as to overall alternative approaches which are to be considered.

PRE-TRIAL PROCEDURES FOR CHILDREN

Many submissions commented on the process of interviews conducted with children, and questioned their quality, the training received by interviewers and the number and timing of such interviews.

Criticisms included:

- the failure to conduct interviews as soon as possible
- the failure of police officers to take any or adequate contemporaneous notes
- repeated interviewing of child complainants without controls
- the non-disclosure of proofing notes of witnesses by the Director of Public Prosecution on the ground of privilege
- the non-disclosure of counselling notes being “protected communications” under Division 9 of the Evidence Act 1929 (SA)
- involvement of victim liaison officers or counsellors with child complainants during the time of the interviewing process and potential for contamination
- the lack of transparency about the investigation processes including the failure to disclose that children have undergone counselling
- an example given of two complainants having been counselled by the same counsellor
- the need for an “unbiased investigation” by properly trained investigators with four examples given to illustrate the point
- only professionals specially trained to interview children should be used in child sex abuse cases. This should be a specialised team comprising child psychologists, legal advisers and trained police officers.

These criticisms were particularly made in the context of prosecutions for sexual offences against children. The South Australian Law Society - Criminal Law Committee and the Justice Advisory Group, recommended that the guidelines used in the United Kingdom be used as a basis for implementation of guidelines in South Australia. These guidelines are sensible and practical approaches which may be used by expert interviewers. They are not binding and instead act as an indication of best practice as to child interview techniques. These guidelines contain detailed guidance and include important aspects such as the keeping of the written notes used by the interviewers.

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5 Submission 153 South Australian Law Society – Criminal Law Committee.
6 Ibid.
7 Ibid.
8 Ibid.
9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.
13 Ibid.
14 Submission 1 Professor Freda Briggs.
15 Home Office in conjunction with Department of Health (c1992) Memorandum of Good Practice on video recorded interview with child witnesses for criminal proceedings.
Other submissions pointed out that multiple interviews of children are not only traumatic for the child but also problematic for the court. At the same time it is also necessary to take into account that children often disclose gradually and not completely at the time of their first formal interview. Thus, it is frequently not possible for child interviews to be limited to only one. This latter aspect can lead to the defence seeking to argue in court that the best evidence of the child is in the first and earliest interview, which is often not the case. It is this factor which leads to Recommendation 98 below.

Another important factor to also take into account is the statistical data referred to later in this section. This data reveals that with regards to sexual offences, three in 10 report alleged offences after more than six months and further that the five to nine age group is the group most likely to lodge a complaint to police after more than six months.

A further factor is the interviewing of children with disabilities. One submission suggested that forensic interviews with children with disabilities should be more flexible and allow for a differing and or a more directive approach to be utilised. This problem is discussed in relation to the giving of evidence hereafter. There is a need to entertain a range of processes to interview such children which include the use of communicators and more flexible and unconventional forms of eliciting information.

Whilst The SA Law Society - Criminal Law Committee was critical of counselling being undertaken during the process of investigations, other submissions commented adversely on parents being advised not to seek counselling for their child because it may “contaminate the evidence”. Additionally, Child & Adolescent Mental Health Services (CAHMS) were sometimes put on hold until the criminal processes have been dealt with.

There is a very comprehensive *Interagency Code of Practice for Interviewing Children and Caregivers (SA)* March 2001 and the Justice Advisory Group in its submission observed that this is a “sound document” but that it should be updated to take account of further training requirements. The observation was that there was “…an urgent need for research, guidance and best practice training for child practitioners. Currently, research activities are ad hoc and lack coordination”.

This Review supports the need for the developing of guidelines.

SA Law Society - Criminal Law Committee expressed concern over counselling of children, or indeed any alleged victims of sexual offences during a period in which questioning or investigation is taking place. Whilst it is understandable that counsel acting for accused may be instructed to take every possible challenge to each and every part of the investigative process, the public interest in ensuring that alleged victims are able to access professional counselling to assist them to cope with their lives is appropriately reflected in the legislation. The rights of the accused are part of the overall public interest in justice as are the rights of victims. There are sufficient protections in the existing legislation to ensure correct balance and fairness.

The foreword to the *Memorandum of Good Practice* encapsulated this notion well:

> The interests of justice and the interests of the child are not alternatives. Children have a right to justice and their evidence is essential if society is to protect their interest and deal effectively with those who would harm them.

> All too often the interest of justice have been frustrated - and the child further harmed by the legal process - because it has just not been possible for the child to cope...
RECOMMENDATION 91

That UK guidelines in the Memorandum of Good Practice be used as a base together with the Interagency Code of Practice Interviewing Children and Caregivers, for the purpose of developing guidelines which can be incorporated into Practice Directions to guide professional interviewing of children in relation to potential criminal proceedings.

Reason

This recommendation recognises the need for training, accountability and standardising of child interviews to ensure that the best possible quality of interviews are available if required for the use in the criminal justice system. Many of the criticisms referred to in the submissions in respect of the interviewing processes can be dealt with by implementing proper processes as recommended.

EARLY DISCLOSURE TO ACCUSED OF VIDEO INTERVIEWS OF CHILD VICTIM

Research available in the United States suggests that if the accused is exposed at an early stage to the child making direct accusations against him or her on video, this is often the trigger for a guilty plea. This is particularly so in cases of intra-familial abuse and may result in the accused entering into diversionary processes. The reasons for and nature of diversionary programs are discussed hereafter and also in Chapter 16.

As an adjunct to the application of diversionary programs and in order to promote an early resolution to alleged sexual offences against children, the accused should be given the opportunity to be shown any video interviews with the child victim in a formal setting, with or without legal representation at the option of the accused, as soon as possible. The viewing of the interview prior to committal or trial can only be done in the presence of the accused in person and not through the agency of the lawyer alone.

The accused at the time of the showing of the video should be advised that anything he/she says will be recorded and may be used in evidence against him/her. However, any physical reactions of the accused (as distinct from what the accused says) in the course of being shown the interview should be recorded but cannot be used against any accused in any trial. Subject to the application of evidentiary rules, evidence as to the physical reaction of the accused may be introduced by the accused, subject to relevance, either during the trial or a sentencing process.
### RECOMMENDATION 92

That a video interview(s) should be shown to the accused in a formal setting, with legal representation if the accused desires. This should take place in an interview room and the accused should be warned that anything he/she says during the process of the viewing will be noted and may be used as evidence. Guidelines should be drawn up as to the circumstances of the formal viewing and may be issued as Practice Directions by the Court.

**Reason**

Such a process of early viewing may have many advantages. First, it will encourage early interviewing of the child. Second it will give an early opportunity for the accused to assess his/her position. Third, it may enhance the possibility that the viewing of such interviews will lead to the accused accepting guilt and not proceeding to a criminal trial.

### CHILDREN’S EVIDENCE: COMPETENCE, CORROBORATION JUDICIAL WARNINGS

Historically there has been a strong bias against relying on young children’s eyewitness testimony, which continues to exist.24 Even as recently as 1996 a report concerning practice in New South Wales found that judges and magistrates still regarded children as “honest” but highly suggestible to the influence of others and prone to fantasy.25 It has been hypothesised that the legal system’s view is based on historical beliefs that children cannot be trusted, cannot give an intelligible account of their experiences, cannot understand the obligation to tell the truth and are manipulative.26

Two submissions to this Review27 suggest that society generally believes the word of an adult over that of a young child. A study conducted by McNichol, Shute and Tucker28 in relation to eyewitness memory of children for a repeated event found that there was in fact little evidence that children “made things up” and that children were more likely to omit details or identify that they did not know and answer if they were unable to answer a posed question.29 Further, there is research which suggests that children as young as four years of age have a capacity to differentiate lies from the truth.30

The issue of children’s evidence relating to competence, corroboration and judicial warnings was comprehensively analysed on a national basis in Australian Law Reform Commission (ALRC) Report No 84: Seen and heard: priority for children in the legal process Chapter 14. However, in relation to the comments made about the legislation in South Australia, it is important to note that modifications have subsequently been made to the Evidence Act 1929 (SA) in relation to sections 9 and 12.

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28 Also Saywitz and Acmparo (1998) referred to in Submission 169 Action for Children SA.
COMPETENCE

Historically the common law required evidence taken in court from any person, including a child, to be sworn, that is, given on oath. \(^{31}\) Provided that a child understood the nature and consequences of sworn evidence, then a child of any age could give evidence on oath. \(^{32}\) Over the years there have been statutory changes to this common law position which liberalise the giving of evidence to include different forms of oath, affirmation, and unsworn evidence in certain circumstances.

Section 9(1) of the *Evidence Act 1929 (SA)* provides that any person (which includes a child) is presumed to be capable of giving sworn evidence unless the judge determines that the child does not have “sufficient understanding of the obligation to be truthful entailed in giving sworn evidence.”

If the judge determines that the child does not have sufficient understanding, the child may still be permitted to give unsworn evidence under section 9(2) of the *Evidence Act 1929 (SA)* upon the judge fulfilling specified requirements. Namely, the judge is required to be satisfied that the person understands the difference between the truth and a lie. \(^{33}\) The judge must tell the child that it is important to tell the truth, and the child should then indicate that he/she will tell the truth. If those requirements are not met then the unsworn evidence cannot be received. \(^{34}\)

These legislative provisions in South Australia are now in accordance with the *Evidence Act 1995 (Cth)* and the essence of Recommendation 98 made in the ALRC Report No. 84.

It is also to be noted that section 9(3) of the *Evidence Act 1929 (SA)* \(^{35}\) permits a judge to receive and rely on information supplied from sources other than questioning the child. \(^{36}\) The ALRC Report at paragraph 14.64 discussed the effect of such provisions and stated:

> This provision allows a child’s competency to be tested with the assistance of someone professionally qualified or with whom the child has a rapport. For example, expert evidence may assist the judge to determine whether a particular child is capable of understanding and responding to certain questions...[and] may also permit the child’s competency to be tested out of court or in a modified courtroom setting.

Thus, South Australia has the appropriate provisions which would permit the court to take a flexible approach to competency testing which is appropriate to the age and circumstances of the child.

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32 R v Brasier (1799) 168 ER 202.
33 Submission 103 South Australian Law Society – Children & The Law Committee, Attachment 1 suggested that this requirement was only true for children but not adults, which is not correct under the present provisions of general application.
35 Section 9(3) provides “In determining a question under this section, the judge is not bound by the rules of evidence, but may inform himself or herself as the judge thinks fit.”
RECOMMENDATION 93

That where questions regarding children’s competency arise, the court should be encouraged by the prosecutors, or by any person acting as the legal representative of the child, to take a flexible approach to competency testing including obtaining expert opinion and reports as well as considering testing in other than a courtroom situation.

Reason

This recommendation will enable a Court to more accurately assess a child’s competence.

CORROBORATIONS AND JUDICIAL WARNINGS

Historically at common law there was either a rule of law or a rule of practice that a jury in a criminal case should be warned against acting on the uncorroborated evidence of a child, although they may do so if they are convinced that the witness is truthful and reliable.37

In South Australia, as in other Australian jurisdictions, there are statutory provisions which modify the effect of this rule. In South Australia, the combination of section 9(4) and section 12A of the Evidence Act 1929 (SA) have been recently interpreted by the Full Court of the Supreme Court in the case of _R v Starrett_38 as abrogating the common law rule regarding a child’s sworn evidence (section 12A) and unsworn evidence (section 9(4)) requiring the judge to warn a jury. However, the legislation is not as clear as it could be and section 9(4) is implicit in contrast to the express provisions contained in section 12A.

Further, as noted by the Court in paragraph 41 of the reasons:

… that does not mean that s 9(4) stands alone. In the background remains the common law requirement to warn or to caution a jury whenever necessary to avoid “a perceptible risk of miscarriage of justice arising from the circumstances of the case”…this common law requirement should not be regarded as abrogated is inconsistent with the requirements of s 9(4) of the Act. The requirement to warn or to comment will depend upon the circumstances of the case. It will not arise simply because the witness is a child. The circumstances of the case will dictate the matters by reference to which warning or comment is made, and the strength of the warning or comment. This requirement is different from a requirement as a matter of course, in all cases, to give a warning.

In the ALRC Report it was noted at paragraph 14.67 that judges in Australia continued to give strong warnings about child witnesses, showing that children’s evidence continues to be generally viewed with suspicion. Similar submissions were also made to this Review, such as Submission 1 which stated that this was further emphasised in children of tender years whose evidence is unsworn.39

It was also submitted that these factors were additionally reinforced when juries are warned that there is even less credibility if the sexual abuse was not reported soon after the offence. It was pointed out that this is a real problem because children seldom realise that the abuse is wrong and reportable, particularly when the alleged offender is a trusted authority figure.40

As another submission put it, children in court are not believed and young children, babies and intellectually disabled children have no voice in courts.41

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39 Submission 103 South Australian Law Society – Children & The Law Committee, Attachment 1.
40 Submission 1 Professor Freda Briggs.
41 Submission 81 Noarlunga Community & Allied Health Service.
Although sections 9(4) and 12A of the Evidence Act 1929 (SA) have removed the common law requirement that a judge must warn the jury that it is dangerous to convict on the uncorroborated evidence of a child, it still remains open to a judge to give such a warning as indicated in the case of R v Starrett. 42

Submissions were made to this Review that the Evidence Act 1929 (SA) should be amended as it has been in Victoria, Tasmania, Northern Territory and Western Australia, to prohibit warnings which suggest that children are an unreliable class of witness. Further, that Recommendation 100 of the ALRC Report should be implemented, which says that a warning in respect of a particular child should be permitted in exceptional circumstances, and judges should be required to provide written reasons for the giving of the warning. 43 These submissions have validity.

**RECOMMENDATION 94**

That, in keeping with Recommendation 100 of the ALRC Report, the Evidence Act 1929 (SA) be amended to provide that corroboration of the evidence of a child witness whether sworn or unsworn, should not be required.

That Judges be legislatively prohibited from warning or suggesting to a jury that children are an unreliable class of witness. An example of such legislation is section 106D of the Evidence Act 1906 (WA).

That in accordance with Recommendation 100 of the ALRC Report, legislation provide that judicial warnings about the evidence of a particular child witness should be given only where

1) a party requests the warning, and
2) that party can show that there are exceptional circumstances warranting the warning.

Such exceptional circumstances should not depend on the mere fact that the witness is a child, but on objective evidence that the particular child’s evidence may be unreliable.

That the warnings which are given should follow the formula in Murray v R 44 to reduce the effect of an individual Judge’s bias against, or general assumptions about, the abilities of children as witnesses.

**Reason**

Such a recommendation will promote a more appropriate standardised approach for all Judges to take in relation to the evidence of children which is more in keeping with their capacity to give reliable evidence.

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43 Submission 129 Office of the Status of Women.
44 (1987) 39 Crim R 315 “...in all cases of serious crime it is customary for judges to stress that where there is only one witness asserting the commission of the crime, the evidence of that witness must be scrutinised with great care before a conclusion is arrived at that a verdict of guilty should be brought in.”
CHILDREN IN COURT

AMBIENCE

A court environment is challenging for all witnesses whether they be adult or child. However, they are even more confronting for a child and the younger the child, the more intimidating. Not only is the environment intimidating, but the child is also expected to face defence lawyers challenging their competence to provide reliable and truthful testimony.45

Court environments on the whole are large, austere rooms with a raised judicial bench, long bar table, long associate’s or court reporter’s table, large jury box, a similar sized box for the accused and sheriff’s officers, and a small witness box. The judge and counsel are all wigged and robed in the superior courts. In summary the atmosphere is not conducive to enabling a child to feel comfortable about the giving of evidence.

It is sometimes suggested that this environment is needed in order to impress on witnesses the importance of their role and encourage their respect for the judicial criminal system. In relation to children, this is not a very persuasive argument as by the time they give evidence they have already been well informed about the court process and the importance of giving truthful evidence. A nervous or frightened child is not the best way to adduce reliable and full information on the allegations.

As one submission described the situation:

The Criminal Justice System also displays a significant lack of respect for children by not allowing the child to routinely give evidence in an environment that is adapted to their needs… If the adult Criminal Justice System were serious about respecting children's rights for the psychological safety and access to justice, then the Vulnerable Witness provisions46 could be routinely offered to all children negotiating the Criminal Justice System.47

In South Australia, section 13(1) of the Evidence Act 1929 (SA) allows special arrangements for the taking of evidence from a witness in order to protect the witness from embarrassment or distress or being intimidated by the atmosphere of a court room or for another reason.

Section 13(2) of the Evidence Act 1929 (SA) provides examples of "special arrangements" which include evidence transmitted by closed circuit television, the placing of a partition to obscure a witness's view of a party, and the accompaniment of a relative or a friend to provide emotional support. These special arrangements are not limited to children but may be applicable to several categories of vulnerable witnesses particularly adults who have experienced trauma including rape or sexual abuse or who suffer from an intellectual disability.

Section 13(10) of the Evidence Act 1929 (SA) also provides that a criminal case involving a “vulnerable” witness must have a decision made before the taking of any evidence for special arrangements. A “vulnerable” witness is a witness who is under 16 years of age, or suffers from an intellectual disability, or is the alleged victim of a sexual offence or is suffering some special disadvantage. There is, however, a qualification that the order must not be made if it would prejudice any party, relieve a witness of an obligation to give sworn evidence, or prevent a judge or jury seeing and hearing the witness.

45 Submission 169 Action for Children SA.
46 The provisions of the Evidence Act 1929 (SA).
47 On Vulnerable Witness contained in Submission 163 Child Protection Services, Flinders Medical Centre and similar sentiments in Submission 1 Professor Freda Briggs.
Various submissions have indicated that whilst there has been a gradual increase in the number of matters in which witnesses have applied to use special arrangements, particularly the use of a screen positioned between the accused and the witness, it is less common to use closed circuit television (CCTV). Access to courts which have closed circuit television facilities are limited. There are also a number of examples where child witnesses have been accompanied by a support person, and this facility is available from within the office of the Crown.

One submission indicated that although section 13 of the Evidence Act 1929 (SA) directs a judge to consider whether a vulnerable witness provision ought to be put in place including the giving of evidence in another room by CCTV, the prosecution is “commonly concerned” that such evidence would have “lesser impact on a jury” and therefore be less likely to secure a conviction.48 Consequently, witnesses under the age of 16 years are not always provided the option of giving evidence in another room.49 This point was also reinforced by Submission 169 which further suggested that such facilities should be “an assumed entitlement to be exercised by the child”. This same notion led to the suggestion in Submission 129 that that the child should have legal representation as the prosecution cannot and does not perform that role.

Another submission stated that a child entering a courtroom is often still confronted by the perpetrator only metres away. Indeed, a child may have to walk past the dock, even if there is later a shield in place while the child gives evidence. Such a situation is both traumatic and humiliating.50

Although equipment and procedures are available for vulnerable witnesses, their availability is severely limited and their use is infrequent, particularly for regional and country areas.51

In relation to the court environment, there is a need to ensure that the child's wishes are accommodated where reasonably possible and recommendations are accordingly made. With respect to the suggestion that the child be independently legally represented in the Court, there is no recommendation to this effect. The other Recommendations which assist the child in the overall court system, set out hereafter, largely overcome many of the existing deficiencies in protecting children without the need for separate legal representation.

In addition, the role of such a legal representative in a criminal trial could in certain circumstances lead to complications and may even result in the counsel being cross-examined as to the basis for assertions that certain questions are inappropriate or that the child is being traumatised by the process.

48 Submission 129 Office of the Status of Women.
49 Ibid.
50 Submission 6 Victim Support Service.
51 Ibid.
RECOMMENDATION 95

That the environment in which children are interviewed or give their evidence should preferably be in a comfortable room with the least number of persons present and include a witness support person if the child wishes.

In the case of a child required to give evidence in a court room:

- children should be routinely offered a choice of vulnerable witness alternatives, including whether Judge or counsel should be robed or wigged
- the child may choose to have the presence of a support person who is not linked directly with the case and is not a member of the family.
- the child should not be required to walk past the dock when the accused is present
- the accused should not be physically present in the room in which the child gives evidence but instead may hear and view evidence through closed circuit television
- the child should not be exposed to the presence of the accused in any adjacent room.

Note also see Recommendation 101.

Reason

This recommendation is made to help alleviate the intimidating atmosphere of a courtroom may have to be gradually implemented because of the lack of purpose built or modified facilities, but in the mean-time any changes which can be made incrementally along similar lines will be an improvement.

DELAYS IN COURT PROCEEDINGS INVOLVING CHILDREN

OBSERVATIONS

Delays in Court hearings of nine to 12 months add to the trauma and adverse consequences to a victim’s psychological wellbeing.52

Submissions 163 and 16953 summarised delay and its effects as follows:

The lack of respect afforded to children in the Criminal Justice System remains a salient issue for people working in the field of child protection. This lack of respect is evidenced in the delay of trials for children who have been sexually abused. The longer the trial is delayed the greater the effect this is likely to have on the evidence that is provided and the emotional wellbeing of the child. If the trial is delayed by several months or even years as is the case in the current South Australian system, peripheral details about the incident of abuse are likely to be forgotten. These details, if they were attended to straight away without delay, may help to establish a better understood context and thus would be of great benefit to the child and the process if evidence was heard as close to the event as possible. In South Australia when an accused pleads not guilty, the matter is likely to be delayed for a significant period of time. The emotional toll for families and children during this time can be debilitating and can often mean that children and their families choose not to pursue the matter due to the distress it causes.

52 Submission 1 Professor Freda Briggs; Submission 103 South Australian Law Society – Children & The Law Committee Attachment 1; Submission 163 Child Protection Services, Flinders Medical Centre.
53 Submission 163 Child Protection Services, Flinders Medical Centre; Submission 169 Action for Children SA.
The Justice Advisory Group submission referred to a system of prioritising the listing of criminal trials involving children.

Recommendation 101 will impact on the length of time taken to resolve criminal allegations and the involvement of the child victim in that process. If evidence is adduced by video process this may help minimise delay. The process of priority for hearings should continue.

**TRIAL PROCESSES INVOLVING CHILDREN**

A range of issues were canvassed by submissions under this broad heading which were frequently interrelated and some were said to compound the deleterious and unproductive outcome of the current trial processes. The issues included:

- the effect of cross-examination on child witnesses
- the practices relating to corroboration and warnings to the jury on child witnesses
- the statistics concerning police reports and the results of prosecution
- the standard of proof required
- suggestions for reform such as an inquiry process, civil procedures and diversionary programs

Each of the topics and observations will be individually discussed hereafter.

The essential message common to almost all submissions was that the present criminal system was ineffective at dealing with the various forms of child abuse through the criminal justice system. The processes were too long, too traumatic, too expensive, and increased rather than assuaged the stress on victims and families, with the end result being very low conviction rates and no adequate treatment of offenders to stop repeat offending. Submissions argued that the criminal law process was not working and that other avenues for protecting children were urgently required outside this system.

**CROSS-EXAMINATION OF CHILDREN**

Whilst there have been changes relevant to the evidentiary processes of trial, these changes do not alleviate the child’s exposure to further trauma caused by the process of attempting to achieve a conviction.

Many submissions referred to the trauma of cross-examination by defence counsel and made the point that such court processes can result in further abuse, betrayal and powerlessness.

Children within a criminal trial have to cope with the significant anxiety associated with giving a detailed account of their experience, which has already provoked anxiety. Elevated anxiety can interfere with concentration, making it harder to access memory and can impair motivation for the event to be recalled.

As submission 169 noted, a common coping mechanism for managing anxiety is avoidance or dissociation which, if it occurs in the context of a criminal trial, can result in the child being viewed as indecisive or indifferent, thus diminishing their credibility.

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54 Submission 196 Justice Advisory Group.
Submission 163 Child Protection Services, Flinders Medical Centre; Submission 169 Action for Children SA.
A gross example of inappropriate cross-examination was cited of a seven-year old boy cross-examined for up to five hours. The appellate court in that case found that the child had been exposed to “institutional abuse” by the court.\(^{58}\)

One submission referred to “rigorous cross-examination” consisting of bullying tactics, trick questions, and legal jargon or language which is too sophisticated for the age of the child.\(^{59}\)

Another submission tellingly described the process of cross-examination in these terms:

_Discrediting a child witness frequently involves confusing, intimidating and/or exhausting the child using a range of tactics. Some tactics precisely echo the dynamics of sexual abuse, such as the tactic of winning a child witness’ trust with gentle friendly questioning and then attacking and accusing the child._\(^{60}\)

This same submission also quoted a barrister who stated that:

_…if in the process of destroying the evidence it is necessary to destroy the child – then so be it._\(^{61}\)

An Australian study revealed that half of the participants stated that they would not recommend to other victims that they report the abuse.\(^{62}\)

It was also stated that many cases end in the entering of a _nolle prosequi_ because the stress of the child prevents continuation.\(^{63}\) Certainly the statistics which are referred to later in this chapter indicate that a large number of cases are the subject of an entering of a _nolle prosequi_, but there is no data which reveal the basis for that action. It is not hard to accept that a child’s stress or limited coping skills may well be a significant component leading to the filing of such a document.

An additional factor raised in submissions was the fact that a child of tender years may have little spatial or time concepts, but this does not prevent the child from being able to recount the incident well. Cross-examination which is focused on date, time and how far away things were may be inappropriate in some circumstances and expert evidence may be apposite to illustrate the child’s limitations so that the child’s evidence may be appropriately assessed.

During the process of consultations with members of the legal profession in the Office of the Director of Public Prosecutions and Judges in both South Australia and Western Australia, it became apparent that the practices varied considerably as to the approach to cross-examination taken by Counsel and or permitted by a Judge. In the end, much depended on the sensitivity of the Judge to the effect of the process of cross-examination on the child as to whether an inappropriate approach was permitted to continue.

Sensitivity as to the particular difficulties of children in court is not one which can rely solely on common sense, or whether a person has had experience of children by having had his/her own. It requires specialist information. The system to date has relied far too heavily on an approach based on the view that lawyers who are appointed to courts have picked up all the necessary skills through their extensive legal and life experiences prior to appointment. Whilst no doubt some have, it is not true of all and some further information and educational process is required.

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58 Submission 6 Victim Support Service.
60 Submission 129 Office of the Status of Women.
61 Ibid.
63 Submission 1 Professor Freda Briggs.
The same is true of lawyers involved in working with children in court, particularly prosecutors. The knowledge and practices in relation to working with children in courts must start at the beginning with the interviewing, the proofing, preparing them to give evidence, through to the giving of evidence. Knowledge is required to be implemented at all levels in order to minimise the stress to children in the courts.

The Western Australian approach which includes a complete application of the principles commonly referred to as “the Pigott system” coupled with a Child Witness Support Program which is discussed hereafter, provides a best practice model. The implementation of that system which included extensive consultation processes and a multi-disciplinary involvement with the criminal lawyers, the Crown and the judiciary has produced an overall product which recognises the special needs of the child.

**RECOMMENDATION 96**

That an appropriate, formal, judicial information/education program be devised for Judges, Crown Prosecutors and general members of the legal profession to assist them with a better appreciation of the special difficulties experienced by children when giving evidence and in particular the effect of cross-examination on children. (See Recommendation 154 in Chapter 21)

**Reason**

This recommendation will assist in minimising trauma suffered by children when giving evidence.

**UNREPRESENTED ACCUSED**

A further concern expressed in submissions is that an unrepresented accused should be prevented from cross-examining a child witness. Section 106G of the Evidence Act 1906 (WA) contains provisions which prevent a defendant who is not represented by counsel from cross-examining a child under 16 years and a process is suggested for the judge to ask the questions.

The Submission by the South Australian Law Society – Children and the Law Committee – suggested that a better remedy was that a court appointed advocate for the accused, rather than the judge, cross-examine the child.

In considering this issue, a number of concerns arise.

First, this raises the problem of legal aid and its limitations. There is an argument that this problem could be solved by ensuring that the accused always has legal representation so that the situation does not arise. This is of course one solution which commends itself, but it does not take account a second problem being the situation in which the accused does not wish to be legally represented but wishes to do the case him/herself. An accused may reject either legal aid or a court appointed lawyer.
This situation has occurred, albeit infrequently, in Western Australia and the approach is that the judge has cross-examined the child on behalf of the accused. The approach adopted has been for the accused to inform the judge of the topics and questions in a general sense or sometimes particular questions to be put to the child which are then asked, subject of course to the evidentiary rules.

This solution is by no means ideal. The judge is being placed in a compromised position and can appear to the child to be on the side of the accused. The judge is being involved in a role which differs from that of non-involved independent decision-maker. Additionally, an accused could later on appeal seek to argue that the judge failed to ask the right questions or asked them in the wrong manner, etc. A third problem is whether a trial in such circumstances should be proceed at all. This proposition would provide a very obvious easy means to avoid prosecution and is therefore not a real option.

Whilst a court appointed advocate is a good solution, it does not cater for the defendant who refuses assistance. Also, a defendant who refuses legal assistance is potentially the person who is most likely to want to intimidate the child in court and it may be the very reason for the desire not to be represented.

It is recommended that a defendant be first offered legal representation through legal aid or a court appointed counsel, but if that is refused by the accused the judge would cross-examine the child. It would also be useful for the South Australian Judges to communicate with the Western Australian Judiciary as to their experiences.

RECOMMENDATION 97

That the Evidence Act 1929 (SA) be amended to include a similar section to section 106 G Evidence Act 1906 (WA) which prevents an unrepresented defendant from directly cross-examining a child. Such amendment to be applicable to all children and not just those under 16 years of age.

Reason

This amendment should be utilised as a last resort and it would avoid compounding re-victimisation of the child victim by ensuring that the accused, who usually would have no legal training, from directly questioning and confronting the child. Fairness to the accused is also retained in a difficult situation as the accused may have the benefit of more effective cross-examination of the child than if left to his/her own devices.
EXPERT EVIDENCE

Whilst expert opinion evidence is frequently given in cases involving children in the Family Court, or in the Youth Court, there is little use of such witnesses in the criminal justice system. This is partly due to the fact that expert witness evidence is required to be confined to the person about whom the witness is called and also because the prosecution is generally unable to call a witness solely for the purpose of bolstering the credibility of a witness. In addition, general issues regarding the patterns of disclosure or the behaviour in child victims may be perceived as being within the “common knowledge” of the members of a jury, or as was regarded in the case of *R v C* (1993) 60 SASR 467 not a fit subject for an expert.

The issue of expert evidence and its use in criminal cases was the specific subject of consideration in the ALRC Report No. 84, at pages 328-329. The discussion in that report referred to the fact that a child’s behaviour on the witness stand or during the investigative process, including the timing and manner of disclosure, may be contrary to a jury’s expectations of an abused child. This may be also true of judges who have not received specific training or education on the issue.

It was recommended in submissions that the rules of evidence should permit expert evidence to be called on issues such as patterns of children’s disclosure in abuse cases and the effects of abuse on children’s behaviour and demeanour in and out of court. This evidence would be admissible to assist the decision-maker in understanding, for example, why certain behaviour of a child may not reflect adversely on a particular witness’s credibility.

The *Evidence Act 1908 (NZ)* may in part be an appropriate model for the giving of such evidence. The legislation permits, in cases concerning child sexual assault, expert evidence to be called on the intellectual attainment and general development level of children of the same age group as the complainant and, in addition, whether any evidence regarding the complainant’s evidence was consistent or inconsistent with children of the same age group.

There is a further issue which particularly affects children with a disability. They are at risk of having their evidence regarded as unreliable and their disability may cause them to behave in court in a manner which may be perceived as inappropriate and therefore suggesting unreliability. It was submitted that the giving of expert evidence should be admissible to explain a child witness’s particular disability, the characteristics of the disability and the likely physical responses of the child to the court environment and process.66
RECOMMENDATION 98

That Recommendation 100 of the ALRC Report No. 84 be implemented by amendment of the Evidence Act 1929 (SA) to allow the court to permit expert opinion evidence to be given in any civil or criminal proceeding in which abuse or neglect of a child is alleged. The parameters of such legislation to include matters covered by the New Zealand legislation.

That such amendment specifically permit evidence to be given regarding any capacity or behavioural characteristics of a child with a mental disability or impairment. In addition, an amendment should permit generalised evidence to be given by an expert about patterns of children’s disclosure in abuse cases and the effects of abuse on children’s behaviour and demeanour in and out of court, without specific reference by that expert to the particular child.

Reason

Such a recommendation would ensure that both Judge and Jury are appropriately informed about the special features of child abuse cases so that the child may be better understood and credibility assessed from an informed base. It would also assist in the process of the way in which the child should be examined and the use of appropriate language and concepts in the Court process.

This recommendation has particular significance to children with an intellectual disability. These cases are rarely the subject of prosecution because of presumptions made about not only their competence but about reliability and behaviour. This recommendation is also related to the provisions of section 13 (3) of the Evidence Act 1929 (SA), recognising of course that there is a difference between issues related to the competence of a child and those related to the matters of credibility and evidence.

STATISTICS REGARDING CRIMINAL INVESTIGATION AND PROSECUTIONS

There are two main sets of data which are required in order to adequately assess what happens to cases potentially involving a crime which are notified to FAYS, and are then referred to SAPOL and proceed through the court and to conviction.

The first is the data from FAYS of notifications to the SAPOL. The second is the SAPOL’s data about the progress of complaints through the courts system.

The Office of Crime Statistics was requested to provide information on this process and data. In two Briefing Papers67, it has provided information which will be further analysed by that Office in due course.

As to the first set of data in relation to FAYS, the briefing paper indicates that:

It is not possible to track FAYS notification to SAPOL Police Incident Report by electronic means alone. With the current computer systems and data recording practices, any research tracking from FAYS notification to SAPOL requires a substantial level of manual intervention.

There were four main problems identified which included:

- it is not possible to identify at the FAYS end all of the notifications referred to SAPOL
- the two main data items needed for tracking cannot be relied on:
  - the Justice Information System Personal Identification Number (as there are two or more pin numbers for the same victims)
  - the FAYS intake number, which is not consistently recorded at the SAPOL end
- a proportion of the FAYS referrals are not recorded on the central Police Incident Management System
- for those cases where the notifications originated in SAPOL, FAYS does not record the SAPOL Incident Report Number.

Proposals were put forward in the briefing paper to address this problem.

As a consequence, the Review has only considered the second set of data which has sought to track incidents involving child victims under the age of 18 years from the point of notification through to the final outcome in court.

The process used by the Office of Crime Statistics to undertake this task was highly complex and involved:

- linking data from different operational bases
- counting issues, (which was complex because one incident report may result in multiple incidents and multiple charges as well as multiple offenders)

Thus the figures provided through the Office could only be regarded as providing a broad statistical overview and further analysis is required.

The starting point of this data is the lodgement of police incident reports, which for the year July 2000 to end June 2001 totalled 4498 (which would roughly equate to individual children).

In relation to the figure of 4498 the Office in its report also indicated:

Victimisation surveys conducted at a local, national and international level have repeated demonstrated that many offences against the person, particularly sexual offences, are never reported to police in the first instance, and so never formally enter the criminal justice system… In relation to sexual offences, the victim may either be too ashamed or, in those cases where the perpetrator is a family member or friend, too frightened or concerned about the consequences to take official action.

Also in relation to the 4498 it is also important to note that 162 of these related to infants between the ages of zero to two years of age, which represented 3.6% of the overall incidents. The majority of incidents (57.9%) related to adolescents between the ages of 14 to 17.

Of the 4498, there were 952 sex offences.

Of the 952, there were 569 which were “cleared” for the year leaving 383 which were “not cleared”.

In broad terms “cleared” cases included largely those cases in which police had taken action such as “apprehension”, or found the allegations to be unfounded, or noted “victim requests no further action”. “Uncleared cases” are those which remain on the books.

69 Ibid.
Of the 569 cases “cleared” for the year, 158 (27.76%) did not proceed further as a result of “victim requests no further action”. In view of the fact that these are offences against children, the question arises as to by whom and in what circumstances is the request made of police to proceed no further.

Of the 952, there were 364 recorded as “apprehensions”. However, not all of those recorded as “apprehensions” translated precisely into cases of actual apprehension of an alleged offender because the number of incidents was greater. Instead the number further processed through the court system was a slightly lesser figure of 356.

Of the 356, there were a further 94 (26.4%) which did not proceed further. Of those which proceeded further, 62 went to the Youth Court and 200 went to the District or Supreme Court.

Of the 62 in the Youth Court, many were not dealt with but of those which were, only 10 (or 25.6% of those dealt with), were recorded as guilty.

Of the 200 in the District and Supreme Court, 86 were recorded guilty (43%) and the remainder of the 114 (57%) recorded no finding of guilt. In summary, of the 569 cleared cases for the year, a total of 96 were recorded as guilty which is a conviction rate of 16.87%. This is illustrated by the following table:

**Table 28: Sex Offence Incidents Reported to SAPOL July 2000-June 2001**

<table>
<thead>
<tr>
<th>Sex Offence incidents reported</th>
<th>952</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cleared for year</td>
<td>569</td>
</tr>
<tr>
<td>Victim requests no action</td>
<td>158</td>
</tr>
<tr>
<td>Proceeded to Court</td>
<td>356</td>
</tr>
<tr>
<td>Not proceeded further in Court (inc nolle prosequi)</td>
<td>94</td>
</tr>
<tr>
<td>Referred to Youth Court</td>
<td>62</td>
</tr>
<tr>
<td><strong>Recorded guilty</strong></td>
<td></td>
</tr>
<tr>
<td>Referred to Supreme Court or District Court</td>
<td>200</td>
</tr>
<tr>
<td><strong>Recorded guilty</strong></td>
<td>86</td>
</tr>
<tr>
<td><strong>Total recorded guilty</strong></td>
<td>96</td>
</tr>
</tbody>
</table>

Further analysis of these figures is required and some comparisons also need to be made with the treatment of, for example, major assault on children and then in turn looking at what the pattern is for offences against adults. That remains for others.

What is clearly apparent in relation sex offences is that the number of sex offences committed against children are already significantly under-reported. Of those which are reported and cleared for the year, more than a quarter are withdrawn without progressing further; of those which progress further another quarter do not proceed; of those which continue to proceed to the Youth Court only a quarter are found guilty; and of those that proceed to the adult courts less than half are recorded guilty.

These statistics suggest that children are not well served through the criminal justice system.
RECOMMENDATION 99

That the data system for the criminal justice system be substantially reviewed to enable an interlink across departments allowing the notifications from FAYS to be traced through to outcomes in the Courts.

Further that the data entry process be monitored for accuracy of input including using systems which require response to relevant cells of information.

Reason

Data is an important tool for monitoring and assessing the effectiveness or otherwise of the criminal justice system. It must, however, rely on accuracy and consistency of recording.

LAW OF COMPLICITY

Another specific and serious difficulty regarding conviction for offences in relation to abuse of children has been raised in this Review by the Justice Advisory Group. This concerns persons’ accused of murder/manslaughter of a child, where the injuries causing the death of a child, could have been inflicted by one or both of the child’s caregivers, and it cannot be established which caregiver caused the death of the child, or whether it was both.

Currently, the law of complicity does not allow one of a group of persons to be convicted of a crime against a person, or being an accomplice to that crime and thereby convicted as if the main offender, unless the jury is satisfied that the crime was the result of a common purpose or design between the parties, even if their individual roles in the crime cannot be established.

Simply put, if a child, often a very young baby dies as a result of serious injuries and neither parent admits to having injured the child, neither person is likely to be convicted of a crime.

Some courts have resolved the problem by creatively using another law, namely the law of omission which allows a person who had a duty to intervene when a criminal act was being committed and failed to do so, to be convicted of the offence, in combination with the law of complicity. An example is the New Zealand case of Waitka (1993) 2 NZLR 424.

The Justice Advisory Group have suggested that legislation be amended to explicitly expand the law of complicity to include an omission to perform a legal duty and to include ‘recklessness’ as an element of the offence.

The suggestion which has been made is that the Criminal Law Consolidation Act, 1935 (SA) be amended to create an offence of failure to perform a legal duty and that the elements of the offence include:

- that the accused was under a legal obligation to intervene and
- that the accused did not perform that duty; and
- that the failure to do so encouraged or assisted the principal offender; and
- that the accused intended or was reckless to the fact that the principal offender was encouraged.

This Review considers that such an amendment is an important requirement to protect children and ensure that the perpetrators are made appropriately liable and can be convicted.
RECOMMENDATION 100

That the Criminal Law Consolidation Act 1935 (SA), be amended to include an additional offence of failure to perform a legal duty which thereby encourages or assists the commission of an offence by another. Such amendment to include as an element not only an intention to encourage but in the alternative recklessness as to whether an offence was likely to be encouraged by the failure to perform a legal duty. The precise wording and the parameters of the application of such an offence to other offences will require careful consideration.

Reason

The current legal limitations on the law of complicity have allowed persons to escape liability in circumstances involving the non-accidental death of an infant or young child in the care of caregivers. This gap should be closed so that in circumstances where it cannot be proved beyond reasonable doubt as to which caregiver caused the death or whether it was both, a caregiver can be charged for failure to perform a legal duty.

ALTERNATIVE SYSTEMS AND MODELS FOR TAKING EVIDENCE

This section will discuss other approaches aimed at reducing the trauma to children, increasing the numbers of perpetrators who are found to have offended, and at the same time have fair process to alleged perpetrators. These approaches will include consideration of inquisitorial systems, models of giving evidence, civil proceedings and diversionary processes.

Inquisitorial Systems

Various forms of inquisitorial systems have been proposed in the submissions to help overcome the damage done to children by court processes. Sometimes these have been linked to diversionary processes.70

One submission suggested that a hearing be conducted by a judicial officer who would call on experts trained and accredited in forensic questioning of children.71

Alternatively, another suggested that a judicial officer should lead the evidence from the victim, the accused and witnesses including expert witnesses. The role of defence counsel would be to make suggestions to the judicial officer as to questions, but not in a manner which sees the victim attacked.72

Other submissions suggested an inquisitorial system akin to the “coronial or tribunal” approach and the NAPCAN Report to the Attorney General August 199573 was recommended as apposite.74

Further it was suggested that the standard of proof be lowered to either the balance of probabilities or the higher Briginshaw Test of reasonable satisfaction.75 It was submitted that the lowering of the standard was justified if there was a conviction recorded but no incarceration of a familial abuser, but instead a treatment program. This was not an option which was available to extra-familial abuse or a serial offender. This process was then linked with a diversionary program discussed below.

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70 Submission 196 Justice Advisory Group.
71 Submission 6 Victim Support Service.
72 Submission 4 Mr Kris Hanna, MP Member for Mitchell.
74 Submission 115 Victim Support Service Inc; Submission 118 Women’s Legal Service (SA) Inc; Submission 120 Southern Child & Adolescent Mental Health Service; Submission 128 Ms Helen Whittington; Submission 134 NAPCAN.
75 Submission 6 Victim Support Service; Submission 115 Victim Support Service Inc.
Another submission said that the primary focus should be on “where the truth lies” and that there should be a system which is strict enough to safeguard the rights of the accused but flexible enough to accommodate the special needs of children.76 This same sentiment is expressed in the NAPCAN Report to the Attorney General August 1995.77

A further variation on an inquisitorial process is contained in the Justice Advisory Group. In essence, the proposal put forward contains both an inquisitorial element and diversionary considerations. In suggesting a modified inquisitorial process, the submission asserts that it is not feasible to remove child abuse from the criminal justice arena altogether, since this would result in the need to repeal laws making sexual or physical abuse of children a crime.78

A number of suggestions were made in the Justice Advisory Group with regard to cases in which children were the victims of sexual or violent offences and included:

- that the prosecution have the alternative to pursue either a criminal prosecution or to seek civil orders in a civil trial
- in the case of a civil trial, the child be not required to give evidence in court
- in the case of a criminal trial, the Pigott recommendations be implemented
- that the cross-examination of a child be undertaken by a judge whether the defendant is represented by legal counsel or unrepresented
- a diversion program to be applied to familial sexual abuse
- a specialist court be created to exercise jurisdiction in relation to all matters.

Other submissions recommended that there be a panel of persons with various professional backgrounds to constitute the Court, which approach was also suggested some years ago in the Bidmeade Report.79

In considering whether to move away from an adversary based approach to an inquisitorial approach a number of factors are relevant:

- We have not had a history of inquisitorial approaches to criminal justice unlike the “code countries” in Europe.
- Such inquisitorial processes as we do have are limited in number. The obvious one is a coronial inquiry, which is not a wholly inquisitorial system but is still built upon an essentially adversarial approach with modifications.
- The criminal justice system which potentially results in imprisonment has a long and solidly based foundation of a criminal onus of proof which appears apposite.

Taking these matters into account and also with regard to other options available which are discussed hereafter, the inquisitorial approach is not recommended. Solutions need to be found which do not unnecessarily interfere with some of the fundamental underpinnings of our legal system.

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76 Submission 1 Professor Freda Briggs.
77 Submission 115 Victim Support Service Inc and Submission 118 Women’s Legal Service (SA) Inc.
78 Submission 196 Justice Advisory Group.
There are a number of different models for the adducing of evidence from children in criminal trials in Australia.

Section 34CA of the *Evidence Act 1929 (SA)* provides that where the alleged victim of a sexual offence is a young child\(^{80}\) a person to whom the child complained about the offence may be allowed to testify as to what the child said at the discretion of the court. However, this child must also be available to give evidence.

This section would appear to permit the evidence given by the third person to not only prove the fact that the child had made a complaint, but also may be used to directly prove the offence.\(^{81}\)

The *Evidence Act 1929 (SA)* also provides for an interview by a social worker, psychologist or police officer with a child, to be video taped. This videotape can be tendered as evidence in the preliminary examination of charges pursuant to section 104 of the *Summary Procedure Act 1929 (SA)* in a committal. However, such a statement is rarely admissible in a trial as evidence of its contents although it may be admissible for the purpose of proving a prior inconsistent statement. There is no legislative provision for the use of videotaped records specifically for use in a trial.

In other States, there are various permutations of what can be categorised as three basic models for the taking of evidence. These models have been well articulated.\(^{82}\)

The **first model** permits a videotaped interview of a child about the alleged offence to be used as a substitute for a child’s evidence in chief, or sometimes as a supplementary evidence. This approach has been permitted in Victoria, Queensland, Western Australia, Tasmania, New Zealand, Canada, United Kingdom and New South Wales. The tendering of such a tape of an interview may substitute entirely for the evidence in chief, but the child is required to be cross-examined immediately upon entering court. This model was proffered as a suggested approach by Professor Freda Briggs.\(^{83}\) An example of legislation providing for this model is section 106H of the *Evidence Act 1906 (WA)*.

The **second model** is a variation on the first model in which a court in its pre-trial process may order that a special witness be interviewed by tape as a substitute for the giving of evidence in chief. The court is empowered to set the conditions upon which the tape is to be prepared including, for example, who is to interview the child, the setting for the interview and whether or not the child is sworn. This process is available in Queensland, Western Australia, Tasmania and the United Kingdom. As with the first model, the child is required to be cross-examined again immediately upon entering court. A legislative example of this model is contained in sections 106I(1)(a), 106J and 106T of the *Evidence Act 1906 (WA)*.


Essentially, the Advisory Group in that report devised an alternative pre-trial hearing model which enabled the whole of the child’s evidence, both evidence in chief and cross-examination, to be taped and then later played to the jury. There are a number of circumstances surrounding this process including that the accused is usually not permitted to be in the hearing room with the child but can see and hear proceedings and communicate with his or her counsel by closed circuit television or behind mirrored screens. This model is available in Western Australia, the United Kingdom and Queensland. An example of the legislative provisions is contained in sections 106I(1)(b), 106J and 106T of the *Evidence Act 1906 (WA)*.

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80 Defined as being under 12 years of age.
83 Submission 1 Professor Freda Briggs.
The Western Australian model has recently been the subject of an evaluation along with other judicial systems in New South Wales and Queensland. The evaluators gave a positive response to the process.\textsuperscript{84}

In evaluating the respective benefits and disadvantages of each of the broadly expressed models, it is necessary to bear in mind the following essential principles:

- provide quality statements which are capable of being used in evidence and which are free of inadmissible content
- minimise stress on the child in the process
- ensure that the accused receives a fair trial.

The disadvantages of the first and second models relate to the child who, as indicated above, is cross-examined immediately after the playing of the tape to the jury, which can be extremely disorientating and stressful.

The benefit of third model is that it permits the child to give evidence under the best possible circumstances without either the direct presence of the accused, or the confronting courtroom environment with a jury. The benefits to the accused are that he or she is able to cross-examine the child in order to test the evidence.

Although the third model as illustrated in sections 106l(1)(b), 106J and 106T of the Evidence Act 1906 (WA), is the model which is the least stressful to the child, there is a need to provide for a flexible model with alternatives which can take account of the fact that not all criminal trials are conducted with a jury and some are judge alone or magistrate. The first and second models may be more apposite to those circumstances.

THE WESTERN AUSTRALIAN SYSTEM

As part of the Review process, a trip was made to Western Australia to ascertain the way in which the system worked. Members of the judiciary were consulted together with persons from the office of DPP and the Child Witness Service. The video equipment and method of operation was also viewed. The description set out hereunder is very brief thumbnail sketch of a well constructed interacting system.

The overall system in Western Australia was impressive. It has been in basic operation for about 10 years. In view of the fact that it was the first such system to be introduced into Australia, a consultative approach was adopted before its implementation. This was achieved through committees and included involvement of the DPP and legal profession generally. The major committees involved in the process were the Criminal Practice and Review Committee and the Child and Vulnerable Witness Committee; the latter being a multi-disciplinary body chaired by a judge of the Supreme Court of Western Australia.

The consultation process included seminars and mock trials and this, together with the implementation over time, has led to the following practices.

Children who are complainants or witnesses in criminal proceedings are assisted before, during and after the process by a well developed Child Witness Service which is attached to the court system as a funded service. They are physically situated in the court precinct and have rooms especially devised to cater for all ages with appropriate toys and models for assisting children with understanding the court process and alleviating stress.

There is a director and four preparatory officers as well as two part-time professionals (a senior social worker and a psychologist) and there are strict guidelines which prohibit them from being involved with proofing of children and there is no discussion of the evidence to be given by the child.

This service is also linked to services available through the Victim Support Service.

The facilities which were seen by the Review were in the District Court building in Perth and they adjoined the video room from which children gave their video evidence. This room was small but comfortable with a place for the child, the court officer and a support person from the Child Witness Service to be present. This room and another similar room serviced the District Courts and the circuit courts in Perth.

There are four CCTV systems in the metropolitan area of which the Perth system was one and there are two in regional areas with another two about to be added. The regional CCTV is able to permit evidence to be given by children remote to the place in which the trial is conducted.

During the year 2002 some 400 children have given evidence through this process and in one month alone 24 children gave their evidence through the facility in Perth.

About 65% of the children were complainants, mostly of sexual offences, and about 35% were witnesses to crime and were called by either the prosecution or the defence.

Although the Western Australian Evidence Act 1906 has the three methods whereby evidence may be given, in practice approximately 60% of the evidence is done by pre-recording of the evidence of the child on video, which includes examination in chief, cross-examination and re-examination conducted at the same time. This pre-recording is taken with the child not being in court but in the video room. The judge, counsel and accused are in the courtroom linked up with the child by CCTV. Frequent rests are given during the taking of the child’s evidence and if the child appears to be stressed to the child support person or to the court officer, this is communicated directly to the judge by a microphone link and the judge then decides what should be done. This video is later shown to a jury at the time of the trial.

The remaining 40% of the taking of evidence from children is achieved by giving evidence by video which is not pre-recorded, but done at the time of the trial. The same process as described above is adopted.

The advantages of the pre-recording is that the pre-recording of evidence is done within a period of 12 months from the time of the first appearance of the accused in a court whereas if the process is not pre-recorded the trial may be of the order of about 18 months after the accused is first in a court. Further, the processes of pre-recoding without the presence of the jury may be taken at a more flexible fashion.

Thus, in Western Australia, children do not have to give evidence in a court at all where there is a link up with the CCTV system.

After the system had been in operation for some years, at the instigation of the Chief Justice, a survey was conducted of jurors to see how they perceived the process of the video evidence and whether they found it to be a less credible form of giving evidence. The results were that they did not consider that the video evidence was any different from the evidence given directly in a witness box in court.

Other features of interest are that on the whole, children prefer the judges and counsel to be wigged and robed as that removes them as being individuals questioning them, and instead they are seen as part of a court process and dressed to do particular jobs.
RECOMMENDATION 101

That the Evidence Act 1929 (SA) be amended to include the three models for taking of evidence in relation to a criminal trial involving sexual or violent offences against a child as provided in sections 106H to 106T of the Evidence Act (WA).

That the burden of proof remain on the prosecution to prove the charges beyond reasonable doubt.

That there is no requirement for a specialist court to sit on cases in which children are the alleged victims, instead the court must be comprised of Judges who have received special judicial training in respect of child development, victim responses and patterns of abusive behaviour.

That a court-based child witness support system similar to the Western Australian model be set up in South Australia.

That a committee(s) be set up to make recommendations as to the progressive implementation of strategically placed CCTV facilities and video rooms for courts using the Western Australian model as a basis. The design is to ensure the most cost effective manner of delivery of such services in South Australia.

Reason

This group of recommendations is in accordance with what is being increasingly regarded as best practice in relation to the conduct of criminal trials within a common law system. It has already been tried and assessed in an Australian context. The system combines concern for the welfare of the child victim and fairness to the accused and the public interest in an improved system of court procedures.

DIVERSIONARY PROGRAMS

A number of submissions contained detailed proposals for diversionary programs to be limited to first offenders involved in intra-familial abuse. The aim of such programs is to provide alternatives to imprisonment of the offender in intra-familial abuse to avoid the destruction of the family, even if this does not result in family re-unification.\(^\text{85}\) It requires that the offender admit responsibility for actions and thereby avoid the need for a child to give evidence in court.

One model put forward was set out in the NAPCAN Report to the Attorney General August 1995.\(^\text{86}\) This model suggested a process where an accused would be encouraged to accept responsibility for their actions and admit guilt before or after a conviction is recorded. An order would then be made containing a requirement to undergo treatment. Breach of the order would result in automatic imprisonment.

Another similar model\(^\text{87}\) referred to a proposal put forward by Dr Anne Cossins. Dr Cossins suggested that such a diversionary process would minimise the risk of further abuse, minimise secondary victimisation, and help reduce recidivism by the offender.
A further suggestion was made in one submission, that a panel of experts be appointed to look at the video evidence of police questioning of the child. An assessment could then be made in the light of other information from child protection workers or police workers as to whether there was a “high degree of likelihood of veracity” of the child’s story, and recommendations could be made. These recommendations would result in no conviction but instead a treatment program for the offender.88

Another submission recommended the implementation in South Australia of the community based pre-trial program undertaken at Cedar Cottage, Westmead, NSW. This program essentially offers parental incest perpetrators an opportunity to avoid a prison sentence, in return for recording a guilty conviction and undergoing a treatment program over two to three years. There are severe automatic penalties for breach of the participation agreement.89

A very careful and detailed report was undertaken in 1999 by the Justice Strategy Unit in South Australia.90

This report recommended that:

☐ A Community Based Treatment Programme (CBTP) be established for familial child sex offenders, their victims and their families.
☐ To be eligible for entry to the CBTP, the offender must admit guilt. At the completion of the court process, a conviction will be recorded and treatment be mandated in the sentence.
☐ Entry to the programme be offered where the offender has a familial and significant relationship with the child.
☐ The programme provide for treatment of victims, non-offending parents or caregivers, siblings and other significant family members who have been affected by the abuse.
☐ The CBTP build on to existing Government services provided by Sex Offender Treatment Assessment Program (SOTAP) and the two Child Protection Service agencies, as this provide the most economic and practically manageable option and allows for the physical separation of the victims from the offenders while attending therapy.
☐ The CBTP receive recurrent funding and be independently evaluated over the first five years.
☐ Consideration be given to the NSW Cedars program as well as the need for any legislative reform and other issues such as the admission of earlier offences.

The Justice Advisory Group submission91 also initially endorsed this approach, with the rider that it may need some modification to reflect any recent experience in NSW. However a later submission received from the Justice Advisory Group expressed the point of view that if the civil trial alternative discussed hereafter was implemented, this would overcome the need for any diversionary program.

A more detailed discussion on diversionary treatment programs is set out in chapter 16.

Having considered the above and also having consulted with the Director of the Cedar’s Program and seen the facilities in New South Wales, and also SOTAP in South Australia, the Review recommends that such a diversionary program be implemented as well as the civil proceedings alternative procedure discussed hereafter.

The reason for suggesting that both be available is that they are different in approach and are applicable to different groups of offenders.
The diversionary program is for first offenders charged with intra-familial abuse whereas the civil proceedings could include other than first-time offenders and is not limited to intra-familial abuse. Both have a part to play in trying to protect children now and in the future.

**RECOMMENDATION 102**

That the Government implement a court monitored diversionary treatment program modelled on similar approaches used in other States as discussed in Chapter 16.

**ALTERNATIVE COURT PROCEEDINGS**

The poor conviction rate for sex offenders of children in comparison with the rate of reporting of sexual abuse (let alone those who do not report as a consequence of the inadequate and traumatic system) calls for a fresh alternative approach.

There are times when even with an improved system for dealing with criminal matters, as set out earlier, the victim is too young, disabled or vulnerable to give evidence, in which case another approach is warranted. Similarly, if the evidence is not sufficient to prove that the accused committed the crime based on the criminal onus of proof beyond reasonable doubt, but is ample to fulfil the civil onus of balance of probabilities, then this requires an alternative approach.

An approach which is based on current civil processes within our common law system and which involves concepts which are recognised in other linked jurisdictions, would be a proper basis for an alternative court process.

The primary aim of such a process is to ensure that abusers of children are brought to account and receive treatment to prevent them from re-offending and at the same time ensure that there is a fair process.

The recommended solution is a civil proceeding instituted at the discretion of the Crown in which an application is taken in the Court for a Child Protection Order upon a court finding that on the balance of probabilities that the child (or other children) is/are at significant risk of harm as a consequence of the behaviour or actions of the defendant.

If so found, the court would make a Child Protection Order, which would include that the defendant undergo treatment. In addition there may be a raft of other orders similar to those imposed for those undergoing diversionary treatment programs which may include matters such as prohibiting contact with the child, working with children or living near schools, etc.

Bearing in mind that this is an alternative process to what may otherwise have been a criminal trial for a serious offence, there needs to be some penalty of imprisonment attached to the breach of a Child Protection Order. There are however, a number of important safeguards required, namely:

- the breach of a Child Protection Order should be created as an offence in its own right for which a penalty of up to five years should be imposed
- no imprisonment order should be made without a breach being proved on the criminal onus of beyond reasonable doubt
- the penalty cannot be imposed without a court procedure: either a plea of guilty or a trial
- there should be provision that other than the penalties imposed for breach of the Order, there is to be no criminal prosecution or conviction arising out of the matters the subject of the proceedings.
This approach has attraction because:

- it correctly applies civil and criminal procedures
- the issue is not whether a crime has been committed but whether the specific conduct or other general conduct gives rise to a significant risk of harm
- it applies a test of risk of significant harm on the balance of probabilities which is not dissimilar to a process well in use in the Youth Court with care and protection orders and in the Family Court in relation to residence and contact orders
- it can utilise, if necessary, the same evidentiary assistance as for children giving evidence in criminal trials
- it is a process which could be taken in the Magistrates Court which has familiarity with other diversionary schemes. Such a process also be cost effective.
- (as with other cases involving children) it is recommended that training of magistrates is essential.

As this is a new approach there will need to be considerable development, preferably on a consultative basis and in particular to have regard to the potential interaction of orders made in other courts such as the Youth Court.
RECOMMENDATION 103

That in respect of the prosecution of alleged adult offenders who deny the accusations made against them of abuse of a child or children, the prosecutor in the exercise of discretion may either:

- pursue prosecution of the alleged offender through the criminal justice system (criminal trial) or
- in lieu of proceeding with the criminal trial, instead institute civil proceedings (civil trial).

That in a civil trial, an application is made by the Crown seeking a Child Protection Order upon a court finding that on the balance of probabilities that the child (or other children) is/are at significant risk of harm as a consequence of the behaviour or actions of the defendant:

- If so found, the court to make a Child Protection Order, which would include that the defendant undergo treatment. In addition, the court may make other orders similar to those imposed for those undergoing diversionary treatment programs which may include matters such as prohibiting contact with the child, working with children or living near schools, etc.
- The breach of a Child Protection Order to be created as an offence in its own right for which a penalty of up to five years should be imposed.
- No imprisonment order should be made without a breach being proved on the criminal onus of beyond reasonable doubt.
- The penalty cannot be imposed without a court procedure, either a plea of guilty or a trial.
- A civil trial is to be heard before a specially trained magistrate who has received special judicial training in respect of child development, victim responses and patterns of abusive behaviour.
- That consistently with the current general law there is to be no criminal prosecution or conviction, arising out of the matters the subject of the proceedings.

That appropriate discussion and consultation be undertaken to develop the process for a civil trial.

Reason

These recommendations provide for a new approach to the poor conviction rates for child abuse. It gives an alternative to the current criminal prosecution process with its higher onus of beyond reasonable doubt. It has some general similarity with diversionary programs in other areas such as drug use. The creation of an offence also ensures that no imprisonment may occur unless there is a criminal trial process with the application of the criminal onus of proof.

It will enhance offender responsibility for conduct and provide appropriate treatment for them to change their future conduct.
Children and the Courts

CHILD COMMUNICATOR

Submissions were made that children, particularly those of young years or children with a disability either mental or physical, are in a situation of disadvantage and may either not be able to understand the language or terminology used by the questioner or not be able communicate effectively in providing evidence.

This problem has also been the subject of special consideration in the ALRC Report. The report described two particular cases in which alternative methods of communication were achieved. The first case involved the questioning of a three-year-old child, which was accomplished with the assistance of a psychiatrist through whom all questions were directed. Counsel and judge observed from behind a one-way mirror, and the questioning was videotaped. The second case involved a young disabled woman who typed her responses.

Section 106F of the Evidence Act 1906 (WA) permits a child under the age of 16 to give evidence with the assistance of a communicator. The function of the communicator is, if requested by the judge, to explain to the child the questions put to the child and also explain to the court the evidence given by the child.

This facility should be available in appropriate cases to all children whether over or under 16, particularly those with a disability.

RECOMMENDATION 104

That the Evidence Act 1929 (SA) be amended to include a section similar to section 106F of the Evidence Act 1929 (WA) to allow for appointment of a child communicator to assist as an interpreter for a child in appropriate circumstances. In addition, the section to be available to all children and not only those under the age of 16 years. Further, that Recommendation 118 of the ALRC Report be implemented by amendment of the Evidence Act 1929 (SA) to include that a court may permit other means of evidence being adduced in the particular case of children with disabilities.

Reason

This recommendation will enable those children with particular problems of communicating to ensure that they are not further disadvantaged by that factor. It is important that the person appointed be competent and suitable. This does not mean that the communicator must be a person who would otherwise fit the category of expert witness but instead must be capable and must not otherwise be a potential witness.

92 At pp 351-2.
Several submissions referred to the special problems of children with disabilities and the combination of their special vulnerability to physical or sexual abuse, their ability to communicate that abuse, the reporting and investigation and finally the court processes.

Offences against children with disabilities are rarely prosecuted. It was suggested that their condition was so vulnerable that consideration should be given to reversing the burden of proof or that the standard of proof should be on the balance of probabilities.

A number of recommendations made in this Chapter, if implemented, would have a significant impact on their plight; in particular, that of a child communicator.

It is not recommended that the burden or standard of proof should be altered in relation to criminal proceedings in the light of these alternatives and aids.

An additional recommendation is suggested as follows:

**RECOMMENDATION 105**

That the *Evidence Act 1929 (SA)* be amended to permit answers given by a disabled child in response to leading questions, to be received if the judge is otherwise satisfied that the nature of the questioning does not give rise to the answers being unreliable answers.

**Reason**

Whilst it is best if resort is not made to leading questions, evidence should not as a matter of course be excluded because it offends the evidentiary rule excluding leading questions and their answers. It should be left to the discretion of the Judge depending on the overall circumstances of the question in context, the qualities of the victim and any other relevant matters which touch on the reliability of the response.

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95 Ibid; Submission 160 Child Protection Services, Women’s & Children’s Hospital.
Six major themes were reflected in the submissions concerning child protection in the Family Court.

- the interface between the Youth Court (SA) and the Family Court
- the focus and jurisdiction of the Family Court in respect of cases involving allegations of sexual abuse of children
- the relationship between FAYS and the Family Court
- funding of cases before the Federal Court which concern child protection
- the role and training of child representatives
- the role of FAYS social workers and recognition of their expertise.

**The Interface between the Youth Court (SA) and the Family Court**

Concern was expressed about “duplicated services, gaps, overlaps, lack of co-ordination and inefficiencies” in relation to Family Court services and the Youth Court. Further, there are occasions when a party before the Youth Court applies to the Family Court as soon as a Youth Court order has expired in order to try and obtain a better outcome so far as the party applying is concerned. The Review did not understand this latter problem to be the norm, but it did occur in complex, long-running matters. It is to be noted in this context that the Family Court is prevented from making an order in respect of a child who is in the care of the State.

The problem of duplication has always been a difficulty where there is some jurisdictional overlap by topic between Federal and State jurisdictions. This is therefore not a situation unique to child protection. This dilemma had until more recently been dealt with by cross vesting legislation; however, the High Court case of *Re Wakim* prevented the States from conferring child protection jurisdiction to the Family Court.

**Cross vesting**

Cross vesting in various forms between courts exercising State jurisdiction and the Family Court exercising federal jurisdiction was recommended before the decision of *Re Wakim* and continues to be recommended subsequent to that decision.

In a plea for a more unified system of the State and Federal courts dealing with child protection, Chief Justice Nicholson in a recent paper points to the fact that in Australia there are eight sets of child protection laws with fundamental differences as to the definitions of abuse or maltreatment, the systems for investigation and their differing emphasis on forensic investigation. Further, the legislation is administered by different agencies and adjudicated by different courts and all with a background of an increasingly mobile population. The Chief Justice also refers to the unfortunate fact that there are occasions when the Federal and State courts are dealing with the same people and issues.

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97 Submission 159 Chief Justice Nicholson, Family Court of Australia.

98 Section 692K Family Law Act 1975 (Cth); Family Law Regulations 1984 Regulation 12B and Schedule 5


The Chief Justice proposes a number of options, one of which includes that the States or Territories refer certain limited power regarding child protection to the Commonwealth which in turn may then be conferred to the Family Court. This would be similar to the way in which the Family Court has been conferred with jurisdiction to hear and determine matters related to the children of unmarried parents. This proposal is also supported by in the submission by the South Australian Law Society - Justice Access Committee.

An example of the manner in which cross vesting may operate in practice, assuming the existence of valid enabling legislative provisions, is derived from a case in the Family Court which occurred prior to the Re Wakim decision. In Re Karen and Rita jurisdiction was conferred by the State of Queensland on the Family Court to exercise State jurisdiction in respect for adjudicating on care and control orders, at the same time as considering contact orders under the Federal jurisdiction. Thus a complete assessment could be made by the Family Court of all aspects of the needs of the children without the need for two separate hearings in two different jurisdictions.

It is not suggested that the Family Court (or the Federal Magistrates Court) would necessarily or routinely exercise primacy in relation to child protection. The cross vesting of a State Youth Court jurisdiction would be limited to defined circumstances such as if the Family Court has allegations made before it concerning abuse or neglect of a child and is concerned as to whether it is appropriate for any party before it to have the residency of the child.

It is ironic that the only jurisdiction in which duplication is minimised is in Western Australia. The Family Law Act 1975 (Cth), when passed, contained a legislative measure to assist with its acceptance by all States, namely the possibility of setting up State Family Courts. Only Western Australia took up this option and the judges of the Family Court of Western Australia hold dual commissions.

Chief Justice Nicholson suggests that an alternative to a reference of powers as described above, would be that the State enacts similar legislation to Western Australia. This could confer State commissions upon Federal judges normally residing in the state to enable them to exercise a defined jurisdiction in respect of State child protection. In the case of visiting Federal Court judges, they could receive temporary State commissions to sit at first instance.102

The issue of appeals could be dealt with in a similar manner to the Western Australian model.103

Whilst there is often reluctance by a State to transfer the exercise of State jurisdiction to a Federal body for historical and political reasons, the suggested transfer in this instance would be controlled by the State as to limitations of exercise and, in the alternative, the persons in whom the jurisdiction would be vested. The power, if necessary, could also be given on a case-by-case basis according to the need.

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102 This process is already proposed for implementation in Western Australia.
103 Appeals from the Family Court exercising State jurisdiction go to the Full Court of the Supreme Court.
RECOMMENDATION 106

That the State with or without the support of other States, investigate the feasibility of referring certain limited powers regarding child protection to the Commonwealth, which in turn may then confer those limited powers to be exercised by the Family Court in particular defined circumstances. Alternatively that the State confer State commissions to named Family Court Judges to exercise State child protection jurisdiction in particular defined situations.

Reason

The reposing of State jurisdiction in relation to child protection in either the Commonwealth or exercisable by individual Judges of the Family Court in limited circumstances has considerable appeal in logic, efficiency, cost effectiveness and it would avoid duplication of evidence and legal argument. In addition it would lessen trauma to the child who would not have to await the outcome of two applications in two jurisdictions. It may also deter ‘forum shopping’ by disgruntled parties in Youth Court proceedings because it would permit matters to be transferred to the Family Court, if appropriate, at an earlier point in time before a final decision is made by the Youth Court.

Allegations in the Family Court of sexual abuse of children.

Some submissions expressed concern about the role of the Family Court in cases where allegations of sexual abuse are made. It was pointed out that the jurisdiction and powers of the Family Court are substantially different from that of State Courts in that it cannot investigate complaints of abuse or neglect. Instead, its primary role is not to make findings of fact as to whether the specific abuse or neglect occurred nor who was the perpetrator, but to determine whether there is “an unacceptable risk” that a child will be abused if a particular parenting order is made.

Further, the Family Court is often the only court which is hearing and deciding upon issues related to serious child abuse including sexual abuse. These hearings can be complex hearings lasting weeks and are sometimes further complicated by parties representing themselves.104

It was also submitted that some serious reports of child sexual abuse are not investigated by FAYS if the offender’s contact is being challenged in the Family Court.105

Submissions suggested that the Family Court was not the appropriate forum in which to adjudicate such cases because of the lack of a finding of abuse compromised the outcome for the child.106 As most cases before the Family Court were mainly an inter partes contest between the two parents as to whom and under what conditions one or other should have residency or contact with the child, there was too great a focus on the parents rather than the child.107 There are occasions when the Family Court has made findings as to abuse of children in the course of considering residency and contact applications; however, the case of M v M indicated that this should not be the prime focus of such proceedings.

104 Submission 103 South Australian Law Society – Children & The Law Committee; Submission 136 South Australian Law Society – Family Law Committee;
Submission 1 Professor Freda Briggs.
105 Submission 1 Professor Freda Briggs.
107 Submission 5 Mr Joe O’Loughlin; Submission 23 Ms Nicola Dimech.
In response to this criticism there is an argument that if the Family Court has the prime objective of ensuring the best interests of the child in any of its orders, the protection of the child does not necessarily require that there must be a particular finding that a sexual assault occurred. The power of the Court to make an appropriate parenting order or program is not dependant upon having to find on the balance of probabilities that sexual abuse occurred. The Court can make such orders which have the effect of providing protection for the child without having to be so satisfied about the particular alleged abuse so long as the Court concludes that there is “an unacceptable risk” that a child will be abused if a particular a parenting order is made.

Although the Family Court does not have the specific mandate of child protection, such an approach arguably offers better protection in that it is less difficult and safer for the child to conclude on balance that a child is at unacceptable risk, than having to prove the occurrence of specific conduct. It would also fit within the overall philosophy suggested in this report, which is that the prime object is the protection of the child from current and future abuse and to recognise that specific blame and punishment of perpetrators do not necessarily translate into better protection of and less trauma to the child.

This is not to suggest that the Family Court should be primary jurisdiction for the consideration of child abuse, in particular serious abuse, but it must be recognised that such issues will inevitably arise from time to time and there is a need for the State protection authorities to be involved in such cases.

**Relationship between FAYS and the Family Court**

A number of submissions were critical of the approach of FAYS towards matters in the Family Court and they included the following specific and general comments:

- That the Family Court sometimes becomes aware of parallel proceedings and cannot compel the State child welfare authority to be joined as a party.  
- There were 56 cases of suspected child abuse reported by Family Court personnel to FAYS pursuant to the mandatory notification provisions of section 67ZA of the *Family Law Act* and none of those resulted in the FAYS intervening in those proceedings pursuant to either section 92A or section 91B. 
- Serious problems were raised about the failure of FAYS to deal with notifications made to it by the Family Court under section 60 of the *Family Law Act*. In particular one submission detailed a series of particular cases in which FAYS had allegedly not intervened to the detriment of the children and family.
- That studies undertaken in Victoria and the ACT found that the protocols which had been agreed between child protection authorities and the Family Court in those two States for dealing with matters relating to allegations of child abuse lacked effectiveness largely because of lack of communication and coordination.
- That the October 1998 protocol between the Family Court and DHS appeared to suffer from the same deficiencies. Whilst the South Australian protocol appeared to have a number of provisions which, if implemented, would require collaboration between the DHS, the child representative and the Family Court, there still appears to be a lack of appropriate collaboration. Further, the threshold for intervention appears to be set too high, namely: “Departmental staff will normally only use this method of seeking intervention when all others have failed or where grave concerns are held for the safety of the child.”

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108 Submission 159 Chief Justice Nicholson, Family Court of Australia.
109 Ibid.
110 Submission 9 Children’s Protection Advisory Panel; Submission 102 Ms Karin Basse; Submission 118 Women’s Legal Service (SA) Inc.
113 Submission 159 Justice Nicholson, Family Court of Australia, Attachment 1.
Children and the Courts

A recent study also showed that there was a tendency for State authorities to effectively refer cases to the Family Court rather than handling the cases themselves. This was also found to be the case in South Australia and viable family carers such as grandparents are left having to take proceedings in the Family Court when they had few resources or no alternatives. In addition, one submission indicated that FAYS sometimes suggested that family members such as grandparents with whom children are placed should themselves make an application for orders under the Family Court.

Legal aid is either not available for the protective parent or often “runs out”, and there is no legal voice for the child for significant parts of the trial.

These criticisms are concerning, as they suggest that there is an inappropriate diversion of responsibility and costs for child protection from the State to private individuals and to pursuit of protection indirectly through the Federal jurisdiction. It also demonstrates serious lack of coordination between the two bodies. This has not been a problem isolated to South Australia and led to a pilot study in two other States and Territories known as the Magellan Project.

THE MAGELLAN PROJECT

Essentially the Magellan project is a specialised intervention system trialed in a pilot study of 100 cases in Victoria involving serious allegations of child abuse.

The project involved the following principles and characteristics:

- clear information about the program from the outset and explaining progress to families including circulation of expert reports
- a child-focused rather than parent-focused approach with legal representation being available without capping for all children
- a judge-led tightly case-managed program with pre-set steps to ensure timeliness
- early intervention with a wide range of resources and services made available at the outset with tight collaboration and multiple coordination reports
- a consistent multi-disciplinary team maintaining focus and consistency
- use of child protection staff and court counsellors as the professional investigators and assessors
- the removal of capping in relation to the Legal Services Commission
- ongoing monitoring of the program by the steering committee.

An evaluation was done of the study which revealed that:

- cases were more likely to resolve and to do so earlier
- fewer interventions and less cost were involved
- time taken by the State Protection department to produce a report reduced from 42 to 32 days
- time for resolution of cases fell from 17.5 months to 8.7 months
- cases seeking judicial determination fell from 30% to 13%
- the breakdown of orders fell from 37% to 5%.

116 Submission 9 Children’s Protection Advisory Panel.
117 Submission 103 South Australian Law Society – Children & The Law Committee; Submission 136 South Australian Law Society – Family Law Committee; Submission 1 Professor Freda Briggs.
A similar program is being established in WA called the Columbus Project.\textsuperscript{119}

The outcome of the assessment of the Magellan study has been impressive.

Not surprisingly there was strong support for extension to South Australia of the Magellan Project for streamlining processes in the Family Court in which allegations of abuse of children are made by parties.\textsuperscript{120}

**RECOMMENDATION 107**

That an extension of the Magellan Project in the Family Court be developed in South Australia with the collaboration of FAYS and the Legal Services Commission.

**Reason**

This program has been evaluated as effective and cost efficient in expediting the court processes of dealing with cases in the Family Court involving allegations of child abuse. It is appropriate for implementation in South Australia with appropriate adjustment for local conditions. Such implementation will require training. See also Chapter 21.

**RECOMMENDATION 108**

That DHS review the 1998 Protocol as to the procedures and the threshold for intervention by FAYS in proceedings in the Family Court and instead respond more positively to notifications made to it by the Family Court. In particular, that FAYS take action to fully investigate and report regarding the allegation referred to it by the Family Court personnel pursuant to section 67ZA of the *Family Law Act 1975 (Cth)* based on the paramount interests of the child in order to assess whether there should be intervention in the proceedings.

**Reason**

FAYS appear to inappropriately abrogate responsibility to the Family Court to protect children who are the subject of mandatory notification or alleged abuse. This recommendation seeks to ensure that FAYS intervene and remain involved in cases where it is appropriate.

\textsuperscript{119} Ibid.
\textsuperscript{120} Submission 92 Mr Neil Hocking; Submission 110 Association Non-Government Education Employees; Submission 111 Statewide Sexual Assault Reference Group; Submission 118 Women’s Legal Service (SA) Inc; Submission 120 Southern Child & Adolescent Mental Health Service; Submission 128 Ms Helen Whittington; Submission 129 Office of the Status of Women; Submission 134 NAPCAN; Submission 146 Aboriginal Legal Rights; Submission 160 Child Protection Services, Women’s & Children’s Hospital; Submission 169 Action for Children SA; Submission 175 Women’s & Children’s Hospital, Child Protection Services.
RECOMMENDATION 109

That in the event of FAYS identifying circumstances which suggest a child is at risk and there are family members who are viable carers of a child or children such as grandparents, it take appropriate action if necessary in the Youth Court, rather than leaving it to family members to take action in the Family Court.

Reason

This recommendation is complementary with the above recommendations to encourage an improved collaborative approach about child protection in the cases before the Family Court. It will bring back the focus to the best interests of the child and ensure that the State does not absolve itself of responsibility for the protection of children within its jurisdiction.

FUNDING OF CASES BEFORE THE FEDERAL COURT WHICH CONCERN CHILD PROTECTION

Submissions expressed concern at the cost of legal representation in Family Court matters in which a protective parent or guardian is endeavouring to protect the child from abuse. Concerns included the fact that even if some funding is available it is limited and sometimes runs out before a case can be completed. There are also increasing numbers of complex cases being run in which the parties are unrepresented.

There is no easy answer to this dilemma but the Magellan Project does hold hope for those cases involving serious allegations of child abuse to be case managed in a manner which minimises this problem. This may be coupled with FAYS undertaking appropriate investigation and assistance and with cross vesting.

THE ROLE AND TRAINING OF CHILD REPRESENTATIVES

There were concerns expressed about the role of child representatives, particularly their ability to perform their role in the way contemplated by the Family Court Act 1975 (Cth) in the context of limited funding combined with either inadequate training or a failure to apply the training in practice.121

During consultations the Review was made aware that child representatives are usually unable to be present in court for the whole of the hearing, frequently do not actually see the child in the environment in which the child is residing or in which it is proposed the child reside, and do not have the time to develop a relationship with the child to enable an informed representation on the child’s behalf.

Again, in serious cases of abuse, this situation will be assisted by the implementation of the Magellan system. As to other matters the Review was informed that the Family Court was in the process of reviewing the requirements of child representatives. It is hoped that these matters will be taken up and that such a review will include appropriate training to alert a child representative to the particular problems of emotional or physical abuse which usually accompanies domestic violence, as well as to the signs of neglect either physical or emotional, and the importance of neglect in considering the welfare of the child in the short and long term. These considerations may result in mandatory notification processes being activated.

121 Submission 1 Professor Freda Briggs; Submission 103 South Australian Law Society – Children & The Law Committee; Submission 136 South Australian Law Society – Family Law Committee.
RECOMMENDATION 110

That in the course of implementing Recommendation 107 in relation to the Magellan Project consideration be given to ensuring that the role and training of child representatives is improved by developing and implementing appropriate protocols or guidelines.

Reason

It is highly important for the protection of children in the Family Court system that they have a fully informed and trained legal representatives to act in their interest and that the Court is given the greatest assistance it can in its consideration of the appropriate orders to make in their interest.

THE ROLE OF FAYS’ SOCIAL WORKERS AND RECOGNITION OF THEIR EXPERTISE

A common source of frustration for FAYS staff was the way in which they perceived they and their evidence was treated in both the Family Court and the Youth Court. In each case they indicated that they were restricted in the giving of evidence to matters of fact only rather than opinion. The FAYS’ workers pointed out that in many instances the senior social workers, being those most frequently involved in court cases, found that their considerable practical and theoretical knowledge of the signs of child abuse and neglect, and their views on remedies to ensure child protection in the future, were either prevented from being given or discounted by the courts. Sometimes, to their chagrin, recently graduated psychologists or other similar professionals who had only limited contact with the child and family were automatically given greater credence by the court ahead of their own assessments.122

The Review was also informed that this has particular significance in the cases of emotional neglect where it is left to the psychologists and psychiatrists who often diagnose such a condition in terms of attachment disorders.123

There are a number of issues which need consideration in this circumstance.

- The overwhelming focus of FAYS must be on the child, whether the child requires protection, and the nature of the protection and support required.
- FAYS social workers have multi functions in respect of their involvement in child protection which may include:
  - Investigation and assessment following notification as to whether the circumstances which gave rise to notification are confirmed.
  - Follow up services and providing general welfare assistance and support to the family including the child.
  - Instituting procedures in the Youth Court to have the child removed from the family and placed in care.
  - Assessment and investigation to assist the courts in their deliberations.

122 For example Submission 130 Ms Anne Nicolaou and Submission 113 Public Service Association.
123 Submission 99 Ms Julie Modra; Submission 113 Public Service Association; Submission 130 Ms Anne Nicolaou.
By reason of the work overload of FAYS as described in Chapter 9, they are already over-stretched. The added pressure of producing a report to the court which is going to be picked over by the parties each from their own perspective and then subjected to cross-examination, often at length, is daunting.

The spectre of court accountability and appearance, means that they have to spend a lot of their time writing up reports of their attendances and interventions, thereby being unable to spend valuable time in their social work roles.

FAYS are sometimes perceived by parties to litigation in the courts as being the “remover of children” and thus the enemy. Contrary to the above stated perception of FAYS workers that they were not being listened to, other submissions strongly asserted to the contrary that FAYS controlled the courts and the outcomes.\[^{124}\]

Other submissions referred to the lack or appropriate training and practical experience of FAYS’ workers.\[^{125}\]

There are a number of recommendations which may impact on this apparent problem including Recommendations 107 and 111. In addition there is a need for the courts to have regard where appropriate, to the training and experience of senior social workers as a relevant area of expertise and to include them in the recent Family Court guidelines as expert witnesses. Such recognition would enable them to give evidence of opinion which is not automatically discounted as being a lower level of expertise. They have the advantage that many other professionals do not have and that is they have often had long experience with the child and family in their environment over a period of time and thus have breadth of knowledge and are in a good position to assess the potential risk of harm to the child. This of course will not mean that their opinion will be accepted, but it should be able to be relevantly taken into account with all other professional opinions in the context in which those opinions are given.

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**RECOMMENDATION 111**

That the Family Court be encouraged to accept, where appropriate, the training and experience of senior social workers as a relevant area of expertise and include them in the recent Family Court guidelines as expert witnesses. This will then enable them to give evidence not only of their observations but also their opinions.

**Reason**

Senior Social Workers have great experience in assessing child abuse and their evidence should be considered as expert, so that they may be permitted to give evidence not only of their observations but also their opinions. This of course does not mean that their opinions will necessarily be accepted, but they can be taken into account by the Court in making findings.

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\[^{124}\] Submission 83 Mr Neville Jenke; Submission 109 Ms Cynthea Jenke; Submission 125 The Richard Hillman Foundation Inc.

\[^{125}\] Submission 49 Noarlunga FAYS; Submission 80 Dr Nigel Stewart Pt Augusta Hospital; Submission 99 Julia Medra; Submission 100 Annette Aksenov.
MISCELLANEOUS SUBMISSIONS

Other submissions received in relation to the Family Court reflected more on individual cases rather than general problems and included:

☐ an allegation that the Family Court forced children to live with fathers who have allegedly abused them when this is against the child’s wishes.126
☐ an allegation that the Family Court sometimes grants the alleged offender access to children and young people before an investigation is complete and often ignores the outcome of the investigation.127
☐ an opinion that breach of a Family Court order ought to be regarded more seriously.128

These matters seemed to suggest individual concerns rather than systemic problems and no particular recommendations are made.

YOUTH COURT

There are two major jurisdictions exercised by the Court: civil child protection and criminal jurisdiction in relation to juvenile offenders.

Criminal Jurisdiction

A number of the recommendations which appear under the heading of criminal jurisdiction are applicable to the Youth Court, although further consideration may need to be given to specific child perpetrator issues in the light of the earlier recommendations.

Child Protection Jurisdiction

The following common themes concerning the operation of the Youth Court were expressed in submissions and often more forcibly during consultations.

Positive comments were made with respect to:

☐ the fact that orders were able to be made without the calling of evidence from the child129
☐ that evidence could be drawn from a number of sources including hearsay evidence
☐ affirmation of the fact that the issue before the Court was not whether there had been the commission of offences but instead whether the child was a risk of harm using the civil standard of proof130
☐ positive appreciation was expressed by some parents as to the consideration which they were given by the court.

There were also a number of common negative observations expressed which will be separately considered.

126 Submission 1 Professor Freda Briggs.
127 Submission 81 Noarlunga Community & Allied Health Service.
128 Submission 16 Ms Meryl Thompson.
130 Ibid.
Liaison between the Youth Court and FAYS

Concern was expressed about a lack of communication between the Youth Court and the FAYS office on matters related to the smooth operation of child protection processes in the court. This resulted in tensions in the court where the expectations of both the court and FAYS of each other were often unfulfilled. This particularly related to the timely provision of reports from FAYS and the follow-up of informal agreements reached between the parties including agreements reached following the Family Care Meetings. The high frequency and levels of supervised access orders requiring FAYS supervision was also a source of concern.

There has in the past been reluctance for judicial or quasi-judicial bodies to engage in discussion with representatives of parties who may appear before the court, on the basis that it may lead to an allegation or a perception of bias on the part of the judiciary. This reluctance has understandably been developed over a period of time and reflects the importance of the judiciary maintaining independence. However, there is an increasing understanding that courts need to keep in touch with the interests and experiences of their “clientele” and that independence of decision-making is not being compromised by generalised discussion about the means of delivery of the justice system.

RECOMMENDATION 112

That the Youth Court and FAYS develop a means, in combination with other relevant agencies including the Justice Department, to liaise on a regular basis to discuss concerns about general process and ways to improve Court processes.

Reason

There are many examples in many courts and tribunals around Australia where either formal or informal mechanisms are used to improve justice systems and the circumstance of the operation of the Youth Court could benefit from such a dialogue with relevant parties.

Approach to child protection

A number of submissions and information the Review received during consultations mentioned the following:

- A perception that the Court on many occasions placed too great an emphasis on parents’ rights rather than those of the child. This was said to be in the context of applications for care and control orders as well as orders made as to access, with too great an emphasis on family reunification at a point when there was little hope of this being achieved.
- There were at times supervised access orders made by the Court which did not appear to have sufficient regard to the practical implications, such as the age of the child and the time and arrangements necessary for intensive access requiring long travel across the suburbs, which adversely impacted the child.
- There was a need to focus more on long-term security for children rather than rolled out temporary orders, and thus encourage longer-term orders at an earlier stage. Court processes were often protracted when there is little evidence to suggest that longer time increases reunification.

131 For example Submission 179 Family & Youth Services Advisory Group.
132 Ibid.
133 Ibid.
134 Ibid.
In contrast, the Review also received information that the Court at all times acted with the interests of the child as paramount.

It is not necessary this Review to make any specific findings as to whether the concerns are right or not, as it seems that these matters arise for a combination of reasons which include:

☐ a lack of communication between FAYS and the court
☐ the emphasis which the legislation has placed on reunification, which does not also reflect the importance of early assessment support and services being made available to families to successfully achieve reunification
☐ an assumption that access is always appropriate unless there are contra-indications
☐ lack of professional assistance and training available to the court in evaluating the appropriateness of access arrangements and the benefit to the child.

Some concerns about supervised access were expressed in one submission135 in the following manner, being in similar vein to the views expressed by others during consultations:

This demand [for high frequency supervised access] is based on the premise that very high levels of family contact are necessary for the maintenance and strengthening of family relationships to increase the likelihood of returning the child home and to safeguard the emotional well being of the child. However, it cannot be simplistically interpreted from the literature that ordering high frequency access orders will result in better outcomes for children…Parent and child factors and the quality of their relationship are far stronger predictors or outcome than visiting frequency alone.

During FAYS consultations reference was made to the enormous demand made on the professional services of FAYS officers in arranging intensive supervised access in situations where there is significant doubt as to the benefit which such access has on the child. Examples were given of young babies having intensive supervised access with mothers on a daily or multi-week basis when the child is distant from the place of access and most of the time is spent in travel. Further, the quality of access is also a concern. The environment in which such access occurs is not ideal and also some parents appear to require training as to how best to use the access time. The Review was informed that often the access time was not a quality experience for the child as the parent did not know what to do and spent much of the time communicating with the supervisor and not the child. Recommendation 114 adverts to amendments proposed to improve access arrangements and Recommendation 112 to improve liaison between the Youth Court and FAYS.
RECOMMENDATION 113

That Youth Court Judges and Magistrates undergo a specific education program which includes topics such as children’s development, the signs and symptoms of child neglect and abuse and their impact on children’s behaviour, the effect of domestic violence on children and the purpose and effect of access in relation to the needs of children.

That expert evidence be admissible on these general subjects as well as specific evidence in relation to the child in a given case.

Reason

It is a general perception held by lawyers that having had children coupled with sensitivity to people and good communication skills, are sufficient for them to perform the complex and difficult task required in the Youth Court. However, lawyers have not been given training in this area as part of their professional study and need to acquire some of the knowledge and skills of other professionals who have studied and worked with children and their families, in order to be better equipped to perform their work.

Such training would also assist the Court in making more informed decisions as to whether the reunification process is likely to be successful or whether the energies, services and support for the needs of the child are better focused with long-term orders in alternative care. Also it will assist the Court to better inform itself as to the reason and value to the child of access orders, particularly intensive supervised access orders in respect of very young children who live some distance away.

RECOMMENDATION 114

That the Act be amended to empower the Youth Court to inform itself with the assistance of professional opinion as to whether access arrangements are in the best interests of the child. The court to also have regard to matters which include:

☐ the practicalities of where and how any supervised access arrangements can be implemented
☐ the capacity of the parent to partake in a quality access period which is beneficial for the child
☐ a requirement that the parent undertake a parenting program to be arranged by FAYS.

Reason

Such an amendment will enable a court to ensure that the focus of any access arrangements is always on the child and to have the best information available to it so that only beneficial access orders are made by the Court.
HEARING PROCESSES AND AMBIENCE IN THE YOUTH COURT

A number of concerns were expressed on this topic:

- That the physical environment of the Court needed to be more child focused.\(^{136}\) This included the robing of judges, their physically elevated and removed sitting position and in some instances their approach to children.\(^{137}\) This problem was particularly mentioned in relation to proceedings involving Aboriginal families.

- That the method of hearing matters was too adversarial and instead the process could be more inquisitorial. It was suggested that the adversarial system positioned parents against FAYS and the opportunity to work collaboratively in the future was lost.\(^{138}\) Further, too much emphasis was on legal process at the expense of the child’s best interest.\(^{139}\)

- That legal representatives of parents in the Court in submissions tended to minimise not only the conduct of the parents but also the effect of conduct on the child. This was thought to lead a Court to sometimes accepting the “middle ground” which was not in the best interests of the child.\(^{140}\)

- That there is a perceived overly critical approach by the Court to the work done by FAYS officers and a failure to appreciate their expertise or opinion on matters related to child protection.

Many submissions were concerned that the adversarial process was not an appropriate model to be used in relation to care and protection. Some submissions suggested that instead of a judge alone, cases should be heard before a panel which was multidisciplinary and that it should be more inquisitorial in nature. It was submitted that an appropriate model could be along the lines of the Guardianship Board in relation to a multidisciplinary bench or the Coroner’s Court in relation to inquisitorial features.

The suggestion for a multidisciplinary approach largely arises by reason of some of the other concerns as expressed above. If there is appropriate training coupled with admissibility of expert evidence then this Review does not consider it necessary to change the model by extending the Tribunal to include other disciplines. Unlike the Guardianship Board which sits on an irregular basis, the Youth Court is permanently sitting and a multidisciplinary bench would also significantly increase the costs of its operation.

As to a suggested inquisitorial function, the Review is mindful that the Court does not only have the child protection jurisdiction but also the criminal jurisdiction and that it is not appropriate to have an inquisitorial criminal system for reasons discussed earlier.

The Review also notes that far more latitude now exists, particularly in specialist jurisdictions at which one is not bound by the rules of evidence, to have greater flexibility and adopt a more interventionist approach in conducting hearings including requesting and eliciting material, than has previously been the case. It is noteworthy that even in cases in which a formal adversary approach is taken such as in the Family Court, the High Court has expressed the change in these terms:

> At the trial level, modern judges, responding to a need for more active case management, intervene in the conduct of cases to an extent that may surprise a person who came to court expecting a Judge to remain until the moment of pronouncement of judgment, as inscrutable as the Sphinx….Judges, at trial or appellate level, who, in exchanges with counsel, express tentative views which reflect a certain tendency of mind, are not on that account alone to be taken to indicate prejudgment. Judges are not expected to wait until the end of the case before they start thinking about the issues, or to sit mute while evidence is advanced and arguments are presented. On the contrary, they will often form tentative opinions on matters in issue, and counsel are usually assisted by hearing those opinions, and being given an opportunity to deal with them.\(^{141}\)
It is not necessary to change the system in order to discourage an inappropriate or excessively formal approach in the Court. It is largely a matter of style and experience coupled with training, which can modify the excessively adversarial approach which is sometimes adopted by the parties and their counsel. As in everything it is a matter of balance and it would be similarly important to retain a certain level of dignity and formality so that the process does not become overly familiar. A touching recounting of the experience of a child was given to this Review in the course of one of the consultations in which the judge, whilst walking past the child who was sitting outside the court, introduced himself as the person who would shortly be considering the child’s case. This had a great impact on the child who had his fears eliminated by just that fleeting human contact. It sometimes takes very little to change an ambience even though the bricks and mortar remain the same.

With regard to the comments made in relation to Aboriginal families and cultural sensitivity, there is already a good precedent which has been used in the Nunga Court which sits at Port Adelaide and also in two country areas. It is highly praised for its culturally sensitive and respectful approach which includes the physical position occupied by the magistrate. The court also takes a more interactive and conversational approach which may appropriately be adapted in relation to Aboriginal circumstances in the Youth Court. It may also provide a good model for all cases related to child protection, whether involving Aboriginal people or not.

Consideration should also be given as to whether judges or counsel should be robed in the Youth Court noting the experience of Western Australia that when children were giving evidence on video, not in a court room, they largely preferred robes. Aboriginal children may not have the same perception.

**RECOMMENDATION 115**

That the Youth Court continue to be presided over by a Judge or legally trained person and consideration be given to ways of encouraging a less adversarial and intimidating approach in the courtroom. Instead, the Court to cultivate a more interactive and child and youth friendly environment using, for example, an adaptation of the Nunga Court model. Further, that consideration be given to abandoning the use of gowns by Judges.

**Reason**

This recommendation is in keeping with adoption of a more approachable and engaging environment in which parties can be heard and decisions are made with regard to child protection which is more child and youth friendly but still commanding respect.

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142 The magistrate sits at the bar table and not at the elevated bench.
RECOGNITION OF THE EXPERTISE OF FAYS' SOCIAL WORKERS

In relation to the concern by FAYS workers and others that FAYS social workers are not accorded adequate recognition for their expertise and are required to give evidence of facts and not their opinion, there are a number considerations. These have been outlined in discussion in relation to the Family Court.

RECOMMENDATION 116

That Recommendation 113 in relation to recognition of Senior Social Workers as expert witnesses, also apply in the Youth Court.

Reason

Such an approach will also assist in the social workers being treated in a more respectful manner in relation to their role and expertise. However it does not mean that their opinions will necessarily be accepted.

FAMILY CARE MEETINGS

Section 27 of the Children's Protection Act 1993 (SA) empowers the Minister to convene Family Care Meetings if the Minister believes that a child is at risk and arrangements should be made to secure the child's care and protection.

Further, the Minister cannot make an application for an order granting custody or guardianship before a Family Care Meeting has been held unless satisfied:

☐ that it has not been possible to hold a meeting despite reasonable grounds or
☐ that an order should be made without delay or
☐ that there is other good reason to do so.

Section 28 of the Children's Protection Act 1993 (SA) delineates the purpose of Family Care Meetings which is to provide proper opportunities for a child's family, in conjunction with a Care and Protection Coordinator (Courts Administration Authority):

☐ to make informed decisions as to the arrangements for best securing the care and protection of the child, and
☐ to review those arrangements from time to time.

Section 32 of the Children's Protection Act 1993 (SA) articulates the role of the Care and Protection Coordinator who must take reasonable steps to ascertain the views as to the care and protection of the child:

☐ from those persons invited to a Family Care Meeting who are unable to attend and
☐ from the child (so far as his or her views are ascertainable) if he or she has not been invited, or refuses, to attend and
☐ from any guardian or other family member who has not been invited to attend the meeting, if appropriate.
The coordinator must then relay all those views to the meeting.

There were many submissions suggesting that the current role and process of Family Care Meetings required review. Whilst there was general approval of the usefulness of Family Care Meetings and endorsement of the independence of the process and the professionalism with which they were conducted, there were other issues raised which suggested modifications were necessary. These included:

- That the meetings were convened too late and should occur far earlier at a time before families were entrenched in their positions. As one submission stated:
  
  It…would be more useful if it was detached from the threat or actuality of court proceedings.

- That the current practice of awaiting all relevant assessments and report to be available before such a meeting is called results in delays in conducting the meeting.

- That the meetings were sometimes lengthy exhausting processes, which did little to resolve issues between parties when there was no common ground for compromise, however, an alternative criticism was made, namely that cases are closed prematurely.

- That the meetings were not necessarily followed up by the provision of services to support and assist the family.

- They were sometimes being held only because they were viewed as being a compulsory prerequisite before any order could be sought for an order granting custody or guardianship.

- That the meetings should be more inclusive and include foster carers.

- That sometimes compromises were reached in the meetings using access as the negotiating lever with arrangements which were not necessarily in the interests of the children.

- That in spite of the provisions of section 30 of the Children’s Protection Act 1993 (SA) which requires that children be invited to participate, in practice that does not necessarily happen. Children should always be invited and represented at such meetings by their own representative or advocate to ensure that their voice is heard.

- Concern that agreements reached are sometimes not followed by FAYS or the parties.

- That the agreements reached as a consequence of a Family Care Meeting be lodged in the court with status of a Youth Court Order to achieve formality, enforceability, and ensure access to services and support for implementation of the order.

- That, in the case of Aboriginal families, there was a need for a more culturally apposite approach in the processes used for the conduct of the meetings. Some submissions suggested that there should be an ability for the family to select a cultural representative of their choice and for the child to have a separate Indigenous advocate. Another suggested that the Family Care Meetings in relation to Indigenous peoples should be replaced by Aboriginal or Torres Strait Islander Family Community Panels. A further submission was critical of the failure of all relevant family persons to be invited to attend, and highlighted the great distances involved for Aboriginal People living on AP lands.

- That data be collected on the participation of children and young people at such meetings and, if not present, the reason for their absence.

143 See eg Submission 80 Dr Nigel Stewart; Submission 100 Ms Annette Aksenov.
144 Submission 191 Courts Administration Authority; Submission 80 Dr Nigel Stewart
145 Submission 147 Federation of Parents & Friends of Catholic Schools.
146 Submission 155 Children’s Protection Advisory Panel.
147 Submission 83 Mr Neville Jenke.
148 Ibid.
149 Submission 191 Courts Administration Authority.
150 Submission 83 Mr Neville Jenke.
151 Submission 143 Office of Youth; Submission 133 The Youth Affairs Council of SA.
152 Submission 191 Courts Administration Authority; Submission 133 The Youth Affairs Council of SA; Submission 143 Office of Youth.
153 Submission 100 Ms Annette Aksenov.
154 Submission 179 Family & Youth Services Advisory Group; Submission 191 Courts Administration Authority.
155 Submission 191 Courts Administration Authority.
156 Submission 9 Children’s Protection Advisory Panel.
157 Submission 145 Aboriginal & Torres Strait Islander Commission.
158 Ibid.
159 Submission 133 The Youth Affairs Council of SA.
RECOMMENDATION 117

That Part 5 Division 1 of the Children’s Protection Act 1993 be amended so that it is not compulsory for the Minister to convene a Family Care Meeting prior to an application being made for custody or guardianship. The amendment should indicate that the holding of such meetings either before or after an application for custody or guardianship is made, is not an automatic expectation and instead may be convened by the Minister or at the discretion of the Judge on his or her own initiative or on the application of a party or interested person.

That consideration be given by the Minister or a Judge to the desirability of convening a Family Care Meeting at an early point of time rather than it being used as a “last resort” with the threat of litigation in Court if no agreement is reached.

That arrangements for the convening of a meeting need not be delayed awaiting the receipt of all reports.

That if a Family Care Meeting is convened:
- it should usually include foster carers, particularly if the foster carers have been involved for a significant period of time
- children should be invited to attend or be represented by a separate legal representative if the child is too young to participate
- data should be kept on the participation of children and the outcome of Family Care Meetings
- a culturally sensitive approach should be taken in the process for holding a Family Care Meeting in the case of Aboriginal people
- any agreement reached between the parties at a Family Care Meeting in relation to a care and custody application be recorded in the Court in the form of orders.

Reason

As a consequence of Recommendation 40, the need for a Family Care Meeting should be reduced because of appropriate early assessment, casework management and services undertaken through FAYS.

It is important that the arrangements agreed at such a meeting be recorded formally which will allow a supervisory role of the court to operate in relation to the agreement to ensure that it is clearly expressed and capable of being enforced or amended by a subsequent application to the Court.
INVESTIGATION AND ASSESSMENT REPORTS

The Review was informed that the 28 days for an Investigation and Assessment report as provided in section 21 of the Children's Protection Act 1993 (SA) is too short a time in which to provide a quality, well informed report about the assessment of the child. This was because of the processes which were required for such orders which include:

- holding a Family Care Meeting
- preparing the application for the order
- obtaining assessment reports from various agencies and professionals involved with the child and family
- informing parties of the proceedings including the parents, the child, lawyers
- briefing the counsel from the Crown
- attending court.

The statistics show that in the years 1999-2000 and 2000-2001 there were 160 and 179 Investigation and Assessment Reports respectively and 92 and 91 extensions of time for these reports in each of the respective years. This demonstrates that about 50% of the assessments are not completed within the time frame set out in the Act.

It was suggested that section 21 be amended to either provide a more realistic time frame or to give the Youth Court the power to set the period needed in each particular case, or that the fixed period be increased to 30 working days with an extension of up to 30 days.

Another submission said that it had been suggested that a non-extendable time of 56 days be set however the same submission argued that this was not appropriate on the basis that the interests of the child would not be served if the automatic giving of greater time is used as an excuse or reason not to prioritise requests for assessments.

It is essential for there to be sound information and opinion placed before the Youth Court before an order is made for custody. It is also necessary for this to be dealt with as a priority, bearing in mind that such orders result from a situation where the child is regarded as being at risk. The necessary assessments should be carried out at the earliest possible time. There would appear to be some need for increased time to be allowed for reporting.

RECOMMENDATION 118

That pursuant to section 21 of the Children's Protection Act 1993 the time for carrying out Investigation and Assessment Reports be increased from 28 to 35 days with a further extension of 21 days instead of 28 days. That there be monitoring of this reporting requirement in order to significantly reduce the number of extensions except for highly complex cases or special circumstances.

Reason

There are sound reasons for a minor extension to the period allowed for such reports, but that the time allowed for a further extension should remain the same as presently exists. The critical situation of children whose situations require investigation and assessment are such that early reports are highly desirable.

160 Submission 179 Family & Youth Services Advisory Group.
161 Ibid.
162 Submission 155 Children’s Protection Advisory Panel.
CARE AND PROTECTION ORDERS

A number of submissions were made in respect of Care and Protection Orders.

Some submissions suggested that 12-month reunification orders do not provide sufficient time to engage, assess, plan, intervene and evaluate change and family functioning. The high numbers of extensions of the 12-month period is referred to in support of this view. It was suggested that there should be greater flexibility with respect to the nature and length of time for Care and Protection Orders.

In addition it was submitted that as soon as a Care and Protection Order was granted there was an assumption that reunification with the child’s family will be attempted as soon as possible because of the emphasis given in the legislation to the rights of the child’s family rather than specifically considering the needs of the child. This can cause a particular dilemma in circumstances where a Care and Protection Order is granted as a result of confirmed child abuse in relation to which the child is undergoing therapy, often in alternative care. The process of reunification at that point can adversely affect therapy. It was submitted:

>This is because the child is required to consider the issues in relation to returning to live with his/her caregiver(s) without adequate time in therapy to address the effects and experiences of abuse. The child can be constantly reminded of the abuse by being questioned about reunification. At this stage therapy should be kept separate to the reunification process and involve the alternate caregiver(s), (the foster-carers).

It was pointed out that in such a circumstance, a parenting assessment is likely to have been done which outlines areas of difficulty and recommends what the caregiver(s) need to do to establish a protective and nurturing environment for the child. Some passage of time is essential to assess whether the carers are willing and able to implement the recommendations and to assess whether they have carried out the recommendations.

It was submitted that there should be a one-year period in which to implement the recommendations with a review of the situation at six months to assess progress. After one year a further two stage assessment process should occur. The first stage is to assess whether the carers have demonstrated willingness to implement changes as recommended. The second stage involves interviewing the child and carers separately and together. If reunification is recommended the process will occur over a designated period with specific objectives put in place and a contact plan. If reunification is not recommended then there would be an order for the child to be placed under a guardianship of the Minister. On the other hand another submission suggested that the period of 12 months was sufficient time in which to provide services and support and assess the situation for reunification and if necessary the time could be extended.

A similar submission was made supporting the continuation of the 12-month period arguing that research revealed the importance of establishing permanency within one year and a clear rationale for resolution requires more time.
As this submission stated:

…the provisions for 12 month orders with their emphasis on timely resolution and accountability for progress remains a sound component of the legislation. Provision to allow for more lengthy orders at the outset are open to abuse by both parents and agencies, as pressure for effective change would be lessened and scrutiny reduced…The inability to provide effective family reunification intervention as a result of work overload and protracted court processes must be addressed by appropriate means, not by allowing for the option of lengthy periods of intervention. With this option in place, the use of this provision would rapidly become commonplace, with justification given on spurious child-based grounds.\textsuperscript{169}

This Review considers that in order to achieve a secure and permanent arrangement either with the birth family or in care, that is preferable to permit the Court in its discretion to increase the period of time for the initial order to up to 18 months in an appropriate case. This will allow reunification processes to be appropriately undertaken and minimise the current practice of multiple 12 months orders. See further discussion in Chapter 23.

**RECOMMENDATION 119**

That statutory changes be made to Section 38 of the *Children’s Protection Act 1993*, to permit the Youth Court to extend the time for care and protection orders in appropriate cases. See Recommendation 180 in Chapter 23.

### Separate Legal Representation for the Child

Four separate problems have emerged with regard to this section of the Act.

This section prohibits a court from proceeding to hear an application under the Act unless the child is represented by a legal practitioner or the court is satisfied that the child does not want to be represented by a legal practitioner and, whether represented or not, the child must be given a reasonable opportunity to present his or her views personally to the court, unless the court is satisfied the child is not capable of doing so.

The first problem is that this section has been regarded as preventing orders being made in circumstances where the child has either not been brought to court or refuses to attend, or alternatively where an application is made for ex-parte custody orders because a parent of guardian is likely to leave the jurisdiction. This is a matter of concern in cases in which the children are in high-risk situations but not sufficient to warrant the immediate removal of a child under either sections 16 or 17 of the *Children’s Protection Act 1993 (SA).*\textsuperscript{170}

\textsuperscript{169} Ibid.

\textsuperscript{170} Submission 9 Children’s Protection Advisory Panel; Submission 18 Mr John Weyland; Submission 19 Ms Lynette Jennings.
RECOMMENDATION 120

That the *Children’s Protection Act 1993* be amended to empower the Youth Court to make orders in the interest of the child, notwithstanding the child’s absence, or at least make temporary orders on an adjournment. One way of achieving this is to have the discretion to dispense with compliance with section 48 in certain circumstances.

**Reason**

Such a provision will ensure that the jurisdiction of the Youth Court is not being thwarted simply by non-attendance of the child.

A second concern is that the section does not provide any mechanism by which the legal representative is to be appointed or otherwise attends to represent the child. The Youth Court appears divided as to how it deals with the issue. Some judicial officers formally appoint a solicitor to act for the child pursuant to the section other judicial officers are of the view that there is no power of the court to make such an appointment.171

Some submissions also suggested that there was a need to reinforce the importance of ensuring that the voice of the child is heard with the assistance of a separate representative. It was suggested that that the *Children’s Protection Act 1993 (SA)* be amended to permit the Youth Court to order that a child be legally represented similar to the provisions in section 68L of the *Family Law Act 1975 (Cth)*.172

RECOMMENDATION 121

That the Act be amended to incorporate provisions similar to section 68L(2) and (3) of the *Family Law Act 1975 (Cth)* and thus empower the Youth Court to appoint a separate child representative and to make such orders as are necessary to secure separate representation. Such an order may be made by the Court on its own initiative or on the application of the child, a party to proceedings or any person seeking to make submissions under section 41.

**Reason**

Such a provision will clarify that the Youth Court has power to appoint a separate child representative to ensure that the voice of the child is heard. An amendment will also strengthen the right of the child to be heard on matters which concern him or her and in particular the terms and conditions of any order.

A third concern was the interpretation of section 48 by some judicial officers as requiring the presence of the child in court and personally asking the child for comments. This has occurred in circumstances where the parents, guardians or parents may be already present and the child representative advises that the child does not wish to be present in Court or to make any comments.173

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171 Submission 155 Children’s Protection Advisory Panel.
172 Ibid; Submission 9 Children’s Protection Advisory Panel.
173 Submission 155 Children’s Protection Advisory Panel.
**RECOMMENDATION 122**

That the Youth Court issue guidelines which endorse the view that the child representative is able to speak on behalf of the child if the guidelines are fulfilled without the need for the child to be brought into Court unless the child desires such attendance.

**Reason**

This recommendation is to clarify that there is no need for the Court to personally ask the child whether he or she wishes to say anything and to minimise trauma to the child by requiring the child to appear in Court to so inform the Court personally.

A fourth consideration is in relation to the appointment, training and expertise of the child representative acting for the child in relation to court proceedings.

Representation is usually arranged by the Legal Services Commission of SA. The Commission selects from among a group of lawyers who practise in the jurisdiction and have done so for a period not less than five years and who have also attended a national training program. The Review was informed that on occasions when the representation of children does not automatically fall to the incumbent youth legal services officer, it has been the practice of the Crown Solicitors Office to approach solicitors who are known to practice in the Youth Court, until the Crown can find a solicitor willing, often at short notice, to represent the child. That solicitor then advises the Legal Services Commission of his/her selection by the Crown and funding is the provided by the Commission.

It is a fact that the *Children’s Protection Act 1993 (SA)* requires representation to be in place before an application can be dealt with at all which causes a problem. Recommendations proposed will assist in part in overcoming the problem, but it is also necessary to implement the following recommendation as an adjunct.

**RECOMMENDATION 123**

That the Youth Court be empowered to make an order for separate representation of a child at the time when the application is lodged, or at any other time without the need for attendance or submissions.

**Reason**

This recommendation further enables the Youth Court to order separate representation for the child without the need for attendance or the need for hearing submissions on the matter. (See also Recommendation 120 and 121.)
**RECOMMENDATION 124**

The Youth Court liaise with the Legal Services Commission regarding the appointment of a specific lawyer. Further, if the attendance of such a lawyer cannot be organised in advance of the first return date, the Court to have power to dispense with the requirements of section 48 during a period of the adjournment. (See also Recommendation 120 on page 57 regarding Section 48.)

**Reason**

This recommendation is complementary to recommendations on 120 and will improve the practical operation of the section.

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**RECOMMENDATION 125**

That except in a situation of emergency, no person shall separately represent a child unless they have undergone the national or other training program in relation to such representation. These requirements are to be contained in guidelines issued by the Court and to be developed after consultation with the Commissioner for Children.

**Reason**

This training will ensure consistent and quality standards for all lawyers who represent children in the Youth Court.

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**Court order that parents undergo assessment**

A difficulty which was mentioned in submissions and in a number of consultations was concern about the lack of professional assessment available in respect of parents prior to the Court considering whether a care and protection order was appropriate. While FAYS is able to glean relevant information about the family circumstances by interview, there are occasions when there may be, for example, physical or mental health concerns in relation to one or both parents. Unless the parent is compliant and prepared to attend a professional for assessment, there is a gap in the relevant information which the court should have available to it in considering appropriate orders.

It was submitted that the Court should have power to make an order that parents undergo assessment for capacity to protect their children in appropriate cases.\(^{174}\)

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\(^{174}\) Submission 130 Ms Anne Nicolaou.
RECOMMENDATION 126

That sections 21 and 38 of the Children’s Protection Act 1993 be amended to include a power for the Youth Court to order that a parent or caregiver undergo assessment with an appropriate professional as to capacity to protect his/her child.

Reason

It is important for the court to have available all relevant information about vital aspects of a parent’s capacity to care for a child. Whilst professionals are reluctant to assess non-voluntary patients, there are many precedents for compulsory assessment reports being made in the workers’ compensation and insurance field which include mental health and physical conditions. The suggested amendment is not requiring compulsory treatment.

SENTENCING

Other than the submission by the Justice Advisory Group, there were only two submissions which dealt with sentencing in relation to child abuse175, and this was only in passing.

The Child Protection Services, Flinders Medical Centre suggested:

…the sentences imposed for sexual offences against children do not reflect the long-term damage that is invariably inflicted on children who are exposed to sexual abuse.176

Action for Children, SA177 referred to a study which argued that:

…penalties for people who abuse children are not severe enough.178

The submission by Justice Advisory Group (JAG) provided a good summary of the sentencing process with regard to offenders against children.179 This submission sets out the sentencing principles, which sometimes incorporate conflicting concerns. The submission describes the process as follows:

Abuse of children, in all its forms, is a criminal act and sentencing processes should seek to achieve specific and general deterrence. However, unless sentencing also serves to protect children from repeated abuse when the perpetrator is returned to the community, it is a costly activity with little tangible result.

We believe that a broader range of judicial processes and sentencing options should be available for those found guilty of offences against children. These should incorporate the broad principles of cautioning, diversion, conferencing …and treatment, that underpin the current approach to young offenders.

The use of imprisonment, here and abroad, has been shown to have little, if any positive effect on recidivism.

175 Submission 163 Child Protection Services, Flinders Medical Centre; Submission 169 Action for Children, SA.
176 Submission 163 Child Protection Services, Flinders Medical Centre.
177 Submission 169 Action for Children, SA.
Imprisonment damages the physical and psychological wellbeing of prisoners; corrupts prisoners through forced associations; places stress on the social relations of prisoners; and has a propensity to ‘institutionalise’ prisoners such that they find it difficult to re-integrate into society once released. However, JAG acknowledges that imprisonment provides general deterrence and the ultimate protection (albeit often temporary). In some cases, it may be the only available sanction for serious repeat offenders.

Against this backdrop, it follows that since the behaviour of offenders occurs in the community, and one of the main aims of Corrections is to reintegrate offenders into the community, the community is the ideal locus for correctional control and treatment. In addition, programs that challenge offending behaviours are most effectively delivered in community settings where offenders are able to readily put their new skills to immediate use. All participants responsible for the delivery of the administration of justice should be involved in the development of broader jurisdictional processes.

Some issues have been identified that impact upon the effectiveness of community based sanctions:

- **Sex offenders on bail with supervision** require Community Corrections to implement tight ‘contracts’ with offenders and these are then ‘signed off’ and agreed to. If conditions are breached, Community Corrections is able to take action by way of breaching the bail. Some participants thought it would be beneficial for the court to impose more stringent conditions at the outset in appropriate cases.

- **Some issues were raised concerning Court responses to bail**. There is a perception of an inconsistent approach by some Magistrates as to whether there are adequate powers to direct offenders to programmes. Training may be a key to improving consistency.

- **Department for Correctional Services data** indicate a higher failure rate for home detention on bail (which is ordered and assessed by the court), in contrast to a high success rate with home detention (assessed by DCS where strict criteria are applied). Some participants thought it would be beneficial for the court to impose more stringent conditions at the outset in appropriate cases.

- **Community Corrections advises they are in a weak position concerning ‘non-compliance reports’**. A breach of bond report is submitted to SAPOL who will lay a charge of enforcement for breach of bond if appropriate. JAG understands that it takes a long time for the matter to be heard, with a common result being an extension of the bond. In other words, the reality is that there are few conditions that are enforced.

The submission then refers, amongst other matters, to two aspects of sentencing, firstly in relation to youth and secondly in relation to Aboriginals.

The Mary Street program is described as a good example of justice and welfare responses working collaboratively with young offenders to treat and rehabilitate them and actively reduce the likelihood of recidivism as adults.

In relation to sentencing of Aboriginal people it is noted that there is a need to consider how both existing and proposed sentencing options, and the infrastructure to manage them, could be designed to maximise their appropriateness for Aboriginal people and improve outcomes.

The Submission referred to the Larkin Report (1995) “Barriers to Alternative to Custody”, which concluded that the effectiveness of non-custodial sentences for Indigenous people could be significantly enhanced by a treatment program which addressed recidivism by tackling a range of issues including employment, the causes of the offence, addiction problems and family relationships.

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180 DCS internal report on home detention breach rates.
The submission further stated that:

Aboriginal attendance and participation in therapeutic interventions that are not culturally appropriate, is poor. The lack of culturally appropriate options leads to low completion rates and therefore greatly limits positive outcomes for offenders and the community. For example, there is an approximately 50% Aboriginal offender participation rate for general Magistrates’ courts, compared to 80% rate at the Aboriginal Courts (in Port Adelaide, Murray Bridge, and Port Augusta).

Another matter referred to in the submission was the complex issue of the rights of victims within the criminal justice system which are increasingly being afforded more attention.

Examples include:

- The Victims of Crime Bill 2001 lays down the principles that govern the treatment of victims of crime in the criminal justice system.
- The Department for Correctional Services has commenced a pilot project in conjunction with Victim Support Services in regards to facilitating Victim-Offender Mediation sessions. To date, only one mediation session has been completed and one further session is in planning. These sessions will inform future policy and practice. Initial findings are favourable.
- Offender Aid and Rehabilitation Service have initiated a Centre for Restorative Justice which aims to educate and promote restorative approaches.

Justice Advisory Group suggested that in pursuing the principles of restorative justice, there should be the following safeguards:

- that the best interests of every child victim are carefully considered and if necessary, expert advice obtained
- that the protection of the child is paramount and supported by independent child advocates
- that the needs and voice of victims in the process is recognised
- that children are not re-victimised at the institutional/systematic level
- that the criminal justice process recognise secondary victims of crime such as children and families of offenders, so that they may be heard, considered and supported in the court and sentencing process and during any periods of incarceration.

This Review agrees with these principles and suggested safeguards.

**RECOMMENDATION 127**

There is no recommendation made to increase sentences in respect of sex offenders of children.

**Reason**

The emphasis should be on treatment of offenders to protect children.

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182 According to the Justice Strategy Unit - Attorney-General’s Department, based on Dept for Correctional Services data.
RECOMMENDATION 128

That a Court when sentencing for sex offenders of children, take into account that if treatment of offenders is not conducted within the prison, a period of less than two years on parole is insufficient. A three-year period is preferable.

Reason

SOTAP information as well as general information on sex offender treatment programs indicate that a period of two years is likely to be too short a period for the completion of sex offender programs and that a longer period of parole is required to encourage finalisation of treatment.

PERJURY

One submission\(^{183}\) recommended that proceedings for perjury should be instituted in respect of false allegations which are made in respect of child abuse. There was no mention in the written submission of a recommendation of the alternative, namely, that proceedings for perjury also be instituted in respect of false denials of child abuse, although in subsequent discussion it was agreed that this was also appropriate.

With regard to this suggestion the Review notes the difficulty that always exists in relation to proof of perjury. Perjury cannot be instituted in respect of false allegations per se, it is a crime related to the giving of evidence on oath and a court is required to be satisfied that a person has told a deliberate and malicious falsehood on oath as distinct from being a person whose evidence is not accepted. There are very few cases of perjury of any sort which are the subject of prosecution, let alone in this particular highly emotional area. There is no reason why such a charge could not be laid in appropriate circumstances if they exist. There is no need to make any recommendation on this issue.

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\(^{183}\) Submission 125 The Richard Hillman Foundation Inc.
INTRODUCTION

This chapter discusses:

- the need for sex offender treatment and
- options for treatment.
GENERAL DISCUSSION

...although sexual offending has been documented as far back as 500 BC, it has only been relatively recently that sexual offender treatment programs have become available, the first being established in California in 1948.¹

There is widespread community concern regarding people who commit sexual offences against children. A substantial number of submissions to the Review discussed the issue of sexual offenders and what should be done to curtail their behaviour. Some have argued for a position of ‘zero tolerance’ of sexual abuse of children:

Zero tolerance is the only viable option and once somebody has offended they should never be allowed to have any contact with children.²

Zero tolerance for sexual offences would make a difference. Plus really accepting that child sexual offenders exist in all levels of our communities…³

We promote the introduction of a zero-tolerance legislation in the criminal sentencing for child sex offenders in South Australia. This is a situation where mandatory sentencing, and other deterrents are clearly needed to help prevent paedophilia.⁴

 Others have called for better treatment programs for offenders in and outside of prison and stricter penalties and restrictions on behaviour:

The current system is grossly inadequate in dealing with sexual offenders and the treatment of sex offenders in the wider community is incredibly inadequate.⁵

Offenders need assistance for their addiction … Mandatory treatment programs in goal are needed. Mandatory programs as recommended by magistrates and judges are required and severe penalties for not complying with those directions.⁶

Education and treatment of offenders – in and out of prison’ is needed.

…treatment programs for alleged sex offenders be made compulsory, regardless of any admissions/denials of guilt.⁷

There should be treatment in prison for the perpetrator…they should be segregated from children in society but they shouldn’t be released if there is still doubt about the offender violating a child again.⁸

Deterrent counselling programs must be provided…in the community and the prison system. Jail terms for repeat offenders – more for the safety of children than because of any hope that they will change their behaviour.⁹

Substantial longitudinal research has established that cognitive group therapy can substantially reduce the risk of re-offending by paedophiles. A cognitive based group program to address offending behaviour is needed for paedophiles at all stages of their imprisonment after conviction.¹⁰

¹ The Hon Mr Justice David Malcolm, Chief Justice of Western Australia (1995) Sex Offender Treatment Programmes p 1.
² Submission 14 – Name Not For Publication.
³ Submission 38 SPARK Resource Centre.
⁴ Submission 123 Movement Against Kindred Offenders (MAKO).
⁵ Submission 38 SPARK Resource Centre.
⁶ Submission 15 Port Adelaide Police Child & Family Investigation Unit.
⁷ Submission 150 Mr & Mrs J & D Matters.
⁸ Submission 125 The Richard Hillman Foundation.
⁹ Submission 23 Ms Nicola Dimich.
¹⁰ Submission 21 Name Not for Publication.
¹¹ Submission 50 Mr Graeme Vinall.
One submission supported the need for treatment but did not favour prison based treatment as an option:

In my experience as a SA prison chaplain I found no program of any sort specifically for child sexual offenders; on reflection, that was not a bad thing in that the sort of treatment that these offenders need cannot, I believe, be given in a prison setting but has to be within a carefully designed physical environment that allows for surveillance while facilitating the sort of interaction with adult others that psychiatrists seem to recommend for offenders. 12

Another called for a more rational debate about child sexual abuse believing that the position that it is 'universally accepted that adult-child sex contacts, whatever their nature are evil', does little in developing an understanding of the problem and developing solutions. Further, 'that open debate and discussion is an absolute necessity in all controversial matters…and suppression of free expression can do nothing to aid the forensic examination of the phenomenon'. 13

Others support enhanced treatment and counselling for the non-offending parents and victims.

Many have been highly critical of the way the ‘system’ deals with the issue. Individual submissions poignantly detailed their own cases of abuse or that of their children, in an attempt to demonstrate to this Review the injustice, hurt, anger and disbelief at how the ‘system’ has failed to adequately deal with their situations. Many of the concerns result from the ‘offender’ not being sanctioned and as a result, still allowed to continue in their sexual offending behaviour without any appropriate treatment or adequate punishment.

The need to ensure that offenders are properly sanctioned whilst at the same time enabling them to receive appropriate treatment has considerable merit.

Abuse of all children, in all its forms, is a criminal act and sentencing processes should seek to achieve specific and general deterrence. However, unless sentencing also serves to protect children from repeated abuse when the perpetrator is returned to the community, it is a costly activity with little tangible result. 14

In Western Australia, the Honourable Chief Justice, David Malcolm AC in an address given on Sex Offenders’ Treatment Programs in 1995 concurred with authors of A Three-Tiered Approach to the Rehabilitation of Incarcerated Sex Offenders:

...when sex offenders have been identified by the judicial process, and while they are under some form of jurisdictional control, whether in prison or on probation, it would be foolhardy not to attempt to do something constructive with them to reduce the likelihood that they will re-offend. 15

There is no doubt that now more than ever there is a recognition that the rehabilitative aspects of sentencing are of equal, if not greater, importance as the punitive aspects of sentencing. 16

Given the extraordinary prosecution and incarceration costs that are placed upon the community as a result of criminal behaviour, if for no other reason there is an economic imperative to utilise treatment programs to prevent offending behaviour. 17

The Review recommends that a rehabilitative approach must be put into place. Given that sex offenders differ from most other criminals in that treatment can often reduce their propensity to offend, 18 it is critically important that a range of treatment options are available for offenders, families and their victims.

12 Submission 69 Mr Paul Finnane.
13 Submission 201 Wilmar.
15 The Hon Mr Justice David Malcolm, Chief Justice of Western Australia (1995) Sex Offender Treatment Programmes.
16 Ibid.
17 Ibid.
As one submission to the Review stated:

South Australia is said to be the only State that lacks a treatment program in correctional centres. Ararat Prison (Vic) which caters for about 360 offenders, claims a 75% success rate for its treatment program in its seven years of existence, success being measured by the number of prisoners who have not been re-convicted. New Zealand authorities claim similar success, noting that if they prevent one prisoner from offending for one year, the program has paid for itself. It is inappropriate that sex offenders should be jailed for several months or years with no attempt being made to change their attitudes to children or sexual preferences.¹⁹

REPORTS OF CHILD SEXUAL ABUSE

The report ‘A cost-benefit analysis of child sex-offender treatment programs for male offenders in correctional services’ by Donato, Shanahan, Higgins 1999 undertaken by the Child Protection Research Group, University of South Australia, points to a need to distinguish between prevalence and incidence when discussing reports of child sexual abuse. The ‘prevalence’ refers to the percentage of people who have been sexually abused, while the ‘incidence’ refers to the number of new cases of abuse each year.²⁰

In South Australia for the year 2001-2002 there were 2308 notifications classified as child sexual abuse involving 1998 children or young people. Of those notified, 1566 matters were ‘screened in’ and 496 investigated under the Tier rating system, while another 531 were referred directly to SAPOL for follow up.²¹ Of those investigated by FAYS, 175 cases were confirmed and involved 166 children.²²

The prevalence of child sexual abuse in the community is difficult to ascertain as studies conducted use figures elicited from retrospective studies of adults. Nevertheless many believe the prevalence of child sexual abuse is under estimated.

The under-reporting of child sexual abuse is a major reason for the true cost of such abuse being ‘invisible’. In addition to the fact that for many reasons child abuse is not reported at the time, differing methodologies used by researchers when questioning adult survivors of child sexual abuse can produce widely varying prevalence rates.²³

Based on 1995-96 data of 600 confirmed cases of sexual abuse by the then Department of Family and Community Services, researchers Donato et al asserted that these figures were likely to ‘underestimate the ‘actual’ incidence of child sex abuse in South Australia and produce a conservative estimate for the costs of child sexual abuse that can be potentially avoided through reduced recidivism rates’.²⁴

They further state that many professionals now believe that most cases of sexual abuse go undetected and it is very difficult to gauge the true extent of child sexual abuse in the community.²⁵

What is known is that offenders often commit many acts of abuse although they may only be convicted for a few acts. Self-report studies undertaken with offenders support this finding.

¹⁹ Submission 12 Mr Kevin Beinke.
²¹ For further details regarding child protection data see Chapter 9 B and Chapter 15.
²² DHS Data Warehouse.
²⁵ Ibid pp 9-10
Donato et al, refer to one of the most dramatic studies conducted by Abel, G and others in 1987. This study indicated that the 561 subject offenders given a ‘lengthy structured clinical interview,’ self-reported an alarming total of 291,737 ‘paraphiliac acts’ against 195,407 victims under the age of 18 years. This is an average of 52 acts per offender. The five most frequent reported acts involved criminal conduct, including incest of males and females and rape.

This Review agrees that:

*Sex offender programs are especially important because of the very high risk of re-offending.*

The development of appropriate interventions for sex offenders is seen as a priority.

The deleterious effects of sexual abuse on children and later the impacts upon them as adults is now well indicated in the research. A variety of negative consequences on physical and emotional health have been documented. It is therefore critical to develop strategies and services for those that sexually offend against children in order to secure for children and young people a future free from such abuse.

### THE EFFECTIVENESS OF SEX OFFENDER TREATMENT PROGRAMS

There have been a number of studies to show that treatment programs, in particular cognitive behavioural approaches, can be effective.

One study by Marshall in 1993 found that while 60% of untreated offenders re-offended over a five year period only 15% of treated offenders re-offended.

Another comprehensive study in New Zealand over a ten year follow-up of 238 prisoners who undertook the Kia Marama treatment program in its first three years of operation, found that the treated group had a recidivism rate of 8% compared with a recidivism rate of 21% for the control group. Despite concerns regarding the variability of results and methodology, Donato et al state *‘that there is substantial evidence to support the thesis that treatment programs reduce recidivism rates’*.

### CURRENT TREATMENT OPTIONS IN SOUTH AUSTRALIA

The Department of Correctional Services has statutory responsibility for the establishment and management of prisons and other correctional institutions in South Australia. It has a critical role in the criminal justice process to ensure that the custody and rehabilitation of sentenced offenders is safe, secure and humane and the rights of victims are respected. The Department administers nine prisons accommodating low, medium and high security prisoners and 16 Community Corrections Centres that provide supervision of offenders on probation, parole, home detention, intensive bail supervision and community service orders.

Currently the Department of Correctional Services (DCS) does not provide a prison-based treatment program for persons who sexually offend against children or adults.
DCS does provide programs that reflect the most frequently identified ‘criminogenic’ (offence-specific) need and include treatment/counselling options for the following:

- alcohol and other drugs
- anger management
- cognitive skills
- domestic violence
- numeracy and literacy
- victim awareness.

While many elements of the above programs may also be a benefit to sex offenders, they do not specifically address the unique characteristics (such as distorted thinking errors) of child sex offending.

There were 146 persons who were convicted of a child related sexual offence who commenced imprisonment during 2000-2001.\(^\text{34}\) This represents a substantial number of persons who could benefit from a prison-based treatment program.

### COMMUNITY BASED TREATMENT

**Adults**

In terms of community-based treatment the Sex Offender Treatment and Assessment Program (SOTAP) has been operational in South Australia for over 10 years. It is administered by Glenside Mental Health Services, which is a part of the Royal Adelaide Hospital. SOTAP provides a psychologically based assessment and treatment service for adults who offend against children and young people. Clients may be mandated to attend, by order of a court or Parole Board, or they may attend on a voluntary basis. All child sex offenders in prison are assessed towards the last three months of their prison sentence in order to determine suitability to the community-based program.

Clients attending voluntarily can be referred through a variety of places including community services, child protection or police agencies. Services are currently delivered in the metropolitan area and regular country services are provided at Port Augusta and Murray Bridge.

As at April, 2002 there were 147 ‘active’ clients on the program with nearly 50% being self-referred.\(^\text{35}\)

Treatment at SOTAP requires a comprehensive assessment and understanding of the following:

- family history
- sexual development
- offence history
- current sexual behaviour
- mental health issues
- management of emotions, attitudes and empathy to victim.
Treatment is delivered through an intensive ‘cognitive-behavioural’ group therapy and individual treatment processes. There is also an information and support group for partners (non-offending parent), family members and other support people.

**Children and Young People**

The Mary Street Program is a prevention program which promotes safety in families and communities by helping young people to stop sexual abuse and sexual harassment of others. Young people aged between 12 and 18 who have:

- committed a sexual offence
- engaged in inappropriate or offensive sexual behaviour or
- sexually harassed others

are eligible to attend.

The program has been in operation for 12 years and provides counselling and help for young people and their families or caregivers to assist young people to:

- take responsibility to stop sexual abuse and sexual harassment
- make restitution to help heal the harm caused by sexual abuse and sexual harassment
- respect others and develop appropriate relationships
- build self-respect and confidence
- make sexuality respectful and positive.

The program is a good example of justice and welfare responses working collaboratively with young offenders to treat and rehabilitate and reduce the likelihood of recidivism in adulthood. The staff at the program may attend a family youth conference, also when the young person comes before the Court, the program will assist their clients to enter into a commitment with the Court to attend the program for the maximum time of 12 months. In doing so, of the 100 or so children and young people currently receiving therapy only two are likely to receive a detention sentence.⁶ This contrasts with New South Wales where two thirds of young offenders are imprisoned.

Submissions to the Review pointed out the need and importance of intervention for children and young people who sexually offend against other children.

*The extent of sexual offending by adolescents – approximately 20 percent of recorded sex offences are committed by adolescents and it is estimated that 30-50 per cent of child molestation cases are perpetrated by adolescent males. The need for early intervention before the behaviour becomes chronic and ingrained is essential.*⁷

Sexually abusive behaviour often starts early in adolescence and is likely to become entrenched if intervention does not occur. As adolescence is a period of developmental change, there is often greater potential to intervene, change behaviour and create positive sexual identity.

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⁶ Interview with Mr Alan Jenkins, Director, Mary Street Program and the Reviewer and Submission 196 Justice Advisory Group.
⁷ Submission 162 Ms Rachel Mann.
DIVERSIONARY PROGRAMS

Currently, there are no diversionary options available for adults who sexually offend against children and young people in South Australia.

‘Diversion’ is a term commonly used to loosely describe a range of alternatives to traditional adversarial criminal process and outcomes. Depending on the facts and context of each case, it aims to encourage personal acknowledgement of wrongdoing by an offender and to promote community confidence and participation in decision making about the appropriate penalties and consequences for the crime.38

Discussion of a diversionary program for sex offenders is not new. In 1986, the Task Force on Child Sexual Abuse in South Australia recommended the establishment of a diversionary program for child sex offenders to be put into place. Since that time, there have been various discussions at a political and community level, for and against such a proposal. In support of a diversionary program submissions to the Review stated:

A specific service for men who sexually abuse their own children similar to that in NSW “the Cedars” is needed. Main features of this program are a focus on the effects on the victim. It is a diversionary program that involves a criminal conviction and disincentives to leave the program eg jail sentences. It also insists the perpetrator leave the family home during the duration of the treatment. Ongoing monitoring and evaluation is required as evidenced in NSW to ensure that men’s conduct can be monitored.39

At present there is no legislative mandate for providing diversion of offenders into treatment programs instead of receiving custodial sentences. This Review recommends that such an option be put into place and appropriate treatment provided. The legislative technicalities and rationale for a diversionary approach are dealt with in Chapter 23.

CULTURALLY APPROPRIATE TREATMENT SERVICES

It is well known that child sexual abuse is a major issue in Aboriginal communities. It contributes to the high youth suicide rate… Child sexual abuse is not culturally condoned but Aboriginal communities are often not prepared to share the problem with the ‘white’ criminal justice system.40

There are no treatment programs designed to assist Aboriginal and Torres Strait Islander persons who sexually offended against children within Indigenous communities in South Australia.

The recently completed Inquiry in Western Australia into Family Violence and Child Abuse in Aboriginal Communities (known as the Gordon Inquiry) found that the majority of Aboriginal communities strongly supported offenders receiving help with their offending behaviour, particularly in regard to sexual offending.41

In WA, there is currently one program targeted at Aboriginal sex offenders, the Indigenous Medium Program at Greenough Regional Prison which focuses on Aboriginals who commit repetitive sex offences with a significant level of aggression. The Gordon Inquiry found that the view of communities was that effectiveness of programs was dependent upon them being ‘widely available and culturally appropriate’.42

For remote communities, the lack of community-based treatment meant that prison was the only option available to assist the offender and protect the victim, and even then the prison program was not
compulsory. The Inquiry also noted that the community perception was that offenders of child abuse and family violence were being returned to the community after prison without ‘treatment’ being provided. In general terms, attendance and participation in therapeutic interventions that are not culturally appropriate tend to be poor. The lack of appropriate treatment options limits positive outcomes for offenders and the community and often results in recidivism.

The research, including the Royal Commission into Aboriginal Deaths in Custody, has recommended that alternative approaches to justice, justice programs and services should be developed that are culturally appropriate. In particular, the need for interventions that involve families and the wider community is recognised as a crucial component in reducing recidivism.44

It is noted that within the adult criminal justice system there has been a wider acceptance of services which are more culturally appropriate for Aboriginal offenders. The Nunga Court, that operates primarily from Port Adelaide, Murray Bridge and Port Augusta Magistrates’ Courts has a high level of success in offender participation with rates at 80% in comparison to 50% in other general Magistrates’ Courts.45

### TYPES OF TREATMENT PROGRAMS IN AUSTRALIA AND OVERSEAS

In the United Kingdom, United States, Canada and Australia it is accepted that the most effective program to address sexual offending behaviour against children is a group based cognitive therapy, which focuses on attitudes and victim awareness.46 In addition, these programs also include relapse prevention.

There are, however, differences in delivery, depending on the settings, for instance, in the prison or in the community and the type of agency providing the service, for instance correctional services or health services.

### UNITED KINGDOM TREATMENT PROGRAMS

**Sex Offender Treatment Program (SOTP)**
The Sex Offender Treatment Program (SOTP) began in the UK in 1991 as part of a national strategy for the integrated assessment and treatment of sex offenders and is currently run in 25 correctional establishments. The central aim of the program is to increase the offender’s motivation to avoid re-offending and to develop the self-management skills necessary to achieve this.47

Group work has been central to the SOTP strategy. By joining a group an offender publicly actions and acknowledges his need to change. Group work also provides:

> …a context in which socially acceptable values are conveyed and normal social interactions reinforced.48

Treatment approaches are similar to those undertaken in NSW. The program uses a ‘cognitive-behavioural’ approach which research indicates to be effective in the treatment of child abusers. The ‘cognitive’ aspect involves recognising the patterns of distorted thinking which lead to contemplation of illegal sexual acts as well helping the offender to understand the impact on victims. The ‘behavioural’ component involves techniques to reduce sexual arousal to inappropriate fantasies of forced sexual activities with children and adults.49

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44 Submission 196 Justice Advisory Group.
45 Ibid.
46 Submission 50 Mr Graeme Vnall.
48 Ibid p 5.
49 Ibid.
All prisons conducting the program are subject to accreditation by an international panel of experts who assess the quality of treatment, written outcome reports, tutor availability and management support. Prison Governors cannot meet their key performance targets unless they fulfil these accreditation criteria.50

Dr Anthony Beech, Senior Lecturer and Research Fellow from University of Birmingham, UK was a part of the review team who evaluated the program in 1999. Discussions were held with Dr Beech by the Reviewer about the evaluation of the program.51

A range of psychometric tests were administered before and after treatment and were designed to measure change in a variety of areas including denial/admittance; impact on victim; low self-esteem and recognition of risk of re-offending. Overall, significant improvements were found in nearly all the measures administered to participants.

Another more sophisticated analysis assessed the extent to which child abusers had, by the end of the treatment, attained a ‘treated’ profile. In order to meet this, the offender had to show that changes were made across both pro-offending attitudes (cognitive distortions) and social competency/acceptance of accountability. The study found that over two thirds were successfully treated with regard to reducing pro-offending attitudes’ and one third showing overall treatment effect.52

West Midlands Probation Service Sex Offenders Unit – UK
In 1993 the West Midlands Probation Service set up a sex offender unit with the aim of providing a specialist treatment service for sex offenders serving a community service order.53 The service is the largest community based unit in the UK and is staffed by probation officers, support staff including a social worker, art therapist, and clinical psychologist. In addition, workers from other agencies work alongside the unit officers in group sessions.

Attendance on the program is usually a condition of a three-year probation order if the pre-sentence assessment suggests the risk of dealing with the offender in the community is acceptable.54 Further conditions can be added to orders including prohibition of unsupervised contact with children or residing in an approved probation hostel.

An evaluation of the program, which accepts intra-familial and extra-familial offenders and men who have committed sexual offences against women, was undertaken in 1997 by Allam, Middleton & Brown. They found that offenders who had committed sexual offences against children were the majority of participants in the program with them representing 101 males or 78% of all participants. Of this group, almost half or 50 were extra-familial offenders, 47 were intra-familial abusers and four had abused children both within and outside the family.

Core treatment themes include:

- cycles and cognitive distortions
- self-esteem, social skills and assertiveness training
- sexuality
- role of fantasy in offending
- victim empathy and
- relapse prevention.55
Part of effective service provision is the involvement of other agencies in treatment and supervision. Workers are expected to have regular contact with non-offending parents, as well as field probation officers, local authority social workers, mental health workers and the police. Communication with other agencies is not ‘one-way’, as other agencies working with the offender are expected to share any information considered pertinent to supervision and treatment. This information could include whether an offender had obtained employment in child related areas, had breached the rules of residence or failed to attend supervision meetings with the field officers.56

AUSTRALIAN TREATMENT PROGRAMS

Prison-Based Treatment
The Victorian, New South Wales and Western Australian prison systems have separate facilities for sex offenders with programs available through the prison sentence.57 As previously mentioned, South Australia has no prison-based treatment.

New South Wales
The Review visited the New South Wales program in order to appreciate first hand the type of prison-based treatment program on offer. The Custody Based Intensive Treatment Program (CUBIT) is a prison based residential treatment program for men who have sexually offended against adults and/or children. Prisoners are accommodated in a special, self-contained unit located in Long Bay Correctional Centre. The setting is designed to help offenders work intensively on changing their thinking, attitudes and feelings which led to their offending behaviour. A multi-disciplinary clinical team with the involvement of specially trained and supported custodial staff conducts the program.58

The CUBIT program is primarily a group based treatment option and is offered to moderate and high risk/needs offenders. Offenders in the high intensity program can expect to stay in the program for approximately 10 months while offenders accepted in the moderate intensity program can expect to remain involved for approximately eight months.

CUBIT also offers an ‘adapted’ program for sexual offenders with literacy problems, high functioning offenders who have a borderline intellectual disability or other offenders with special needs.

Key features of the program include addressing the following issues:

- targeting denial and minimisation of offending behaviour
- developing an understanding of the offence cycle and relapse prevention
- developing a relapse prevention plan
- addressing pro-offending (distorted thinking) beliefs and attitudes
- victim impact and empathy
- changing sexual arousal and sexual regulation patterns
- relationship and appropriate sexuality skills
- emotional regulation skills
- anger management
- handling stress
- coping with life’s problems
- building a healthy and well balanced lifestyle.

56 Ibid.
58 New South Wales Department of Correctional Services (2002) Institutional Treatment Programmes for Sexual Offenders: CUBIT & CORE.
In the initial stage of treatment each participant is required to provide a full disclosure of his sexually offending behaviour and related issues. If an offender is unable to do so, he is likely to be unable to acknowledge and address the effects of his offending on his victim(s); understand his offence cycle; and develop a viable relapse prevention plan to manage his risk for future offending.\(^{59}\)

Intake to the program is with the full consent of the offender and once an offender is accepted to the program his name is placed on a waiting list. Offenders may come from any prison within New South Wales.

This facility represents a model prison treatment program for sex offenders. The physical design of the service and the treatment options available are highly favoured by this Review.

**COURT ORDERED DIVERSION COMMUNITY BASED TREATMENT OPTIONS**

**New South Wales**

New South Wales has a specific program called the *Pre-Trial Diversion of Offenders Program* located at Cedar Cottage in Westmead, Sydney which was set up in 1989. The Review visited ‘Cedars’ to understand how the program operates, and to determine whether a similar diversion program could have applicability for South Australia.

Cedar Cottage is a specialist treatment and management service for parental child sexual offenders, their child victims and families. The goals of the program include:

- the protection of children
- the prevention of further child sexual assault in families where this has occurred and
- an increase in responsible thinking and behaviour by offenders.\(^{60}\)

The program is legislated through the *Pre-Trial Diversion of Offenders Act 1985 (NSW)* which was amended in 1993. The Act and supporting regulations define eligibility and treatment and is available to a limited number of child sexual offenders. To satisfy the ‘eligibility test’ which is assessed by the Office of the Director of Public Prosecutions:

- the offender must be the child’s parent, step-parent or defacto parent
- the offence must not be accompanied by acts of violence to the victim or a third party
- the offender must be over 18 years of age
- the offender must not have a previous conviction for a sexual offence or have been offered the treatment program before
- the child must be under 18 at the time of referral and
- a vacancy exists in the program.

Immediately after being charged with a defined child sexual offence, the police have the responsibility of giving the offender a brochure about the program. The offender then has to nominate whether he or she wishes to apply for consideration into the program. If they do not, the usual course of prosecution proceeds. If an offender wishes to apply for an assessment he/she will indicate this in the Local Court prior to entering a plea at which point an adjournment will then be granted for four weeks to allow the DPP to conduct its assessment of eligibility.

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60 New South Wales Health Department (2000) Cedar Cottage Background Information on Programme - NSW Pre-Trial Diversion of Offenders Program.
Acceptance onto the program is not automatic. Careful assessment for eligibility is undertaken of offenders who must be willing to plead guilty to an offence and indicate their agreement to participate in the program.

If the person is assessed as ineligible, when he/she returns to the Local Court the usual course of prosecution will commence. If they are eligible they are referred for further ‘clinical’ assessment for suitability. If they are found to be clinically suitable then they are asked to formally enter their guilty plea and the offender is then convicted with respect to each of the offences. At the same time the offender enters an ‘undertaking’ to participate in the program following the ‘reasonable directions’ of the Director of the program. These directions are set out in a Treatment Agreement which is provided to the court, having been signed by the offender.

The treatment program is rigorous. Progress by offenders is assessed at regular intervals throughout treatment and details can be provided to partners or former partners if they wish to have this information. If an offender satisfactorily completes all aspects of treatment, at the conclusion of two years there is no further legal requirement to continue treatment. If the person breaches conditions of their Treatment Agreement and therefore their undertaking, the matter is referred back to the District Court as a breach of undertaking. If the person is excluded from the program, he/she is sentenced for the offences for which they have been convicted.

**Treatment Models at Cedars Cottage**

Cedars Cottage provides an ‘integrated’ service which means that each member of the family is offered assistance if they wish.

Key issues for offenders include acknowledging the nature, extent and meaning of their actions and a focus upon demonstrating their acceptance of responsibility for actions. Respect for others and understanding or empathy for the effect of their actions is crucial.

Core issues for treatment at Cedar Cottage include:

- accountability
- countering secrecy
- establishing and respecting appropriate boundaries
- developing empathy for others
- addressing the sequence or cycle associated with sexually abusive conduct.

A number of procedures at Cedar Cottage ensure the safety of the child victim and include:

- restricting contact (direct or indirect) with children including the victim and siblings
- restricting access to the victim’s place of residence
- ‘engagement of audience’ – this is a requirement that a small number of people close to the offender are recruited to assist the offender to develop a responsible and non-abusive life style and
- restriction on some forms of employment, for example, those in ‘child related’ areas, although general employment is highly encouraged in the program.  

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The stringent guidelines and monitoring processes in place at Cedars are designed to ensure that children and young people are protected in the community from persons who have committed sexual offence against them. The program requires a high level of commitment from participants not just in attending the program but in all aspects of their life. The program encourages at all times, respectful behaviour and appearance, requires participants where possible to gain employment if they are not already employed, and uses surveillance to ensure that those involved comply with all requirements. Since its operation Cedars’ has had forty men successfully complete its program.

RESIDENTIAL-BASED TREATMENT

In one submission the option of a residential based treatment service was raised as a possibility for consideration.62 A ‘secure residential facility’ with a therapeutic service for sex offenders is suggested as it could allow sex offenders to:

- self-refer for out-patient attendance and therapy on a user pays / subsidised access basis
- elect to attend an in-patient residential period of therapy as an alternative to traditional criminal justice system responses
- be mandated to attend therapy from prison as a method of achieving earlier parole following conviction and sentencing. Offenders who were eligible for ‘home detention’ could be mandated to reside in the facility.

The submission puts forward the benefits of a residential facility as including:

- offenders could be housed away from families
- their conduct can be monitored
- they would have improved access to therapeutic care
- they could be accessed by researchers to improve knowledge about offenders behaviour and responses
- group work could occur alongside of individual therapy.63

Whilst this option has considerable appeal, this Review is making a number of recommendations which if accepted would set in place services for offenders both within and outside of prison, without the need to establish a specific residential facility in the community.

In summary, whilst the New South Wales CUBIT facility is an excellent example of a prison based treatment program, it is not achievable on the cost basis alone, in the short term in this State.

However, there could be a means of providing for a secure facility within which a section could be quarantined for sex offenders, namely the Port Lincoln Correctional Facility. A section of this prison could be designated for sex offenders and a prison based treatment program developed along similar lines as CUBIT in NSW and SOTP in the UK. Psychological and social work services could be undertaken by expanding resources to SA’s existing sexual offender program, namely SOTAP.

Also it is expected that ‘diversionary options’ and ‘civil procedures’ such as those being recommended in Chapter 15 will in all likelihood increase the number of persons requiring and seeking treatment. Efforts must be put in place to effectively deal with the predicted demand. Again such out-of-prison treatment for adult offenders could be provided through SOTAP which will require increased staffing and resources to undertake both in-prison and diversionary services. One issue that is critical in establishing and extending treatment to sex offenders in prison and the community, is the need to ensure all programs and services are properly evaluated.

62 Submission 66 National Council of Single Mothers and Their Children Inc.
63 Ibid.
An investigation into sex offender treatment programs throughout Australia undertaken by Professor Freda Briggs found that there was ‘no national agreement on what constituted treatment and records were not routinely being kept relating to either their cost or offenders’ recidivism rates.’

In order to evaluate the success of treatment and deliver information to the community on outcomes, treatment programs in and out of prison must ensure that proper long-term evaluation is built in. A suitable model to consider is that which is used in the United Kingdom, as discussed previously in this chapter.

RECOMMENDATION 129

That the South Australian Government:

- Develop a specialised prison based treatment program for sex offenders at Port Lincoln Correctional facility, based on the models currently used in NSW and UK. The program would feature:
  - a culturally appropriate model of treatment and engagement for offenders from Aboriginal and Torres Strait Islander communities
  - a cognitive/behavioural approach
  - and be properly evaluated by external evaluators.

Following favourable evaluation, consideration be given to extending the program to be available from one central metropolitan correction facility.

Further that the current community based treatment program (SOTAP) be extended to accommodate offenders who are deemed suitable by the Court for treatment in the community. That the model use a similar approach to that which is currently operating in other States, with the same safeguards in place to protect victims and other children in the community and be continually evaluated externally.

Further that the Mary Street Program for Adolescent Sex Offenders be extended to ensure that all young people who offend sexually against others be appropriately treated and counselled. That an external long-term follow-up evaluation of participants be conducted to determine the efficacy of the program.

Reason

The case for the extension of sex offender treatment programs in South Australia is strong and convincing. Not providing treatment programs in and out of prison will do little to change the behaviour of those who sexually offend against children. It is acknowledged that successful treatment for this type of behaviour is not without its difficulties as changing the highly self-reinforcing and compulsive behaviour of sexual abuse requires coordinated intervention by criminal justice and child protection agencies to ensure that children are protected and offenders made accountable for their actions. However, bearing in mind the untreated recidivist rates and the high numbers of acts per offender, many children will be spared exposure to sexual abuse and in turn are more likely in turn to spare other children. The treatment for adult sex offenders can most effectively be provided both in and out of prison by SOTAP.
INTRODUCTION

This chapter discusses:

- the protection of children and young people from abuse by persons who work with them in the community
- the complexities involved in developing a screening and monitoring system
- suggestions for screening and monitoring requirements and
- complaints and investigation processes.
GENERAL DISCUSSION

Children and young people have a fundamental right to safety at home, at school or child care, during sport and leisure activities and generally, in public places in the community. They should be able to participate in a variety of activities throughout their lives, safe in the knowledge that they are free from harassment, sexual exploitation and violence inside and outside the home. High profile cases have highlighted the need for a comprehensive and consistent approach to child protection, one that has wide applicability to all sectors including sporting and leisure clubs, churches and Government and non-Government services.

Employers, workers and volunteers working directly or indirectly with children and young people have a particular duty to ensure that workplaces are safe for children and adults alike. Behaviour or conduct that does not uphold a child’s basic right to safety and protection must not be tolerated. Child protection requires a commitment from parents, employers, staff and carers to build environments that are safe for all children and young people.

All employers have a legal and moral responsibility to ensure that employees and volunteers working directly with children are suitable for the work and do not misuse or abuse the trust of children and young people placed in their care. The employer has to exercise an appropriate ‘duty of care’ towards children, which includes ensuring they are free from sexual abuse.

By far the majority of staff, volunteers and carers working with children are safe. Nevertheless, it is recognised that some people are attracted to child-related employment in order to gain access to children and young people for ulterior purposes.

Devising a system which ensures the rights of children and young people are safe and protected, while at the same time ensures adults accused of abuse against children have a right to a fair and just process, presents a number of complexities for Government and the community in general.

The aim is to develop a system that is easily understood, appropriately administered and effectively implemented. This will require a combination of specific legislation, policies and guidelines to ensure that each person (employer, staff, carer, volunteer) working with children and young people are informed of their duties and rights and responsibilities.

Children and young people can be abused in a number of ways – physically, sexually, emotionally or through neglectful behaviours. While all forms of abuse present a risk to children, are damaging and should not be tolerated, it is child sexual abuse that often creates the most alarm and anxiety in the community.

Whilst the majority of child sexual abuse is committed by close family members, children and young people are also vulnerable to abuse from persons outside of their immediate family. Sexual abuse of children can include a variety of behaviours including sexual assault, sexual exploitation and prostitution, exposure to pornography and Internet paedophilia. Statistics from Victoria’s Child Exploitation Squad from 1988 to 1996 reveal that 43.5% of offenders investigated gained access to the child victims through children’s organisations.

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People who abuse children sexually come from all walks of life, are employed in a variety of occupations, are a range of ages and are both male and female. The majority of sex offenders are, however, likely to be male, also have sex with adults, deny or minimise the seriousness of their behaviour and began their sexual activity with children during adolescence.³

A review of a child protection programs in Victoria revealed that adolescents were responsible for a third of all sex offences against children. Among the 200 offenders referred to the Children's Protection Society during a five year period, the following was noted:

- the average age at which offenders started to sexually abuse was 12 years of age
- 50% of the offenders had been victims of sexual exploitation
- 82% of victims were aged under 10 years
- in 22% of cases the abuse lasted for more than two years
- 60% of the victims were female
- 99% of offenders were known to the victims.⁴

Research suggests that there are four preconditions before sexual abuse can take place. A potential offender needs to:

- have some motivation to abuse a child sexually
- overcome internal inhibitions against acting on that motivation
- overcome external impediments to committing sexual abuse and
- undermine or overcome a child's possible resistance to sexual abuse.⁵

Offenders tend to work hard to prevent other's knowledge of their behaviour; are often unrealistic about their ability to control their behaviour; are prone to rationalise and minimise their abusive behaviour and can be infrequent offenders or paedophiles fixated on children as sexual objects.⁶

Abuse can occur in a variety of circumstances, however, research shows that abuse is more likely to take place in organisations that have the following characteristics:

- limited resources
- poor coordination and consistency
- gaps between policy and practice
- inadequate guidelines
- lack of specialised skills
- limited staff support
- unwillingness to listen to the child or young person
- lack of information.⁷

Greater awareness of risks in the workplace has enabled organisations to develop 'risk management strategies'. Such strategies provide a timely and appropriate process for agencies to develop and identify the potential for an incident to occur and to take steps to reduce the possibility of it occurring.

Many agencies have already implemented child protection policies and procedures based on child safe practices including screening mechanisms for employees.⁸

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8 Scouts Association SA Branch; Association of Independent School SA; the Teachers Register Board; Department of Sport and Recreation; the Catholic Church, Uniting Church in Australia Synd of SA; SA Catholic Commission of Schools (to name a few).
Even with such policies in place there is still considerable concern about the adequacy of policies and procedures, criminal record checks and/or personal referee checks to ensure people who work with children are suitable. There is a perceived lack of independence and external scrutiny when allegations do arise in organisations, particularly Church and religious organisations. There is also a belief that many allegations of sexual abuse tend to be dealt with in-house, sometimes by the transfer of the offender to another agency or parish, which adds little confidence amongst the general public for the current screening processes.

The Royal Commission into the New South Wales Police Service - The Paedophile Inquiry - undertaken by Commissioner Wood in 1997, found that many agencies’ procedures were inadequate and that because of a lack of cooperation or joint focus, paedophiles were very often protected from investigation and prosecution. When allegations were made against staff the Commission found that each agency generally had:

- a disbelieving and disparaging attitude towards complainants, particularly those in vulnerable positions
- a disinclination to accept that any of its officers would engage in wrongful conduct
- a concern as to the possible scandal which would arise as a result of investigation
- a belief that it was better to ‘fix’ the problem from within, and on occasions
- a readiness to penalise an officer or employee who reported possible misconduct by another worker.10

Currently in SA there is no overriding mechanism which requires all Government and non-Government agencies working with children to put in place the following:

- systems or processes which prohibit persons who have been convicted of a serious sex offence or serious physical abuse from applying for child-related employment, accepting child-related employment or remaining in child-related employment (paid staff or volunteers)
- guidelines for responding to disclosures or discovery of abuse whilst ensuring fair investigation of complaints and allegations
- processes for considering a person’s suitability to work with children including the kinds of screening and checking processes to be undertaken
- guidelines for responding to allegations of child sexual abuse made against an employee whilst in employment
- procedures which require employers to notify when any employee has been through a disciplinary proceeding in relation to sexual misconduct with a child.

**COMMUNITY CONCERNS**

Many submissions raised concerns about the current system and the lack of effective screening and monitoring processes for people working in or volunteering in child-related activities.11 These concerns included:

> …clearer procedures need to be developed to protect children in all sectors, whether Government or non-Government.10

> …the current system is not effective.13
If an adult is charged with a sexual offence against a minor, and if the charge is dismissed, the record of that charge should be known to an agency that has youth members... By having this information it provides the agency with an opportunity to make a more informed decision.14

There is a breakdown of careful screening for positions, such as foster parents, as the basis for the screening is the police record. A referee system may also not be sufficient, as in many cases of child abusers they may appear to be upstanding members of the community.15

Police checks only work if the person has a record of offending, and most don’t.16

It is not sufficient to do police checks but there must be other monitoring and follow-up checks on staff or volunteers who work with children, especially those who have intellectual or learning disabilities.17

Police checks which do not reveal past child abuse or allegations of paedophilia are of limited value when assessing people who work with children. More resources need to be put in place to screen all applicants, including volunteers, for child-related activities and programs involving the care of children.18

As there was no conviction in our case, we have been told he could get a police clearance, as he would have no mark against his name. This needs looking into as it lets (him) get away with even more, and work with children if desired.19

There is considerable community support for taking preventative measures and developing a consistent and coordinated approach to screening and monitoring in South Australia across Government, non-Government, sport and recreation groups and church organisations.20

SCREENING PROCESSES IN NEW SOUTH WALES

In NSW there are currently three Acts21 which deal with child related employment which reflect the involvement and interaction of a number of statutory bodies and agencies.

The NSW legislative framework is very elaborate and involves significant functions being performed by the Ombudsman, the Police Department, the Commissioner for Children as well as a number of statutorily identified ‘Approved Screening Agencies’.

An important aspect of the NSW arrangements is the establishment and maintenance of a register of ‘prohibited persons’ who are defined as those who have been convicted of a serious sex offence or convicted a registrable offence under the Child Protection (Offenders Registration) Act 2000 (NSW).22 Such prohibited persons must not apply for child related employment nor should an employer employ such a prohibited person in child-related employment. This register is established and maintained by the Commissioner of Police.
In addition there is a screening process performed by the Commissioner for Children or by Approved Screening Agencies with regard to conduct of a person, other than offences for which the person has been convicted. This includes conduct by persons who have:

- had an allegation of child abuse against them
- been the subject of disciplinary proceedings involving findings of child abuse, sexual misconduct of a child or committed in the presence of a child, or violent acts committed while working being acts directed at, or occurring in the presence of children
- been the subject apprehended violence orders.

In respect of disciplinary hearings, the information in relation to this conduct is required by legislation to be provided to the Commissioner or an Approved Screening Agency by all employers against any employee, whether in child related employment or not.24

In addition employers who are ‘designated Government agencies’ and ‘designated non-Government agencies’ under section 25A of the Ombudsman Act 1974 (NSW) are required to notify the Ombudsman of information as to any child abuse allegation or conviction against an employee of a child related offence, regardless of whether that conduct is alleged to have occurred at a place other than at work.

Part 7 of the Commission for Children and Young People Act 1998 (NSW) requires that every person commencing paid child-related employment be screened to determine suitability. A risk assessment is made by the Commissioner’s staff or by the Approved Screening Agencies, which is then provided to the proposed employer to assist them to make a decision as to whether to employ the person in child related employment. “Employment” is defined as including the performance of work as a minister of religion or other member of a religious organisation and the definition is interpreted as including a foster carer. The legislation does not make it mandatory to screen volunteers and other unpaid workers.

As part of this screening process, the Commissioner in NSW has the function of “collecting and maintaining a data base” which is used for the screening process. This is different from the register of prohibited persons, which is maintained by the Police.

Another controversial area in the NSW Legislative scheme, relates to the increased powers and functions given to the Ombudsman in respect of a ‘designated non-Government agency’, which in turn refers to non-Government schools, child care centres and other bodies prescribed in legislation. The increased functions includes monitoring the progress of an investigation by the designated non-Government agency in relation to child abuse by an employee or volunteer or alternatively conducting an investigation against an employee or volunteer within such designated non-Government agency. These powers are significantly different from the usual powers of the Ombudsman, which have traditionally been tied to Government agencies and to secondary review and not primary investigation.

In NSW it is the Ombudsman who deals with allegations of abuse (as a consequence of information) which is required to be provided to the Ombudsman by designated Government agencies or non-Government agencies about their employees or volunteers. The responsibility for reporting outcomes of the allegations to the Commissioner for Children remains that of the employer after the Ombudsman has either undertaken an investigation or monitored the investigation. Thus, persons who are the subject of criminal charges or allegations in relation to child abuse are not recorded on either the register or the data base.

23 Which includes Government Agencies.
24 This does not include where disciplinary proceedings have found that the allegation were false, vexatious or misconceived.
Whilst this process of requiring information about allegations of child abuse occurs in relation to employees and volunteers of designated Government and non-Government bodies, the process does not include allegations about person who are not employees or volunteers, such as, persons who are the subject of mandatory notifications.

The above description of the NSW legislative scheme does not purport to cover all aspects of the screening and monitoring arrangements. The scheme is clearly the product of considerable thought and discussion. The NSW scheme highlights the need to balance protection of children and at the same time to provide appropriate safeguards for the person who will have restrictions placed on their employment choices. This Review considers that in the interests and safety of children there is need for a comprehensive screening and monitoring system to be developed in this State, whilst taking into account the complexities of the NSW system.

**RECOMMENDATION 130**

That a coordinated and comprehensive screening and monitoring system be developed in South Australia that is compatible with any National agreement or State/Territory system currently in operation.

**Reason**

There has been considerable concern in the community that children and young people are not being effectively protected from people who prey on their vulnerability. Whilst many agencies have in place some mechanisms for protecting children (police checks, referee checks, policies guiding behaviour) there is no coordinated and enforceable requirement upon agencies to ensure these process are in place and adhered to. A coordinated and comprehensive screening and monitoring system is therefore required.

**REQUIREMENTS FOR SCREENING AND MONITORING**

There are a number of requirements for screening and monitoring purposes including legislation, a register and appropriate guidelines for employees for instance. Specific legislation is the first important step in developing a coordinated and consistent approach to screening and monitoring throughout South Australia. There are a number of interdependent and interrelated components for ensuring effective community protection for children.

Legislation will need to provide the basic principles and objectives to be achieved and provide administrative direction, compliance and penalty clauses as well as give attention to the protection of those involved in its administration. The extent of the legislation will depend on the instrumentalties involved.

The following ingredients are essential for the creation of a coordinated system:

- legislation establishing the basic principles, objectives and framework
- establishment and maintenance of appropriate register(s)
- mechanisms for screening and monitoring
- processes and responsibilities for notification
- appeal processes.
RECORDING INFORMATION ON A REGISTER

The following sets out three categories of information which are recommended to be recorded on a register in South Australia, to be called the Unsuitable Persons Register.

1. **Convictions of serious offences including sex offences**

The least controversial aspect of any screening and monitoring system is the need to establish and maintain a register of persons convicted of certain offences in relation to children and there would appear to be considerable support for such a register. It also seems appropriate for the establishment and maintenance of a register should be with SAPOL.

Screening and monitoring is a police function. The police are responsible for the investigation and prosecution of alleged crimes. They have information from national and international links about paedophile activity, including Internet networks. A special probity unit should be resourced in the police department for vetting all people seeking child-related employment, including sports/recreation groups.\(^{26}\)

The offences which could be included on an Unsuitable Person Register are offences of the type contained in Section 3 of the *Child Protection (Offenders Registration) Act 2000 (NSW)* and may include convictions in relation to child pornography and inappropriate Internet usage.

It is recommended that the first category of the register should be for persons subject to criminal convictions, which can thereby become part of a national register scheme recently agreed to by the State and Territory police ministers at the Australasian Police Ministers’ Council (November 2002).\(^{27}\)

This proposal for an Australia-wide register is to be based on the existing register in New South Wales where sex offenders are required to report regularly to police and inform them of any changes to their name, employment, vehicle or of any travel plans.\(^{28}\)

In relation to this first category of convicted persons, there has been some strongly expressed support for a ‘public’ register\(^ {29}\). At the same time some submissions contended that to give general members of the public access to such a register, would ‘be incompatible to our present criminal processes and that it would potentially prejudice child victims and juries’.\(^ {30}\) This Review does not recommend a public register as, in addition to the above reason, such a public register could give rise to vigilantism and unfair harassment and victimisation of the convicted person.

The supply of information for the purposes of Category 1 of the Unsuitable Persons Register would be by the Courts Administration Authority (SA), other Police forces and the National Register on its establishment. Access to the Register would be limited to Police Departments nationally and prospective employers with the consent of the individual in question through the agency of SAPOL.

2. **Findings of sexual or other serious misconduct against children through disciplinary hearings or civil or diversionary processes**

The most controversial aspect of screening and monitoring provisions relates to screening for conduct other than convictions for child-related criminal offences.

In NSW, in addition to the register kept by the Police, the outcomes of a disciplinary process are recorded on a data base with either the Commissioner for Children, the Ombudsman or an ‘Approved Screening Agency’ as described previously.

\(^{26}\) Submission 181 Aboriginal Advisory Group.

\(^{27}\) The Age 6 November 2002.

\(^{28}\) The Australian Newspaper 7 November 2002.

\(^{29}\) Submission 123 Movement Against Kindred Offenders (MAKO).

\(^{30}\) Submission 196 Justice Advisory Group.
This Review has a number of concerns about the complex NSW arrangements and its applicability as a whole package to South Australia. Apart from the involvement of many different organisations in the process, a major concern of this Review relates to the decision-making process required in undertaking risk assessments by the Commissioner’s staff or the Approved Screening Agencies, as previously mentioned. This process is time consuming and involves individual discretionary decision-making.

Rather than having an elaborate assessment process, this Review favours the use of deeming provisions by which persons either convicted of criminal offences as defined in legislation, or who have had findings made against them in disciplinary proceedings as defined in the legislation, are deemed by the legislation to be persons who are unsuitable for child-related employment.

Such persons are automatically placed on an Unsuitable Persons Register, but with a legislative provision enabling the person to make application to the District Court for a declaration that the persons’ name be removed from the register, if the Court considers that the person does not pose a risk to the safety of children. Such a provision would be similar to the provisions of section 9 of the Child Protection (Prohibited Employment) Act 1998 (NSW). In addition a removal could be made conditional upon certain conditions as to employment as ordered by the Court in relation to employment.

In considering the disciplinary processes to which the recording on the register would apply there are some particular issues to be considered. These include the quality and independence of the investigations and disciplinary process, as well as whether they are limited to employees or whether they could also apply to volunteers.

There are generally three major bodies involved/participating in the ‘investigation’ of allegations of child abuse in employment, namely FAYS, SAPOL and the employing agency. During such a process there is a vital need to communicate with each body in a coordinated manner in relation to each individual case, and to discuss who will have prime responsibility for the investigation.

This coordination should be done according to general guidelines which will need to be developed. Whilst there are some existing guidelines for various Government agencies and protocols between FAYS/SAPOL and FAYS/DECS these require further development in light of proposed recommendations. In addition, assuming that the case does not involve a criminal offence or one that FAYS are involved with, but instead concerns an employment issue, the employment agency whether Government or non-Government, must ensure the process of investigation and disciplinary hearings are fair and include independent review.

If the agency is a Government agency, the process would in addition to an internal process include an external independent review process by the Ombudsman as discussed in Chapter 19.

If the agency is a non-Government agency, then the process of review should include an external review process as described in Chapter 19. This Review does not recommend that the Ombudsman’s powers and functions should be extended as in New South Wales so as to include monitoring or conducting primary investigations into non-Government bodies.

There is, however, a role which is suggested by this Review to be performed by the proposed Commissioner for Children and Young Persons, namely to assist with the development of guidelines for both Government and non-Government agencies regarding minimum standards to be followed in such investigations and disciplinary proceedings. These guidelines to be monitored for effectiveness by the Commissioner, but such a role should not include monitoring or investigating individual cases.
In relation to volunteers, such persons would not usually be the subject of ‘disciplinary hearings’, however, one aspect of the guidelines should be that such persons agree before they volunteer that they would be subject to such a process.

It is also suggested by the Review that in addition to information being recorded in the secondary category of a register about persons who have been the subject of findings in disciplinary hearings, as described above, such a register should also include those persons who have entered into diversionary programs and also persons who are the subject of Child Protection Orders in civil proceedings as referred to in Recommendation 103.

In summary, with regard to the second category of persons to be placed on the Unsuitable Persons Register, this is recommended to apply to persons who:

- have had findings of child abuse made against them by disciplinary proceedings as defined by the legislation
- have had Child Protection Orders made against them
- are the subject of diversionary programs, and includes outcomes of investigations by FAYS or SAPOL of any alternative care provider (for example foster carer, respite carer etc) and volunteers.

These persons are to be automatically placed on the register if they fit within the category but with rights to seek a declaration for removal from the register. This overall process of automatic recording on the register has the advantage of eliminating discretionary decision-making at the point of time of being placed on the register.

Persons required to supply information to Category 2 of the Register are employer agencies (Government and non-Government, including Church, sport and recreation groups). Access to the Register would be through the agency of SAPOL, and would be limited to prospective employers with the consent of the individual in question.

3. Temporary Category for registration of certain charges or allegations

There is a third category of person which are recommended to be placed on the Unsuitable Persons Register, namely

- persons charged with offences, which if the subject of conviction would result in being placed on the register, as above described
- persons awaiting disciplinary proceedings in relation to alleged child abuse.

**Persons charged with criminal offences following allegations of child abuse**

The Register of prohibited persons maintained by the NSW Police Department and the data base maintained by the Commissioner for Children in NSW, both record **completed outcomes** of criminal proceedings or disciplinary proceedings, but do not record **charges** in respect of a criminal offences nor allegations of child abuse.
With regard to a person who has been charged with child abuse offences or other serious offences as outlined above, but have not yet had the matter finalised, such person should be the subject of temporary placement on the register until the matter is finalised. This information for the register would be easily available through SAPOL and reflects aspects of current practice. Currently, SAPOL undertakes a check of police records for agencies with which it has a Memorandum of Understanding, with the consent of the individual in question. This includes a check of any criminal convictions and charges in relation to any offence. This current role could be extended to include the keeping of a register, which employers would be legislatively required to check before employing any person in child-related employment.

In the event that there is no finding of guilt or conviction or if there is a nolle prosequi, the person's name is to be removed from the register. In addition, the person should also have a right to seek a declaration from the District Court to have his/her name removed from the temporary register pending the outcome of criminal charges on the basis that the person does not currently pose a risk to children. Such a removal could also be conditional.

**General allegations of child abuse awaiting disciplinary findings**

There are many circumstances in which allegations of child abuse can be made. Examples include:

- a notification through the FAYS process
- allegations in the Family Court against a parent/s
- allegations made against employees or volunteers by a worker, a parent or child.

The proposed screening and monitoring scheme is specifically intended to be limited to protecting children from unsuitable persons who are engaged in or are seeking to engage in child-related employment, including as a volunteer. It does not seek to provide universal protection for children, nor could it. The particular concern is that allegations of child abuse may well indicate a potential risk if that person seeks to work with children.

If the person is already working in child-related employment and there is, for example, an allegation against a teacher in a Government school or a foster carer, the investigation and complaints process as discussed above and in Chapters 9 section A and 19 should apply. However, the question still arises as to whether the person the subject of such an allegation of child abuse ought at this stage be recorded on a register, and if so, by what mechanism.

In considering this question it is relevant to note that at the present time, the mandatory notification scheme in South Australia requires Government and non-Government employers in child-related employment, to notify of all suspicions of child abuse and neglect.

If an allegation of child abuse is made and there is a subsequent confirmation by FAYS, that factor alone should not be required to be reported to the ‘Unsuitable Persons Register Unit’ (UPRU) of SAPOL for the purpose of being recorded on the register. If FAYS was required to inform SAPOL of every such confirmation, it would be a bureaucratic nightmare as well as involving serious concerns about fairness.

It also needs to be acknowledged from the outset that a screening and monitoring scheme will not be possible to keep a register or data on all persons who may be unsuitable to work with children by reason of having been the subject of allegations or charges of child abuse. It cannot be an infallible or fail-safe scheme. Notwithstanding that, a screening and monitoring system should significantly improve the protection for children when it is coupled with employers making their own reference checks.

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31 In a circumstance where there is no substitute of another child abuse charge.
If a notification involves an allegation of child abuse in circumstances where the person is working in child related employment, arguably a different situation arises than if it is an allegation against a person not presently in child related employment.

This situation raises starkly the tension of conflict of interests. The hard question which needs to be resolved in devising a scheme is where the balance lies with what information is recorded on a register in the interest of child protection and what safeguards are needed to protect the rights of an accused in relation to employment.

In summary on this point, it is recommended that in relation to allegations of child abuse in which a person is already working in child-related employment and the allegations become the subject of disciplinary processes, then that person’s name should be placed on the Unsuitable Persons Register in the temporary category. This approach is recommended on the basis that the paramount consideration should be the protection of children from risk of abuse. So long as the process is transparent, and enables to person to apply to seek a declaration that he/she should be removed from the temporary category of the Register, then in the opinion of this Review, the appropriate balance exists.

Persons required to supply information to Category 3 of the Register are SAPOL in respect of person charged with offences and employer agencies (Government and non-Government, including Church, sport and recreation groups) in relation to persons undergoing disciplinary hearings. Access to the Register through the agency of SAPOL would be limited to prospective employers with the consent of the individual in question.

CONCLUDING COMMENTS ON REGISTER

The three categories of the register do not require any individual assessment to be made by the Unsuitable Persons Register Unit at SAPOL as to suitability for child-related employment, but only whether the persons fit the categories of the three circumstances as outlined above.

An employer who seeks to employ a person in child-related employment will be informed if the person is on the register on any of the three categories as outlined above.

The precise wording of the legislation and the detailed practical aspects of implementation of the scheme requires specific consideration by a working group. This Review believes to develop the scheme requires considerable discussion with FAYS, SAPOL and other sectors to establish an efficient, clear and well articulated process.

Further that consideration should also be given in regard to the need for a simple portable mechanism once a person has been screened by the Unsuitable Persons Register Unit. Through the Review process many agencies have requested a simplified and ‘portable’ process for police records checking. Currently, a person who works in an agency that requires a police record check is required to apply for a check at each work place. An employee may work at a variety of work places. It is not unusual for childcare workers or educators, for instance, to work in two or three separate day care centres. This requires a police records check for each work place.

A photo card system, which is on the person, could be implemented. It could remain current for say two- to three-year time period before renewal. This would enable ‘portability’, reduce costs and the amount of administrative time spent by employers/employees and police.

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32 For example Submission 74 Volunteering SA.
RECOMMENDATION 131

That a working group be formed – the “Screening and Monitoring Working Group” to determine the most appropriate:

- legislation
- policies, protocols and guidelines and
- declarations process for SA

taking into consideration the proposed National Paedophile Register to be developed.

That the working group consist of persons from the key agencies involved (SAPOL, Justice Department, DHS, Education sector, Non-Government, churches and Sport and Recreation, representatives of teachers’ unions and major unions covering employees including related employment and parent groups) and should involve the Commissioner for Children and Young Persons.

That specific legislation be developed to deem certain persons as described in the legislation to be unsuitable persons from working with children and young people and to be placed on an Unsuitable Persons Register. Such legislation could be known as the Child Protection (Unsuitable Persons) Act. Legislation to include

- specific provisions for the establishment and maintenance of an Unsuitable Persons Register
- provide for the conditions upon which a person is placed on the register and is thereby deemed unsuitable for employment in child related circumstances
- provide for an independent process for a declaration from a District Court for removal of a person from the register
- provide the requirements of employers when employing persons in child-related activities and that the provisions are mandatory for employees but discretionary in respect of volunteers
- cover all Government agencies, non-Government agencies, church organisations, sporting and recreation clubs who provide employment in child-related activities
- create offences with penalties for non-compliance.

Such legislation may in a general sense be modelled on the NSW scheme with particular modifications to minimise complexity and discretionary decision-making as well as placing the role of establishing and maintaining the register with SAPOL.

Further, that the screening and monitoring working group consider the viability of providing persons screened and cleared a ‘portable’ photo card which can be used by employees.

Reason

The high level of vulnerability of children to abuse in circumstances where they are being provided with services such as tuition in education, sports, recreation or religious activities mostly in the absence of their carers, warrants a consistent and deterrent approach. Many sex offenders may gain access to children through organisations. It is imperative that proper mechanisms are developed to ensure that children are protected appropriately and with proper safeguards in place.
EMPLOYERS’ RESPONSIBILITIES

In conjunction with the proposed recommendations above there is also a need for employers to undertake the following:

**Develop policies/procedures/guidelines for child protection**

Organisations are morally and legally responsible for the wellbeing of children in their programs. Under law an employer can be held liable for the actions of his/her employees. Intentional acts or criminal acts are generally an exception to this rule. However an organisation can be held liable for the actions of an employee ‘if they have the right to control staff, and the act or acts that caused the harm must have been in the scope of the individual’s position (author’s emphasis)’. Child abuse is usually considered to be outside the scope of individual’s position and organisations are rarely found guilty of child abuse. However, an organisation may be liable for failure to prevent ‘foreseeable’ abuse. Failure to take reasonable steps to prevent abuse may be seen as a contributing factor and the organisation could be held to be negligent if its acts or omission contributed to the abuse.

Agencies must take reasonable care to avoid acts that can be reasonably foreseen to cause injury. An agency that suspects or has knowledge that a child is being abused and fails to take protective steps could be held liable. Likewise an agency that has knowledge that a person has abused children and employs that person should also be held liable.

All agencies must ensure that the process is conducted appropriately and fairly. Fairness has two elements – procedural fairness – that is, ensuring the person concerned has had the allegation put to them and they have a fair opportunity to put forward a defence or explanation; and substantive fairness – that is, the final decision is fair. Industrial Relations Courts have overturned cases because they found to contain elements of procedural unfairness, so care must be taken to ensure that the process in undertaken in a fair manner.

All agencies involved in providing services to children should develop a Child Protection Policy. This is a statement of an agency’s commitment to child safety and should outline the steps/strategies of how an organisation will meet its commitment to child protection. A strong policy will guide persons in the agency when a matter of concern arises.

*When there is crisis it may be harder to think clearly. If you have a reliable policy you can react in an informed way and avoid accusations of a biased response in any participants favour or disadvantage.*

Policies and procedures are required by each agency that employs persons who work (volunteer) with or have access to children. Whilst there are many important components to consider when developing a Child Protection Policy including such matters as the agency’s philosophy and defining abusive and/or unacceptable behaviour, one of the most critical is how to raise and report concerns of child abuse.

*Organisations need to be legally accountable for their child protection policy and practice and implementation. They need to create a safe environment for those in their care... This requires legislation that has a similar impact to other important legislation, for example, occupational health & safety, that has teeth and that people know they must apply.*

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34 Ibid p 128.
35 Ibid.
36 Ibid p 134.
37 Ibid p 61.
38 Ibid.
39 Submission 44 Carers Association of SA.
Choose with Care – A Handbook to Build Safer Organisations for Children outlines the following issues for consideration when developing an appropriate policy for raising and reporting concerns:

- the importance of raising concerns
- the role and responsibilities of persons in the agency when a complaint is raised
- how to recognise abuse
- how to respond to disclosure
- confidentiality measures required including a clear statement on the confidential nature of all verbal information and documents relation to allegations of child abuse against employees
- mandatory reporting requirements
- the organisation’s reporting procedure.40

The Handbook provides valuable information for agencies for developing a Child Protection Policy.

**RECOMMENDATION 132**

That all agencies who employ persons who work with or have access to children either in paid or a volunteer capacity should develop appropriate child protection policies and guidelines. All agencies funded by State Government agencies will be required to develop child protection policies and guidelines as a prerequisite to receiving Government funding.

**Reason**

Government has responsibility to ensure that funded agencies uphold appropriate work places practices. Whilst many agencies have in place appropriate mechanisms, many do not have adequate safeguards to protect children. The development of policies and procedures are critical to ensuring agencies have the most professional standards and could be viewed in the same way as Occupational Health and Safety Guidelines, that is, as essential requirements for ensuring a safe and productive workplace.

**Guidelines for accessing the information stored on the Unsuitable Persons Register**

*The sharing of personal information is always contentious as it places a person’s right to privacy in conflict with the greater interest of the community and specifically the protection of children. There are many opposing views to this. It also has implications for administrative law, privacy law, anti-discrimination and human rights law, spent conviction legislation, defamation and duty of care.*41

Strict criteria would need to be in place to access information stored on the Unsuitable Persons Register. At present a process of ‘police checks’ occurs and many community and Government agencies require this to be undertaken before employment generally. This allows agencies employing persons to ask the police to check to see if the person requesting employment has any criminal conviction. The procedure is one where the person requesting employment provides written consent to the employer to enable the police to undertake a check of police records. All criminal matters including charges not yet finalised are checked, not just those relating to sexual offences against children. For example, a bank teller would need to be checked for any previous convictions for theft or larceny and a taxi driver for any car-related offences.
This process would need to continue alongside of the proposed new system as it provides valuable information to employers about the range of possible conduct that may have relevance to the position being advertised.

The information contained on the proposed Register should only be used for the express purpose of screening out persons who pose a risk to children. All checks should be treated in a highly sensitive and confidential manner and access to information limited to the smallest number of people necessary to make a decision.42 People are often concerned that their privacy is being invaded through this process or that their personal credentials are being questioned.

Staff and volunteers will have less objection to the introduction of checks if they have confidence that all information will be managed professionally and confidentially.43

Many agencies currently designate the Human Relations Manager and Director or equivalent as the only persons entitled to received confidential information. For reasons of confidentiality, safety and security it is essential that the information recorded on a register is ‘protected’ with strict guidelines developed for the recording, accessing and divulging information to third parties.

Should such a register be maintained, appropriate safeguards should apply to ensure that such information is only available to, and used by, child protection agencies for the proper discharge of their duties, taking into account the need to prevent disclosure of child victim identity.44

A register:

...would require careful consideration on what basis a person would be included on the register – and how the screening system operated. Although there are many complexities action is required to better safeguard the protection of children and to restore community confidence in social institutions.45

The Review Recommendations reflect a balancing of these delicate issues.

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43 Ibid p 102.
44 Submission 196 Justice Advisory Group
45 Submission 179 Family & Youth Services.
## CHART OF UNSUITABLE PERSONS REGISTER

A Chart which depicts the essential qualities of the Register is set out hereunder.

<table>
<thead>
<tr>
<th>UNSUITABLE PERSONS REGISTER (UPR)</th>
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<tbody>
<tr>
<td><strong>Who Keeps Register</strong></td>
</tr>
<tr>
<td><strong>Categories of Register</strong></td>
</tr>
</tbody>
</table>
| **Persons Registered** | Persons convicted of serious child abuse offences as defined in legislation | 1) Persons against whom findings of child abuse are made in Disciplinary Hearings*  
2) person subject to child protection orders or diversionary programs | 1) Persons charged with serious child abuse offences as defined  
2) persons undergoing disciplinary hearings* in response to child abuse allegations |
| **Persons to Supply Information** | Court administration Authority (SA)  
National Register | 1) Employer agencies*  
:Government*  
:Non-Government* | 1) SAPOL  
2) Employer agencies  
: Government*  
: Non-Government* |
| **Right of Person Registered** | Persons registered may seek a declaration for removal | |  
Automatic removal if not convicted or no abuse findings  
Persons registered may seek court declaration for removal |
| **Access to Information Register** | Police Departments Nationally  
Prospective employers with consent of person | Prospective employers with consent of person | Prospective employers with consent of person |

* As defined in legislation and includes investigations of foster carers and volunteers  
† Includes FAYS employees and foster carers and volunteers  
‡ Includes bodies such as churches, sporting, recreational groups and voluntary organisations
Chapter 18
Child Death and Serious Injury Review

INTRODUCTION

This chapter:

- discusses non-accidental death and serious injury to children
- discusses the process to monitor epidemiology factors isolated to such deaths and serious injury
- proposes a recommendation for establishing a review committee to provide a whole-of-system review mechanism.
GENERAL DISCUSSION

A number of submissions to the Review raised the matter of establishing an independent child death review committee:

The need for a formal process of review for the unexplained or suspicious death of a child is widely acknowledged to be vital component of an effective child protection system.¹

The death of a child is a matter of public interest, particularly when that child has been involved with statutory child protection and care agencies. South Australia does not have a transparent child death review process and the rights and interests of children demand that one be put in place.²

A child death review process should be established to comprehensively identify and report on deaths that are linked with child protection concerns.³

Helfer and Kempe state that:

The absolute dependence of infants and children upon parents and adult custodians renders them susceptible to a range of fatal maltreatment and neglect that defies the imagination of a thousand nightmares.⁴

The prevention of deaths and serious injury of children from causes that are amenable to change is a significant step towards improving child health and protection outcomes. Over recent years there has been an increased interest in causes of child deaths and serious injuries that are avoidable. Such awareness is evident in legislative change in the area of swimming pool fencing and in modifications to the design of motorcycle and bicycle helmets, and safety barriers in hatch-back motor vehicles. These changes have arisen because of systematic collection and analysis of data on the morbidity and mortality of particular children and young people injured as a result of accidents or lack of supervision.

In the area of child abuse and neglect there have also been significant advances in understanding patterns of fatal and serious non-accidental injury of children, particularly those under school age. In Australia, child abuse homicides are a significant cause of childhood mortality where they consistently equal or exceed categories such as motor vehicle traffic accidents, accidental poisonings, falls and drowning as the cause of death for those under the age of one year.⁵

SOME KEY FINDINGS ON CHILD DEATHS AND HOMICIDES FROM NATIONAL AND STATE REPORTS

The NSW Child Death Review Team has produced annual reports since 1996-97 as well as undertaking a special report on fatal assault of children and young people. Some of the key findings from some of these reports include:

- The 1996-97 Annual Report focused on children who had been involved with child protection authorities prior to their death including where their family had prior Department of Community Services involvement. A key finding was non-compliance with existing policies and procedures by agencies that share responsibility for the protection of children.⁶
The 1998-99 Annual Report focused on the deaths of children where there was a history of parental substance abuse and highlighted the need for proactive and determined intervention to prevent inter-generational abuse, neglect and substance abuse.  

The 2000-01 Annual Report highlighted the number of children who died of abuse, neglect or in suspicious circumstances coming from families with high risk for domestic violence, parental drug and alcohol abuse together with significant contact with a combination of health, police or welfare agencies and the need for adequate availability of services over the Christmas and New Year period for children at risk due the higher risk of death in this period.  

The 2002 Fatal Assault of Children and Young People report categorised the fatal assaults of 60 children into four areas: fatal non-accidental injury; children killed by parents affected by a mental illness; children killed following family breakdown; and teenage killing. One-third of children who died came from families in contact with other key service providers.

In the area of child homicides, for the period 1 July 1989 to 30 June 1999, the highest rates of homicide (2.68 per 100,000) for all children up to the age of 14 was experienced among children less than one year of age. This childhood homicide rate declines with increasing age with the rate rising again at the age of 15 to 17 years. The rate is still high for one to four year olds (1.15 per 100,000) reflecting an ongoing vulnerability for very young children.

The analysis of child homicides indicates overall that:

- In Australia, some 28 children die every year as a result of homicide. Of these, 19 die at the hands of parents or parent-substitutes. The majority of children are killed by a parent. For children aged less than 15 years, biological parents were responsible for the greater proportion of killings (64.3%) and de facto parents were responsible for 35.7%. The biological mother was more likely to kill her child than a biological father. However, 4 out of 5 children aged less than one who were killed by a parent, were killed by their biological parent (father 55.8%, mother 44.2%).
- Almost one-fifth (51 out of 284) could be described as child abuse homicides and in these incidents the offender was usually a custodial parent, non-custodial parent, or de facto parent.
- Male children are more likely to be killed than females across all age groups up to the age of 14.
- Most homicides are likely to occur within residential premises.
- The highest rate of child homicide victimisation is for children less than 1 year of age.
- Children under the age of five years are more likely to be beaten to death with hands or feet being used as the most common weapon, whereas the youngest victims are more likely to be suffocated, violently shaken or thrown. A further 10 per cent die of criminal neglect which includes failing to provide proper care, medical treatment and food to the infant. Infant crying or soiling is often cited as a reason for killing a young child.
Two common scenarios that emerge from the data is the concurrence of domestic or family disputes and fatal assault.\textsuperscript{18} Infants, children and young people known to welfare authorities are over-represented among child deaths from homicide.\textsuperscript{19} A number of child homicide cases reveal evidence of prior abuse.\textsuperscript{20}

It is postulated that the decline in child deaths from five years onwards is associated with the increase in time spent by children away from the most likely source of violence against them.\textsuperscript{21} It could also be postulated that, by this stage, children have acquired some behavioural strategies that enable them to avoid the risk of parental violence.

Analyses of child homicide and serious injury provide a unique opportunity to understand what is working and not working in child protection systems. As the information builds in this area, it provides an improved picture of child abuse and neglect in the community and clearer insight into the prevention of child abuse both for those children and young people who are known and those who are not known to child protection authorities.

There are limitations in examining child homicides retrospectively based on data and information available in the public domain. As Mouzos states:

\textit{It should be noted that the number of child homicides …represents the number officially known to police. It is now widely acknowledged that there is a “dark figure” of child homicide – that is, that some deaths may not be accurately recorded as such (Creighton, 1992). These cases may not have been recognised as homicides, leading to misclassification of the manner of death as either undetermined, accidental, or natural (as in the case of a homicide misdiagnosed as Sudden Infant Death Syndrome (SIDS). For example, in 1997 11.3 per cent of infant deaths (under 12 months of age) were as a result of “Sudden Death, Cause Unknown”.}\textsuperscript{22}

There is a need to understand the circumstances and causes of unexpected child deaths and serious injuries in order to try to prevent the deaths of future children by adopting a uniform system in South Australia for the investigation of child deaths and for the collection of accurate information about them.

The death of children who have been abused raises considerable public concern about the adequacy of child protection systems for protecting children and ensuring their safety. One of the most recent cases to come to public attention is that of Victoria Climbié whose death from horrific abuse and neglect prompted the establishment of a high level 18 month Inquiry in the UK led by Lord Laming\textsuperscript{23} This Inquiry took the form of a quasi-judicial inquiry with formal hearings for the taking of evidence and receipt of submissions. This Inquiry’s report was recently published and listed a series of systemic failures that included:

- child protection service under-funding
- lack of accountability of senior managers for children’s outcomes
- lack of capacity to exchange information to enable earlier identification of a child at serious risk especially given the history of contacts with a range of agencies


\textsuperscript{20} Ibid.


\textsuperscript{23} The full Inquiry report can be obtained through the website http://www.victoria-climbie-inquiry.org.uk.
- use of under-skilled contract agency staff on front-line service areas
- lack of adequate supervision; unduly complicated and lengthy guidance
- lack of after hours availability of child protection services (which was regarded as being equivalent to police or hospital emergency services)
- inadequate training and supervision of staff in any of the services working with children and
- the use of eligibility criteria to limit access to services despite high need.

In comparison with major inquiries such as the one described above, a multi-disciplinary Child Death and Serious Injury review provides for a process of continuous independent review of any systemic inadequacies that might arise and sets in train changes that are required for improving responses and services.

**CAUSES OF CHILD DEATHS IN SOUTH AUSTRALIA**

Causes of death of children are collated by the Australian Bureau of Statistics from death certification data which is not always accurate. A proportion of all deaths of children are preventable and these merit attention in order to reduce their numbers. Forty two children aged one to 14 years died in SA in 1999, the main cause of death was accidents, poisoning and violence, accounting for 38.1% of deaths; followed by malignant neoplasms and diseases of the nervous system, each accounting for 14.3% of deaths. Accidents, poisonings and violence are the major cause of deaths for children and young people aged one to 14 years in South Australia. These deaths are largely preventable.

*Figure 6: Child death rates for 1 to 14 years for selected main causes, SA, 1999*

The death rates for Aboriginal and Torres Strait Islander children in Australia showed injury to be the cause of most deaths with a ratio of 91 per 100,000 (compared to 84 per 100,000 for non-Indigenous children) followed by other medical conditions.
CURRENT SOUTH AUSTRALIAN CHILD DEATH REVIEW PROCESSES

In South Australia, the 1976 report by the Community Welfare Advisory Committee entitled *Enquiry into Non-Accidental Physical Injury to Children in South Australia* undertook the first survey of all services in South Australia to identify children who had received non-accidental injuries and identified those who had died or received serious injury. This report used survey findings from hospitals, health services, community welfare agencies and medical practitioners to identify children who had been subjected to non-accidental injuries. It represented one of the first efforts to quantify the extent of injury and death that may have been related to child abuse and neglect in this State.

At the present time, no formal comprehensive mechanism exists to review all deaths of children 18 years and under in South Australia. There are, however, a few mechanisms that allow close scrutiny of child deaths in particular circumstances. These mechanisms include:

- the Minister of Health receives an annual report from three DHS Committees that review peri-natal, maternal and infant mortality (infants up to the age of 12 months)
- anaesthetic deaths of children are reviewed for quality assurance purposes by the Faculty of Anaesthesia of the Royal Australasian College of Surgeons
- there are individual death reviews conducted in hospitals, some of which have paediatric services
- the Injury Surveillance Unit of the DHS collects data on childhood accidents via the Accident and Emergency Departments of some public hospitals and
- detailed information is collected pertaining to Sudden Infant Death Syndrome as part of ongoing research.

These processes tend to primarily focus on medical causes of death rather than to focus on contributory factors or related social causes of death such as domestic violence or child abuse.

Internal reviews of some deaths of children known to Family and Youth Services have been conducted in the past on an ad hoc basis using an in camera interdisciplinary review team. Current practice involves activation of a full case review by decision of the Director, FAYS. The case review is undertaken by a Principal Social Worker and this report is then submitted to the Director, FAYS. If any follow-up is required, this is undertaken at the service location by management.

The limitations of this approach are:

- there are no formal mechanisms for addressing widespread systems issues raised by the inquiry
- FAYS cannot address the full scope of inquiry regarding unexplained or suspicious deaths of children from all causes, even though some of these may be related to child protection and
- FAYS can only inquire into the deaths of children who were the subject of an open case who subsequently died from abuse, neglect or self-harm (this includes children and young people receiving FAYS’ services by way of child protection, adolescent at risk, guardianship of the Minister and young offender program or children who were the subject of an intake regardless of whether a FAYS service was provided in an ongoing way).

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24 Community Welfare Advisory Committee (Chairman: Judge K A Murray) (January 1996) *Enquiry into Non-Accidental Physical Injury to Children in South Australia.*
25 Submission 179 Family and Youth Services.
Finally, the Coroner has the power to investigate certain deaths of children under a variety of circumstances and to make appropriate recommendations publicly. These activities have different purposes and no overall picture can be obtained. Nevertheless, the Coroner’s reports play an important role. For example, in South Australia in August 1995, the State Coroner released his findings into the deaths of three infants where abuse and/or neglect were suspected to be a contributory cause of death. In his recommendations, he cited the importance of timely collection of information about the unexpected death of a child (as he was unable to determine the cause of death in any of these three cases because of a paucity of information surrounding the children’s deaths) and the need for specialised pathologists to undertake the autopsies. As a result of this inquest, a number of changes to the procedures for autopsies of young children were made. However, no other parts of the child protection system were examined.

More recently, the Coroner investigated the deaths of three young adult Aboriginal people who died as a consequence of petrol sniffing making a series of wide-ranging recommendations about service developments required across Government in the Anangu Pitjantjatjara Lands.

One of the other limitations of some of the current processes is that they are focused on infants or younger children. There is a need for a process that focuses on children and young people up to the age of 18 years in order to include children who die from self-inflicted injuries, accidents and other causes. A proportion of these children will have been the subject of child protection notifications, investigations or have been under the guardianship of the Minister. They constitute a group that is considered at risk in terms of their ongoing health or other needs and for whom a range of preventive efforts could be effective. Such a process will provide further assessment of the health and social wellbeing issues that need to be addressed for children under the guardianship of the Minister.

An important term of reference is ‘improvements in services’ generally. The reports of child death review teams in the USA and elsewhere have highlighted a number of potential areas for improvement in the community and in services as well as the provision of education and training for members of professions including medicine and nursing, social work, psychology, teaching, law and the police. There is a responsibility to disseminate information more widely about children and young people’s deaths and serious injuries and their prevention.

**EFFORTS TO ESTABLISH A CHILD DEATH REVIEW COMMITTEE IN SOUTH AUSTRALIA**

There have been ongoing discussions about the issue of establishing a child death review in South Australia since 1991. In 1993-94 the SA Child Protection Council undertook an extensive literature review on child homicides and models of child death review, examined the collection of data on causes of child death in SA and the existing mechanisms for child death review in SA, and initiated the development of appropriate mechanisms for South Australia. The model proposed was primarily prevention and educational-focused but did not include investigative functions. This proposal received endorsement, but was forwarded to the SA Health Commission (SAHC) for action. The Executive of the Health Commission referred the issue to its Child Health Council of SA.

From 1995-96, the Child Health Council undertook further developmental work proposing two different committees:

- A legislatively-based SAHC Child Mortality Committee which would undertake a population health focus on preventable deaths from all causes and would provide annual reports to the Minister, identifying trends and recommending strategies for the prevention of deaths from identified causes.
A legislatively based State Child Death Review Committee which would investigate certain unexpected deaths with a cross-agency membership with cases referred from the Coroner, police, or other State Government agency. Its role would be to determine whether there was any need for change in current practice, procedure or policy areas and it would have links with the Child Mortality Committee and pertinent information would be shared between the two committees. This proposal was endorsed by the SAHC but work did not progress due to lack of funds.

In late 1996, the Minister for Family and Community Services released a report of an interagency working party entitled The South Australian Child Abuse Prevention Strategy. From 1997, further work by the Child Health Council was directed towards the establishment of a child fatality review process within the then South Australian Health Commission and subsequently within the Department of Human Services.

Recurrent funding of $80,000 was finally obtained as part of the 1997-98 budget to undertake the developmental work necessary and to establish the two Committees. Some work was undertaken by the Women’s and Children’s Hospital. Other work was initiated by the Public Health Division to set up a Paediatric Mortality Sub-Committee under the auspices of the Maternal, Perinatal and Infant Mortality Committee. To date, however, the entire initiative has not been progressed in its recommended form and it is unclear whether funding is still available to do so.

CHILD DEATH REVIEWS IN OTHER JURISDICTIONS

Although the subject of child deaths creates considerable public, media and professional anxiety, there is relatively little systematic information available on the subject. In response to public and professional concern about child homicide, Child Death Review Committees, consisting of interagency, multidisciplinary teams, have begun to be established throughout the world.

In the USA, child fatality review teams have been established at county and state levels in the majority of States over the last decade as well as at a national level. The function of these teams is systematically to examine cases drawn from agency referrals, coroner’s records or vital statistics. Most child fatality review teams are underpinned by legislation.

The US Federal Government addressed the issue of recognition and prevention of child fatalities through the Child Abuse Prevention and Treatment Act Amendments of 1996 (PL 104-235). These provisions included the following requirements:

- child protection services’ reports and records are to be made available to child fatality review panels
- findings about a case of child abuse or neglect that had resulted in a fatality (or near fatality) are to be made public
- US states may consider terminating parental rights of parents convicted of killing or who “have aided or abetted, attempted, conspired or solicited to commit such murder” for any surviving children, and
- US states are required to report on the number of children known to child protection services who died and the number of cases in which family preservation services or reunification were followed within five years by the death of a child.

These provisions have strengthened the moves towards the establishment of child fatality review teams and their capacity to investigate causes of death associated with child abuse.
Within the United Kingdom (except Scotland which has a slightly different system), the deaths of all children either in public care or under the supervision of statutory child protection services require investigation by both the Coroner and the local authority (statutory agency with responsibility for child protection services) with responsibility for that child. Details about the review process to be carried out by local authorities are set out in the guidance and regulations attached to both the *Children's Act 1989* (for England and Wales) and the *Children Order 1995* (for Northern Ireland). These two pieces of legislation are nearly identical but make separate provision for the different administrative structures in each country. The purpose, scope and arrangements for Serious Case Reviews are contained in *Working Together to Safeguard Children 1999*.  

Despite these measures, disquiet remains within the United Kingdom that not enough is being done to monitor child deaths and to learn from them. Child Death Review Teams, which will have a broader remit than just children in public care and/or under the supervision of protective services, are being proposed. Currently, social services leaders are carrying out a survey of Area Child Protection Committees that coordinate the agencies responsible for ensuring the safety of children at risk to investigate how they respond to unexplained deaths. This survey was prompted by concern that no one agency held overall responsibility for unexpected child deaths and that there was no standard procedure for dealing with cases where there is no hard evidence of the cause of death.

In New Zealand, the Commissioner for Children had a statutory responsibility to monitor the work carried out by the Department of Child, Youth and Family Services primarily through case reviews. It is understood that a Child Fatality Review Committee has now been established.

In New South Wales, the State Child Protection Council established a Child Death Review Committee in 1993. It conducted a review of a sample of homicides of children up to the age of 14 between 1989 and 1991. The findings of the review were released in October 1995 and legislation was then passed to establish a NSW Child Death Review Committee to carry out all future child death reviews. In its Child Death Review covering the period January 1996 to June 1997, the committee found that 26 children and young people died in circumstances that indicated non-accidental injury. Of these children: 15 were infants less than one year of age; six of these deaths were consistent with severe shaking; 50% were known to the Department of Community Services prior to their deaths; and nine were infants.

The NSW Child Death Review Team legislation was reviewed in 2002 and recommendations have been made to strengthen the capacity of the team to fulfil its obligations to prevent or reduce child deaths. The recommendations of the NSW Child Death Review Team play a powerful role in changing policies and practices in health, welfare, police and other systems through its continuing review of child deaths, highlighting where these systems have fallen down in protecting children and in continuously reviewing agency responses to its recommendations.

In Victoria, in May 1995, the Department of Human Services recommended the establishment of a Victorian Child Death Review Committee to provide broader perspectives from consideration of all child death reports and to improve public accountability and the quality of reporting of child deaths. Prior to this, from 1989, the Victorian Department of Human Services had held child death inquiries into the deaths of clients of the child protection system, at the direction of the Minister. Public reports about the response to these deaths were produced from 1992. There were also a number of judicial inquiries into certain child deaths.
Procedures for the review of child deaths were significantly enhanced through the establishment of the Victorian Child Death Review Committee. This committee reviews the protective services system client deaths within a broad context and receives the reports from the department’s Child Death Inquiry Panels. Its aim is to provide a multidisciplinary focus on child death reports and to identify ways in which the preventative and early intervention practices could improve the health and wellbeing of children at risk. It also provides advice and comment on any practice issues that may emerge from the child death inquiry process of the department. As a result of its first report, there were new initiatives for adolescents at risk, for high risk infants in the child protection system and for responding to the difficulties encountered in gaining access to hospital and medical records for child death inquiries, because of legal privacy provisions concerning confidentiality.

Whilst its membership is broad, the Victorian model is primarily an internal process examining the deaths of children known to the Department. It cannot examine the unexplained and unexpected deaths of children not known to the department or make broader comment on systems or service improvements in areas outside the remit of the department.

The NSW Child Death Review Team legislation remains the most comprehensive in Australia.

**CHILD DEATH REVIEW FOR SOUTH AUSTRALIA**

The identification of all preventable deaths of children in South Australia is not possible at the present time. As an example, there are no figures available that identify the number of children who are fatally abused and neglected each year in this State.

The lack of accurate information is the result of a number of factors:

- there is no uniformity in the method of investigation, and a death is only investigated if it is deemed suspicious and an autopsy is performed
- there is inaccurate certification and recording of cause of death in vital statistics collections
- child deaths are not automatically reported to one agency
- the statutory child protection authority does not investigate reports of child deaths because the grounds for notifiable abuse do not include death and
- confidentiality provisions preclude interagency sharing of information.

There are a number of actions which could be undertaken to alleviate some of these difficulties. For example, mandatory autopsies could be considered in all child deaths performed by trained paediatric pathologists to ensure the accuracy of death certification and form the basis of an epidemiological database on child deaths. Standardised protocols for autopsies and death scene investigations could also allow a more consistent and thorough approach. Protocols such as those that have been agreed across agencies for the investigation of cases of Sudden Infant Death Syndrome (SIDS) provide a useful model.

Child Death Review Teams involve reviewing child deaths concerning a particular agency (internal) or from the point of view of all agencies (external). They may also perform a range of other functions:

- accurate identification and documentation of all child death fatalities
- collection of standardised and accurate data
- inter-agency cooperation
- identification of potentially preventable child death
- the improvement of the investigation and prosecution of maltreatment deaths
the development and use of inter-agency policies for investigating certain categories of child fatalities
prompt notification of agencies when a child dies
provision of a safe, confidential arena to facilitate communication and resolve any inter-agency conflicts
stimulation of required changes in policy, practice and legislation and
the identification of public health and welfare issues that need to be addressed.

The United States Advisory Board on Child Abuse and Neglect noted that Child Review Death Teams:

…appear to offer the greatest hope of defining the underlying nature and scope of fatalities due to child abuse and neglect…pinpointing system flaws, and promoting prevention services. 31

It has been proposed in the submission to the Review from FAYS that it establish a process to undertake a detailed review of information concerning the death of children/young people who are, or have been, in contact with FAYS. This Review considers that this narrow remit will not provide the level of information or breadth of analysis that can be provided by an independent interagency child death review team that has the responsibility of reviewing deaths and serious injuries from all causes. In addition, FAYS may not necessarily review the cases of children who have died or been seriously injured as a result of abuse and neglect but who have not been known to FAYS, although it is noted that this would be a rare occurrence.

There is a pressing need for continuing quality surveillance of the State child protection system across all agencies to assess its impact on the children for whom it was designed to serve acknowledging that this system involves a range of agencies as well as the community. An interagency statutory Child Death and Serious Injury Review will provide a more appropriate formal independent review mechanism to determine the quality and effectiveness of State interventions with abused and neglected children and their families.

**KEY FEATURES OF A STATE CHILD DEATH AND SERIOUS INJURY REVIEW COMMITTEE**

The NSW project review determined that monitoring of child homicide, improving the professional response when child deaths occur and preventing future child death, could not be achieved without an effective, immediate child death review process. There is no reason to believe that the current situation in SA is different, and there is much to be learned from the NSW experience. An external continuing child death and serious injury process that links to internal agency processes currently in place to review the deaths of children, where these exist, is the more efficient and cost-effective approach for South Australia.

There are a number of factors that appear to be critical for successful operation:

- The body must be interdisciplinary, with experts from various disciplines as well as Departmental representatives from health, welfare (child protection), education, police, the Coroner’s Office and the Attorney General’s Department as a minimum. There should be a mix of members on the committee, as there is a need for those with expert knowledge (such as pediatric pathology), as well as departmental decision-makers. There should also be the ability to co-opt others in particular cases.
- Each agency must be fully committed to the process, and to the need to learn more about system problems in order to protect siblings of dead or seriously injured children who may be at risk, and future children at risk.
- The body must be legislatively based, with powers to access all relevant information and to maintain the confidentiality of the review material. Statutory powers are required to facilitate access to the necessary information that may be held on Departmental files and in other records; for example, medical records, and to maintain the confidential nature of all material that is the subject of review.

The body must conduct immediate (within 24 hours of a child’s death) rather than retrospective reviews. This process allows the full investigation and identification of a range of factors contributing to the circumstances of a child or young person’s death.

The body must be resourced adequately.

The Committee should report regularly to Government on changes to policies and practice by agencies and the community for the prevention or reduction of child deaths.

The body must report annually to Parliament.

The need to take a broad multi-agency approach to the examination of child death and serious injury review is underlined, for example, by the findings of the Virginian State Child Fatality Team Report that examined 58 suicide fatalities among children and adolescents in 1994-95. The State Child Fatality Team found that: 34% of the children had been subjected to physical, sexual abuse or neglect, or had witnessed domestic violence at some point in their lives; 17% had involvement with Child Protective Services; 25% were involved with the juvenile justice system; 25% had received community welfare services; in school, 47% performed below average to poor for their ability; 40% had received mental health services with females 1.8 times more likely to have received mental health services than males; and 21% were involved in custody disputes. The scope of this type of information provides the basis for developing appropriate criteria for identifying risk and for developing appropriate preventive measures within systems and services.

The legislated functions of the NSW Committee are comprehensive and, with the updated amendments following the 2002 review, should be considered as a blueprint for a South Australian Committee, particularly in relation to the identification of policies and practice issues, training gaps and system characteristics that require improvement. These functions are:

- Maintain a register of all child deaths classified according to cause of death, demographic criteria and other factors with a view to understanding the causes of child death, preventing these fatalities and enabling analyses of the accumulated data to identify trends, patterns and prevention strategies.

- Undertake detailed case reviews of certain deaths, including those due to abuse and neglect. The legislation acknowledges that it is not always possible to clearly identify all deaths of children that should be included in this category and therefore provides a mandate to identify deaths of children in suspicious circumstances and undertake a detailed review.

- Identify further areas of research to be undertaken by the team or by other agencies related to the overall function of the Child Death and Serious Injury Review Team in preventing and reducing child deaths.

Formulate and monitor recommendations for the prevention of child deaths to be implemented by Government and non-Government agencies and by the community and comment on the extent to which previous recommendations have been accepted and implemented.

There should be an annual report to the Parliament and the processes and outcomes of the committee should be evaluated after its first 18 months of operation.
ADMINISTRATIVE LOCATION OF THE CHILD DEATH AND SERIOUS INJURY COMMITTEE

The issue of the administrative location of a Child Death and Serious Injury Committee was considered by the Review given that certain submissions proposed that this committee should be established under the Coroner whereas, in NSW, it is established with the Commissioner for Children and Young Persons.

Whilst either location would be appropriate, the following issues need to be carefully considered in relation to location:

- the independent statutory roles and function of Child Death and Serious Injury Committee should be identified in legislation and should be clearly differentiated from either of those of the Coroner or a Commissioner for Children and Young Persons and
- the focus of the Coroner and the Commissioner for Children and Young Persons should be clearly separated from those of the Child Death and Serious Injury Committee so that resources cannot be diverted from one to the other and that the focus of these two agencies is maintained on their principal roles and functions.

Administrative placement with the Commissioner for Children and Young Persons is appealing in that it provides an appropriate location within an advocacy framework for protection and advancement of the interests of children and young people. However, in NSW, it has become such a major focus of the Commissioner’s work that it is diverting attention away from addressing other areas of advocacy for children and young people.

A FOCUS ON BOTH CHILD DEATHS AND SERIOUS INJURY TO CHILDREN

One of the shortcomings in child death reviews that have been established elsewhere in Australia and overseas is that they have not sought to include serious injury. The exclusion of serious injury possibly relates to issues of confidentiality. However, there are good reasons for extending the scope of child death reviews to including serious injury, namely:

- Given the small numbers of child deaths in South Australia due to abuse and neglect, analysis will require a much longer timeframe to enable adequate identification of emerging trends and patterns that may be amenable to change.
- The inclusion of serious injury will enable emerging trends and patterns to be seen earlier resulting in more timely action to change policies or practices thereby reducing future costs to community and Government.
- The inclusion of serious injury enables protective measures to be put in place for these children and their siblings.
- The extent of serious injury as a result of child abuse and neglect is not well-documented and provides an important indicator of the impact of abuse.
- In the case of physical non-accidental injury, particularly to infants, there may be resultant permanent serious disability from the injury, not immediate death. Such cases will have significant long-term costs in terms of support required from health, housing and disability agencies, many burdens on families and the human suffering of the child concerned. Thus, serious injury involves significant personal costs for individuals and their families and significant social costs for the community and Government.
OTHER ISSUES TO BE ADDRESSED IN THE ESTABLISHMENT OF A CHILD DEATH AND SERIOUS INJURY REVIEW COMMITTEE

The Review has been conscious of the need to establish streamlined and cost-effective approaches to processes such as a Child Death and Serious Injury Review Committee given the potential costs involved. The NSW Child Death Review Committee has significant resources available to it that are far beyond what is affordable for this State. The establishment of a Child Death and Serious Injury Review Committee should therefore be established to link with current committees and bodies responsible for the review of child deaths and serious injuries to children so that there is a capacity to build on and use resources that are already available.

The proposed committee should be established with a small core membership of five to six people but have the capacity to co-opt individuals with expertise required to ensure an effective review or support the analysis of data and information. This approach will ensure that there is a continuing core membership to guide and manage the process but with the flexibility required to incorporate appropriate expertise.

The core membership should include paediatric expertise, high-level representation from FAYS and SAPOL, the Coroner, as well as the Commissioner for Children and Young Persons.
RECOMMENDATION 133

That a South Australian Child Death and Serious Injury Review Committee be established under specific legislation, modelled on the NSW Child Death Review Team, as a matter of high priority to carry out all future reviews of child deaths and serious injury to children.

- The functions of such a committee are to -
  - ascertain facts surrounding the deaths of or serious injuries to children
  - collate epidemiological and other data about all deaths and serious injuries to children and young people
  - devise preventive strategies
  - identify areas for improvement and advise the Ministers of Health, Social Justice and other relevant Ministers through intra-departmental structures (for example the Child Health Council of the DHS, and through the Child Protection Board)
- That the committee be administratively attached to the Commissioner for Children and Young People and underpinned by legislation.
- That the Commissioner for Children and Young Persons use these findings to educate the community and inform policy and procedures across Government and non-Government sectors to prevent future deaths of or serious injury to children.
- That the committee report annually to Parliament through the Minister for Social Justice.
- That the committee bring matters to the attention of relevant Ministers or Heads of Departments, as it considers appropriate.
- That the legislative powers of the committee include the right to access information required to fulfil its responsibilities including the transfer of relevant information from already existing child morbidity and mortality Committees within the State.

Reason

The Child Death and Serious Injury Review Committee provides the only effective whole-of-systems review mechanism across Government to monitor the adequacy of systems and services involved where a child has died or experienced serious injury, identify areas for improvement and use these findings to educate the community and inform policy and procedures across Government and non-Government sectors to prevent future deaths of or serious injury to children.
INTRODUCTION

This chapter discusses child protection in the education sectors, incorporating Government as well as non-Government sectors including TAFE. It provides a general context as well as information regarding:

- the role of education in early intervention and prevention
- factors for creating child-safe communities
- current issues in service responses to child abuse and neglect
- the need for professional support and training
- provides recommendations to improve child protection responses within an education context.
Research and practice internationally indicates that the education and children’s services system is an essential part of the child protection system. These services play a critical role in early detection, early intervention and in the prevention of child abuse and neglect. They also have a critical role in supporting children and young people who have been victims of abuse and neglect.

Teachers, other school staff and childcare workers are an essential part of the network of professionals involved in the early detection of child abuse and neglect. Teachers and child-care workers are people who occupy positions of trust and continuous relationship that for many children enables them to disclose abuse. In recognition of the roles and responsibilities that schools and children’s services play in child protection and the prevention of child abuse and neglect, more comprehensive approaches to the integration of child protection in education and children’s services need to be developed in other jurisdictions.

Further, there is an emerging view that schools, kindergartens and childcare centres are crucial, non-threatening environments to engage children and young people and their families as well as the wider community. They constitute natural and accessible sites for the delivery of a range of parenting/community programs and have the potential of reaching a wide group of parents/community.

Schooling and childcare sectors need to have a shared vision and common understanding of their diverse roles and responsibilities in child protection. Yet, safety is clearly seen as a prerequisite for the emotional, social and educational development of all children and to their health and wellbeing.1 Education systems also play a major role in minimising educational disadvantage experienced by children who have been abused and neglected.

While the majority of staff, parents and volunteers are clearly dedicated to supporting the education, welfare and social needs and outcomes of children and young people, education and children’s services are environments that are highly attractive to child sex offenders and may provide significant opportunities for offending against children.

OVERALL OBSERVATIONS

There is a strong message from submissions that the education and children’s services sectors are an integral part of the child protection system and that this role needs to be better defined and developed by these sectors. Many submissions to the Review highlighted a number of concerns about the safety of children and young people in institutions that provide care and education to children.

Concerns were wide-ranging:

- the need for increasing the role of the schooling and children’s sector in early intervention and prevention
- a higher degree of safety arrangements for child protection in schools both in policy and practice
- the need for greater support for personal safety curriculum development and teaching
- increasing the capacity of schools and education sectors to respond appropriately to concerns about staff and volunteers who are suspected of abusing children in their care
- improved responses by FAYS to mandatory notification reports and intervention responses to children in the schooling or service contexts and the impact this has on teachers, children’s services workers, schools and other services

1 Submission 106 Baptist Community Services.
Child Protection in Education

- improved responses from schools and children’s services to the needs of children, parents and the wider school community in the aftermath of both alleged and founded claims of child sexual abuse by personnel
- enhancing the capacity to appropriately respond to child-to-child abuse and
- further support for all personnel in schools and children's services as mandated notifiers.

SCHOOLING AND EDUCATION SECTORS

The education system comprises three schooling sectors:

- State Government schools
- the independent school sector and
- the Catholic schooling sector.

All encompass pre-primary, primary and secondary schooling services. The Children’s Services sector comprises kindergartens, community not-for-profit and private childcare centres, out-of-school hours programs, baby sitting services and family day care. State Government schools and independent Catholic schools are often providers of kindergarten and out of school hours care. They also provide recreational and sporting activities often with the assistance of either paid or voluntary staff.

The non-Government schooling sector comprises attached or stand-alone early learning centres and pre-schools, primary and secondary schools. The Catholic education sector is the largest with approximately 110 school sites covering two dioceses as well as a number of independent or order-operated schools. There are also approximately 90 schools affiliated with the Association of Independent Schools (AIS) that forms the independent schooling sector. These schools include approximately 33 Lutheran schools, a number of Anglican, “Christian-affiliated”, Uniting, Montessori as well as other denominational and independent schools. There are a number of private pre-schools not affiliated with either the Catholic or AIS schooling sectors.

Over recent years, the TAFE and higher education (universities) sectors have also commenced providing secondary education services to young people. In moving away from an exclusive focus on post-secondary education, these sectors now have higher numbers of students below the age of 18 years and are required to comply with the Education Act 1972 (SA) requirements for students in their care, broadening their obligations to protect children and young people in the same way that a school is required to do so. There have also been increasing numbers of overseas students who may be vulnerable due to language and having to interpret a different culture and interpersonal interactions.

LEGISLATIVE CONTEXT FOR CHILD PROTECTION IN EDUCATION

All children’s services and schools are required by legislation to provide a safe environment for children. The extent to which these roles and responsibilities are delineated across the sectors varies considerably. Child protection is clearly a role and responsibility that comes within the education and children’s services sectors. However, child protection falls under broader legislative requirements relating to the safety and well being of students and children and is not specified in its own right.
Under the *Education Act 1972 (SA)* the Director-General is responsible for curriculum under which instruction is provided in Government schools. Under Part 8, School Councils are established for all Government schools and are responsible for the school governance in conjunction with the principal. Activities that fall under this governance include strategic planning, determining policies, developing and implementing operational policies and plans on the school's operations. School Councils can also determine functions relating to pre-school education or to the education, care, health or welfare of students outside school hours.

Non-Government schools also require registration under Part 5, section 72(g) of the *Education Act 1972 (SA)*. One aspect of registration of any non-Government school involves meeting adequate protection for the safety, health and welfare of its students that forms part of the Code of Conduct specified under the legislation. The Non-Government School Registration Board is required to review every non-Government school at least once every five years and can renew, set conditions or revoke the school's registration.

Within the *Children’s Services Act 1985 (SA)* the Minister for Education and Children’s Services is responsible for the following functions that apply to this Review:

(a) to provide and coordinate the provision of, children’s services, having regard to the needs of the community and the need to achieve efficient use of available resources

(b) to develop and implement, or assist in the development, and implementation of, policies relating to the provision of children’s services and to keep the operation of those policies under constant review and evaluation

(c) to monitor and evaluate the nature and quality of children’s services with a view to ensuring the highest possible standards of such services;

(d) ensuring that the expertise and qualifications of persons who provide children’s services are of the highest possible standards

(e) encouraging, or assisting in the provision of, children’s services by voluntary groups or organisations

(f) to keep under review the special needs of individual groups of children (including those who suffer from physical or mental disabilities and those who are economically disadvantaged) and to provide, assist in the provision of, or promote, services to meet those needs

(h) to collaborate and consult with Government departments (of the State, the Commonwealth or of other States or Territories), with public authorities, with municipal or district councils in this State and with non-Government organisations that provide, or support or promote the provision of, children’s services

(i) to encourage public discussion of policies affecting the provision of children's services and

(j) to do such other things as may be necessary or desirable for the efficient discharge of its functions.

The *Children’s Services Act 1985 (SA)* establishes a Children’s Services Consultative Committee which comprises representation drawn from community users of children’s services, the children’s services sector – employees and professional sectors, DECS, non-Government and unions. The functions of this committee are to:

- advise the Minister on the administration of the Act
- identify and assess the needs and attitudes of the community in relation to children's services and to advise on programs to accommodate those needs and attitudes
- consider reports made by regional committees and investigate and report to the Minister on any matters referred by the Minister to the Committee for advice.
Regional Advisory Committees are also established under the Children’s Services Act 1985 (SA) to consider and report on any matter relating to children’s services.

Further the Children’s Services Act 1985 (SA) provides for:

- the licensing of persons who have the conduct or control of a child-care centre, a baby sitting agency, family day care agencies, or approval of persons as family day care providers and revocation of such licenses or approvals
- the registration of children's services centres such as kindergartens and not-for-profit child care centres assisted with public funding
- the conditions under which such services can be provided and required conduct of those services
- offences under the Act and
- determination of regulations for all services covered by the Act.

Licensees or managers of child-care centres, day care providers and babysitting agency licensees must all be fit and proper persons. The licensee of a child-care centre must at all times be satisfied that each person working as a contact staff member at the child-care centre has no criminal convictions arising out of the abuse, neglect or assault (including sexual assault) of a person; is otherwise a fit and proper person to be employed as a contact staff member at the centre; obtains a statutory declaration on fitness from the contact staff member and obtains details of any criminal convictions recorded against a person.

Under Division 3 of the Children’s Services (Child Care Centre) Regulations 1998 (SA) there is a general obligation on the licensee to ensure that all reasonable action is taken to ensure the comfort, safety and wellbeing of children being cared for at the centre and that all reasonable precautions are taken to avoid hazards that are likely to cause injury to those children; and that children being cared for at the centre are adequately supervised at all times.

Similar arrangements exist for other children’s services under the Children’s Services Act 1985 (SA). However, the extent of support provided by the Department of Education and Children’s Services varies for each of these sectors with DECS obtaining police checks for people who are providing family day care services and other relevant household residents.

**RECOMMENDATION 134**

That the role and responsibilities of schooling and children’s services in relation to child protection be developed and specifically included in the Children’s Services Act 1985 (SA) and Education Act 1972 (SA).

**Reason**

There is a need to go beyond the general reference in the legislation to ‘safety’, to make specific reference to child protection in the Children’s Services Act 1985 (SA) and Education Act 1972 (SA) in order to provide an stronger focus on the role of education and children’s sectors in child protection. This approach will prevent confusion about the role of education and children’s services in child protection and support the development and integration of more comprehensive responses by education authorities, by schools and children’s services.

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2 See Children’s Services (Child Care Centre) Regulations 1998, S24 (2) (a) and (3) (a) and (b).
3 Ibid Division 3, Submission 52 UnitingCare, Port Pirie Central Mission.
EARLY INTERVENTION AND PREVENTION

Role of education

The early years (zero to three years) are considered the most critical time for early intervention and prevention, for laying the best foundation for long-term physical, learning, behavioural and social outcomes. However, early intervention and prevention is an important approach that should frame children and young people’s opportunities throughout all years up to the age of 18, noting the special need to focus on transitional points.

DECS is promulgating *The Early Years Strategy* as an early intervention and prevention strategy that focuses on improving outcomes for the children zero to three years of age. This strategy is based on the research findings on brain development in early infancy and aims to improve wellbeing outcomes for children across health and education and involves a partnership with other key sectors and forms a significant component of a wider early intervention and prevention strategy for children and young people proposed by the Review (see Chapter 6).

McCain and Mustard⁴ put forward the view that there needs to be an integrated concept of “from early child development to human development” promoted across Government, non-Government, community and private sectors. Their report *The Early Years Study* highlighted the role that education needed to play in supporting child development, especially its role in providing community infrastructure for this to occur effectively. The Study also emphasises the need to involve parents and students in the development of programs and services. It is useful to highlight the whole school community approaches to drug education, which have been developed as an example of an early intervention and prevention program, and which have already been implemented in schools in South Australia using similar principles.

**RECOMMENDATION 135**

That DECS, schooling sectors and children’s services develop policies and guidelines which recognise and acknowledge their role in early intervention and prevention. In addition these sectors to develop programs, including staff education and training and service development initiatives, to expand knowledge and understanding of the role of these sectors.

**Reason**

There is a need to develop a specific focus on child protection through early intervention and prevention, within a school environment.

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RECOMMENDATION 136

That DECS develop and implement a strategy to promote co-location of children’s services with primary schools in order to improve opportunities for the delivery of a range of services and programs from one site thereby assisting children’s and parents access to these programs.

Reason

Improved opportunities are required to provide access to early intervention and prevention programs for parents and children to reduce child maltreatment and increase the knowledge of parents about parenting and their protective skills. The current system of services is fragmented by virtue of the number of locations from which services are provided and there is a need to improve accessibility as well as continuity of relationships with children and parents and enable the delivery of parenting education programs in a sustainable manner in conjunction with other services.

PERSONAL SAFETY AND PROTECTIVE BEHAVIOURS PROGRAMS

Personal safety and protective behaviours programs have been in place for some years in the education and children’s services sectors. In the 1980s, these programs were implemented as one of the major front-line responses to child protection as a result of community, non-Government and Government recognition of child abuse and neglect and the need for a wider prevention effort. Group-based protective behaviours programs conducted in pre-schools and primary schools remain an important method for providing instruction to children on personal safety.5 Protective behaviours programs also provide another important benefit in that they may encourage some children to disclose previous or current abuse.

Submissions to the Review indicate that efforts at ensuring the provision of protective behaviours programs have fallen away over recent years and require upgrading to reflect current evidence for effective curriculum content and method of delivery and revitalisation throughout the school and children’s services sectors. Examples of views include:

It is well known that the protective behaviours program conducted in schools has become ineffective.6

If the Protective Behaviours Program is to be revitalised again, then funding should be made available to ensure the program has supports in place for the children. The education system could play a major role here.7

I would like to see the Protective Behaviour Program revitalised again for pre-school, primary and high school students, including those children from other cultures including children with a disability…… I would also like to see a Protective Behaviours Program aimed at parents, to explain the rationale behind the program, what is being taught to their child and why. This is essential for parents with a disability, or for those from a different religious or ethnic background, and they are encouraged to attend.8

6 Submission 134 NAPCAN.
7 Submission 100 Ms Annette Aksenov.
8 Submission 100 Ms Annette Aksenov
In the Government schooling sector, the curriculum framework (SACSA) and DECS Child Protection Policy state that child protection curriculum should be provided to R-7 students. Opinions expressed through submissions and in consultation with young people referred to in chapter 13, were critical of protective behaviours programs conducted in schools and strongly suggested that the programs have become ineffective.\textsuperscript{9} The key reasons put forward for this situation included that staff training and development in protective behaviours has not been a prominent area in recent years due to changes in teacher release policies for staff training and development and also lowered priority being given to this area.

However, curriculum in schools for children addressing protective behaviours, bullying, child development, parenting or about the impact of neglect and trauma on children needs to be provided as part of long-term strategies for the prevention of child abuse.\textsuperscript{10} The development of protective behaviours curriculum be integrated within a wider, developmentally appropriate curriculum across the age groups and focus on early intervention and prevention as one of its key principles.

The Review acknowledges that schools and teachers are under increasing pressure to add more specialised focus areas into an already over-crowded curriculum and that child protection and the prevention of child abuse and neglect is one “bandwagon” amongst many others such as drugs and mental health. The Review also considers that there is considerable alignment between all of these areas and that strategies addressing one have bearing on all the other areas. There are, however, specific issues for each area that need to be addressed in curriculum, in school culture, in school-based support practices and in relation to inter-agency collaborative practice and case management. Nevertheless, they do form a suite of issues that are connected with each other, as well as others such as school participation, and have significance for children’s outcomes for future wellbeing.

**ISSUES IN PROTECTIVE BEHAVIOURS**

The research highlights the following issues for teaching protective behaviours programs:

- Such programs can often place responsibility on children for their own protection rather than placing responsibility with adults. The design of programs needs to avoid giving this message to children and young people.
- An undue emphasis on stranger danger undermines the value of protective behaviours programs for children. Most children are abused within the family and protective behaviours programs can play a role in assisting and supporting children who have been abused to disclose abuse to someone who is known to them.
- The curriculum of such programs needs to be designed within a children’s rights context with an emphasis on their right to safety and personal and physical integrity.
- The teaching of protective behaviours programs requires the involvement and participation of parents/guardians.

\textsuperscript{9} Ibid.
\textsuperscript{10} Perry, BD (1996) *Neuro developmental Adaptations to Violence*. 
METHODS OF DELIVERY

One of the issues is the method of delivery of personal safety or protective behaviours programs. One view is that such programs should be delivered outside the curriculum so that there is a capacity to ensure delivery and greater regularity of delivery. Few protective behaviour programs have been evaluated in Australia. Evaluations of these programs conducted in the USA indicate that the quality of such programs can be variable.

The other view, equally strongly held, is that such programs should be delivered within the relevant component of the curriculum framework linked to other curriculum areas such as harassment and bullying. The drawback with the latter approach is that the decision to deliver the program often rests with the classroom teacher in relation to how it is structured and how it is managed within other curriculum delivery demands. The conceptualisation of protective behaviours curriculum has been further developed by broadening and also incorporating age and developmental factors in its delivery. Greater knowledge and skills are required by teaching and children’s services staff to deliver this curriculum. A number of submissions have highlighted the need for staff development to better integrate and deliver this program.

There is another view developed from a children’s rights perspective that such programs need to be delivered within a broader curriculum that also deals with children’s rights and responsibilities within a developmentally appropriate framework. This approach, it is proposed, strengthens children’s and young people’s understanding of their rights to personal safety and to support. One of the submissions indicated that building the confidence and resilience of children, together with developing their skills in seeking help in times of danger, is essential for keeping them safe. This submission went on to say that:

In primary education and pre-school settings the delivery of programs designed to develop resilience (for example, Seligman: The Optimistic Child) and stay safe (for example, protective behaviours) are considered important to assist children in identifying danger, finding a support network and seeking help.

The key point in this statement is that strengthening children’s sense of self and self-worth, their confidence, their sense of personal right to safety and physical integrity as well as resilience must be integrated within any education program on protective behaviours.

There is also a view held that the inadequacy of current delivery of protective behaviours program is due to the reluctance of teachers to tackle sensitive issues. Programs such as protective behaviours programs are often not seen by all teachers and principals “as an appropriate function or compatible with their primary pedagogic responsibilities”.

The role of curriculum development and support for teachers and schools has been subject to policy changes with greater emphasis placed on classroom and subject teachers to determine how and what curriculum will be taught to students within the broad structure of the curriculum framework. This situation places the teaching of protective behaviours at risk of being given a lower priority because of greater emphasis on literacy and numeracy attainments, time pressures in meeting teaching requirements and the divide between what is regarded as primary teaching responsibilities and non-educational services to children.

11 Bruce Johnson Study University of South Australia.
12 Submission 106 Baptist Community Services.
13 Submission 12 Mr Kevin Beinke; Submission 106 Baptist Community Services.
15 Ibid.
One submission raised the issue of whether protective behaviours should be located within the education system or in an agency independent of the education system.\(^\text{16}\) This issue has been a long-standing one. However, it is suggested that the capacity to implement a more organised focus to the teaching of protective behaviours programs within the education and children's services' systems and ensure delivery outweighs any consideration of alternative organisations with a child protection focus becoming a provider of this service.

There is, nevertheless, the need for other community services to play a role in the delivery of protective behaviours programs. Children, young people and their families from culturally diverse backgrounds, Indigenous children and young people and their families, children and young people with disabilities and their parents all require personal safety/protective behaviours programs that take into account their specific issues. These programs may be delivered by appropriate community-based services with a service and advocacy focus on these communities linked in with other programs of support for children and young people and their families.

In some jurisdictions, protective behaviours programs are delivered by personnel who are not classroom teachers. For example, New Zealand has adopted a system where police education officers provide this education supported by school health coordinators, and involve parents in the delivery. This protective behaviour program is, however, primarily delivered to secondary students where police are able to give older students a more realistic understanding of protective issues linked to transitional developmental issues and community behaviour – in other words – teaching young people to be streetwise. Such a strategy for older students is compatible with the work of police in South Australia on drugs and drug education and in crime prevention in schools.

**TEACHER EXPERTISE**

One of the other issues raised in submissions in relation to protective behaviours programs, is the loss of teacher expertise. This factor has led, over time, to the loss of knowledge, skills and delivery capacity, a reduction in the quality and consistency of delivery of these programs within the schooling sector as well as a loss in the development of relevant up-to-date quality curriculum and resources based on current research knowledge of what works best. Since the mid-1990s, there has been a reduced focus on child protection in the Department for Education and Children's Services, leading in particular to a loss of a curriculum development and support function, amongst other things.

However, the need for adequate support by child protection services is a prerequisite for education and children's services personnel to feel confident about teaching protective behaviours in their service settings:

> I am also concerned at the push to teach protective behaviours to children, while there is inadequate community support and response; it may actually be not only placing children in more danger, but also more reluctant to disclose in the future … most child victims of abuse do realise they are being abused, but don’t know how to get help. Protective behaviours offers pseudo-help if there is no adequate follow through after disclosure.\(^\text{17}\)

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16 Submission 134 NAPCAN.
17 Submission 38 SPARK Resource Centre.
RECOMMENDATION 137

That DECS update the personal safety/protective behaviour programs delivered in schools with regard to:

- recent evidence of best practice in their design and delivery to key age groups, for example, four to five years of age; six to ten years, 11 to 14 years and 15 years and older
- whether it is preferable to be included in core curriculum
- changes over the years in schools culture
- addressing the needs of children and young people from different cultures or with disabilities
- inclusion of internet safety
- including provision of information to parents/caregivers to extend understanding and reinforcement of the programs
- training and the support required to be provided to teachers to re-vitalise delivery of such programs.

That DECS undertake an audit to determine the extent to which personal safety/protective behaviour programs are conducted within schools and the quality of such programs.

Reason

Currently, personal safety and protective behaviours are implemented in varying ways and sometimes not at all and not necessarily made relevant to the age group nor with appropriate regard for ethnicity or disability. There is also a variation as to whether or not parents/caregivers are informed or involved.

CHILD SAFE COMMUNITIES – THE EDUCATION ROLE

The current DECS policy establishes the following outcomes for the benefit of all children:

Education and care practices which:

- ensure a safe environment for children in children's services, schools and institutes
- support children to gain confidence in their identity and develop capabilities and strengths
- respect the diverse and special needs of children
- are sensitive and responsive to changes in behaviour which may be indicative of abuse.

Training and development opportunities for education and care workers which:

- ensure they understand their obligations and responsibilities as mandated notifiers and develop appropriate procedures at their worksite
- provide the skills, knowledge and understanding of personal safety programs for children and enable them to continually build upon this.
Examples of best practice models for creating child safe environments include the Childwise (ECPAT) guidelines\(^\text{18}\) and NSPCC resources for schools. Both of these organisations outline a comprehensive approach to addressing all aspects of child protection in schools and children’s services. Such approaches include policies on child protection in schools and children’s services incorporating the following elements:

- screening of all staff and volunteers working with children
- staff and school responsibilities for reporting child abuse perpetrated by a member of staff
- employment practices and reference checks for paid and voluntary staff
- supervision arrangements for all staff both paid and voluntary
- staff role as mandated notifiers and reporting child abuse
- staff training and updating on mandated notifier training
- the pastoral role of schools, teachers and parents in promoting children’s emotional wellbeing and responding to their welfare needs and specifically those who have been abused
- staff Codes of Conduct
- staff development and training in mandatory reporting of child abuse and neglect
- the role and responsibility of a school or children’s service where child-to-child abuse is identified for both victim and perpetrator
- development of appropriate child-friendly policies
- development and promotion of personal, social and health education within the curriculum in children’s services, primary education and secondary education incorporating well-designed protective behaviours curriculum
- involvement of parents and community in the development of child protection policies and in the delivery of protective behaviours programs
- involvement in the provision of parenting education programs for secondary students
- development of comprehensive policy responses to all forms of violence such as bullying and harassment in schools and children’s services and
- interagency liaison and responsibilities in child protection.

These approaches build on the initiatives that have demonstrated best practice in whole schools’/children’s services’ approaches by building relationships and partnerships between schools, students, teachers, parents, other Government and non-Government agencies and the wider community. The initiative developed for drug education in schools in South Australia and nationally is a good example of this approach. DECS has a leadership role across the whole schooling sector to develop a more comprehensive policy response to child protection and to develop policy models and resources that support more comprehensive responses. The Association of Independent Schools of South Australia launched its Student Protection Kit in July 2002 which provides a useful model and is based in part on the work by Childwise (EPCAT).

This Review endorses these initiatives. It is important for them to be evaluated and reviewed on a regular basis to ensure that there is implementation, that they are effective and to improve their effectiveness.

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NATIONAL SAFE SCHOOLS FRAMEWORK

At the recent meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) in New Zealand, the Commonwealth and the States and Territories agreed to establish a National Safe Schools Framework to help protect young people from bullying, violence and physical or sexual abuse. The framework will include a set of agreed guiding principles for schools to follow so that every school can have in place a comprehensive set of protocols for providing a safe learning environment and for handling incidents involving bullying, violence or any form of child abuse. This will be underpinned by a range of appropriate strategies for prevention and intervention.

This framework will comprise an agreed set of guiding principles for responding to the incidence of violence and abuse in schools and for appropriate procedures for prevention and intervention. It is likely to be developed by the end of 2002 and endorsed in early 2003.

The framework will require individual schools and Government and non-Government schooling authorities to have policies and procedures in place for responding to incidents of bullying, harassment, violence and abuse. The aim of the framework is to promote a consistent approach to dealing with issues of violence and abuse.

It is proposed that the framework will incorporate the following strategies:

- all schools to have effective intervention policies and procedures in place as an essential feature of sound management
- engagement of the school community in the development of the policies and procedures
- recognition of an education focus for child protection
- harnessing the whole of Government and cross-sectoral approaches to child protection
- empowerment of children and young people to contribute positively towards helping themselves and others involved in incidents
- implementation of professional development programs for principals and school staff and
- support for staff in boarding schools to complete accredited training in residential care.

The framework is to be developed by experts and organisations with an interest in the fields of child abuse, bullying and violence. A process of monitoring and reporting on the implementation and application of the framework is also proposed.

The development of this national framework represents an important step in establishing common national standards for schools similar to those that exist in the UK that cross all sectors.

One of the issues of concern is the view put forward in a few submissions to the Review about the independent schooling sector’s capacity to implement the National Safe Schools Framework and best practice for child protection without additional Government funding to support this undertaking. However, the alternative view that has been put is that such a policy framework is essential for schools to fulfil their obligations to students in their care and their parents in terms of their duty of care and of implementing a comprehensive risk management response.

The adoption of a National Safe Schools Framework would provide an important broad-ranging strategy to improve child protection within schools and is strongly endorsed by this Review.
SCREENING AND MONITORING

Criminal record checks are undertaken of all teachers when they first apply to teach in South Australia. After the first registration, no further criminal records checks are undertaken. The system of police checks was instituted in 1994 and was not made retrospective. Anyone employed prior to 1994 was not required to undergo a criminal records check.

Currently, Student Support Officers, other staff and contractors and volunteers with student contact in State schools are not required to undergo police checks. A similar situation applies to these positions in independent and Catholic schooling sectors, although there is a policy within the independent schools to seek police checks on all staff.

Family Day Care providers are screened by the Department of Education and Children’s Services whereas child-care workers are required to undergo a screening each time they seek employment with a child-care service at a cost that the individual worker is required to meet. There is no transferability of these checks for employment in other child-care centres. Each child-care centre has a memorandum of understanding with police in place to enable such checks to be sought. Baby sitters and staff employed in Out of School Hours Care are not required to undergo screening.

Whilst there is a clear commitment to screening in parts of the system, the current arrangements have created inequities for employees in some service sectors and system difficulties in ensuring that this basic mechanism for ensuring the safety of children is in place. The proposed mechanism for screening and monitoring in Chapter 17 will serve to remove many of the difficulties inherent in current approaches for all personnel working within education and children's services sectors.

TEACHERS’ REGISTRATION

South Australia has had a system of teacher registration in place for some years. This system served as a positive model for the Woods Royal Commission that exposed a number of deficiencies in the NSW education system associated with the absence of formal systems for teacher registration and disciplinary procedures.

The Teachers’ Registration Board, established under section 60 (1) of the Education Act 1972 (SA) has the following functions:

…to establish, maintain and operate a system of registration of teachers with a view to safeguarding the public interest in pre-school, primary and secondary education by ensuring that it is undertaken only by competent persons.

The Teachers’ Registration Board is primarily concerned with professional competence.

A person qualifies for registration if he/she proves to the satisfaction of the Teachers’ Registration Board that he/she:

- is a fit and proper person to be registered under that part of the Act
- holds prescribed qualifications and has had prescribed experience as a teacher or
- has obtained qualifications and has had experience as a teacher, adequate, in the opinion of the Board, for the purpose of registration.
Registration must be renewed every three years and there is an obligation to be registered. Failure to reregister can incur a penalty of $100.00. This part of the Act also gives the power to the Board to delineate what curriculum a teacher can teach or what course of instruction they can provide (s 63). Cancellation of registration may occur if the Board is satisfied that the registered teacher is guilty of any disgraceful or improper conduct (s 65 (2) (b)).

This system was put in place in 1994 and police checks have primarily been carried out on newly qualified teachers and teachers new to working in South Australia. However, the fact that this system is in place can result in some complacency and reduced expectation of the possibility of sexual offending or other forms of abuse occurring in education-related workplaces. The Woods Royal Commission highlighted systemic failures such as failures to take reports seriously, inadequate recording of information on files, breaches in personnel and management practices and failure to institute appropriate disciplinary procedures against individuals alleged to have abused children and young people. Some individuals were provided with positive references provided they resigned from their positions thereby enabling them to obtain employment elsewhere in the same field.

It has been argued that it would be costly to conduct police checks on all teaching staff in South Australia. However, in Chapter 17 the Review has put forward a recommendation about the establishment of a register of unsuitable persons and an overall screening and monitoring process for persons employed in child-related employment. The register is recommended to be established and maintained by SAPOL. Providing the establishment of such a unit, there is no reason why a process for progressively seeking police checks on all teaching, non-teaching and voluntary staff cannot be implemented.

The objectives of the teacher registration provisions are to ensure that only qualified and experienced persons are employed as teachers and to ensure that all persons who are teachers are fit and proper to ensure the safety and wellbeing of children. In other words, the purpose of registration is to protect the public interest in pre-school, primary and secondary education.

**RECOMMENDATION 138**

That pending an Unsuitable Persons Register being set up as recommended in Chapter 17, the Teachers’ Registration Board in consultation with all education sectors, progressively seek relevant police checks through SAPOL on all registered teaching personnel and that these police checks are updated each time renewal of registration is required.

**Reason**

The Teacher Registration Board therefore provides for the review of teachers whose conduct may not be considered illegal but may contravene professional standards for conduct. There is therefore a proper role for the Teacher Registration Board to continue to seek such checks and updates as part of the streamlined process associated with registration.
COORDINATED POLICE CHECKS FOR ALL NON-TEACHING STAFF AND VOLUNTEERS

Whilst teachers are required to undergo a police check as part of their registration by the Teachers’ Registration Board, concern has been raised, in a number of submissions to the Review, about the checking of non-teaching and voluntary staff.

There is no consistent approach adopted across sectors to ensure that non-teaching staff and volunteers undergo police checks. Various submissions also indicated that there are no consistent or appropriate processes in place to ensure that individuals engaged to provide either paid or voluntary services are “fit and proper persons”. The current arrangements are considered most acute for the independent sector where individual schools determine the process of engaging staff and volunteers that often result in the use of inconsistent and variable employment practices.19

Several submissions have indicated that there is a preference for not using police checks or adopting a modified practice for seeking such checks for volunteers.

There are a growing number of young people under the age of 18 years entering TAFE system with the blurring of boundaries between the secondary schooling and TAFE sectors and, with universities now also offering secondary schooling in the final years, there is an urgent need to extend police checks to staff. See the discussion, and Recommendations made in Chapter 17.

PROFESSIONAL SUPPORT IN SCHOOLS FOR CHILDREN AND YOUNG PEOPLE AT RISK

Schools play a significant role in children’s lives and can either work to provide a strongly supportive environment for the child concerned and their family or alternatively further marginalise a child or young person who is at risk.

A number of submissions highlighted that there are inadequate levels of professional support in primary and secondary schooling and children's services sectors for children who have been abused or for young people at risk.

Since the early 1990s there has been a reduced focus on child protection in the Department for Education and Children's Services. There were several teacher positions designated as Child Protection Officers who provided policy development and implementation advice and assistance, support to teachers and school support staff in making mandatory notifications, staff development and training updates on mandatory training and support to schools. Whilst these positions did not include a welfare focus, the loss of this support has had a significant impact on teaching and support staff.

State and other schools are often inadequately equipped to deal with complex family issues, particularly where there may be child protection issues for children that are secondary to mental health or other issues for parents.20 There have been significant advances made in knowledge about how children learn and behave and the significance this has for classroom teaching requiring different practices that respond to children’s different learning styles. There has also been an expansion in knowledge about the impact of abuse on children and their behavioural and learning outcomes. For example, children who have been traumatised are often unable to deal with the normal classroom situation and cannot learn easily the way that other children do.21

19 Submission 110 Association Non-Government Education Employees.
20 Submission 107 Name not for Publication.
Teachers and other education personnel are ill-equipped to understand or manage children who have been abused or neglected in the classroom and have very few specialist resources to assist in the assessment of these children’s educational needs, manage them in the classroom setting appropriately and support achievement of educational outcomes.\(^{22}\)

Whilst the education of teachers involves some coverage of child and adolescent development, it is an area of learning that requires regular updating to reflect the current evidence-based learning to improve teacher knowledge about new understandings in the field of child and adolescent development and how this applies to their teaching practice for children and young people in general as well as the specific needs of children experiencing educational disadvantage arising from many factors including child abuse and neglect.

**SCHOOL COUNSELLORS/SOCIAL WORKERS**

Most secondary schools and large primary schools employ school counsellors. These positions, particularly in secondary schools, provide advice on educationally related issues to children and young people or deal with behavioural management issues primarily in relation to supporting classroom teaching and learning. A narrow pedagogical focus and emphasis on behavioural management may serve to limit comprehensive responses appropriate to supporting children who have been abused in mainstream schooling.

School counsellors, in primary schools, however, do provide wider support to students, teachers and schools by supporting children who are experiencing crises, in conducting mandatory notification training updates, by developing information and other resources that support the pastoral role of schools and teachers and, in some cases, conducting programs for children and families to respond to particular needs. In this context, some school counsellors with the support of school staff have actively sought to make a difference to the lives of children who have experienced severe trauma or child abuse. For example, Gilles Plains Primary School has initiated a number of programs aimed at providing support to children and their families, and offers an excellent model exemplifying a broad and holistic approach to education in connection with children and young people’s welfare. (See Annexure at end of this Chapter).

A number of submissions have commented on the need for more school counsellors and what this role should entail:

> More school counsellors should be allocated throughout every school. More training and education for those teachers in counselling students is necessary and more communication with parents regarding these problems should be relayed to parents to aid parents with problem solving. Teachers cannot be teaching classes as well as counselling students effectively.\(^{23}\)

> Teachers are not trained to see and understand the disturbed behaviour of a child who has been sexually abused. In the interest of children I believe that every school should be serviced with a school counsellor who not only is trained in behaviour management but also deals with teaching protective behaviours. It is a specialist area that requires time, understanding and training.\(^{24}\)

\(^{22}\) Submission 99 Ms Julie Modra.
\(^{23}\) Submission 122 Mr Chris & Mrs Olga Schoneweiss.
\(^{24}\) Submission 197 Ms Effie Anargyros.
There is a great need for specialised personnel in schools to detect and deal with children at risk. Teachers should be in the classroom to teach but instead they are spending too much time sorting out or trying to deal with behaviour problems and social issues. That is not the teachers’ role. This is why children come out of our school system totally illiterate. Children need to have school counsellors that they will feel comfortable to turn to and discuss their problems and, as stated before, the problems can be further investigated and dealt with.25

The availability of school counsellor positions in schools depends on school size with additional time allocated for factors related to disadvantage. A number of schools do not have school counsellor positions nor do they have access to school counsellor time. Students and teachers in those schools miss out on the benefits of the availability of this position in terms of the support provided for managing children with challenging issues such as child protection.

The Education Department has developed a comprehensive behavioural management strategy to support teachers and classroom teaching and support students whose behaviour is challenging. Children with highly disruptive behaviours may be eligible to receive a specialised 10 week program at special behaviour management services. This program has places for up to 400 students a year and children and young people are assessed for their suitability for entry into such programs. However, there are no long-term options available for children and young people with difficult behaviours and complex needs. For children who have been abused, this strategy is not designed to meet their more complex needs nor is it designed to provide wider support to these children and their families.

The Education Department also employs approximately 10 social workers for 108,000 students across the State. These social workers are attached to district administrative centres that serve schools falling within the centre’s catchment area. The role of these social workers is to primarily provide broad support for teachers in schools through training and development, supporting broad initiatives focusing on whole school change and skilling teachers to support these changes within schools. They may provide social work support in emergency situations to schools. Their numbers are clearly not sufficient to provide social work support for individual students.

Whilst the role of these social workers in providing broad support to teachers is acknowledged as being appropriate given their numbers, there is clearly a need to expand the number of social workers employed within the education system to provide higher levels of social work support and a more tailored response in child protection.

There were a number of submissions which highlighted the need for additional social workers to be employed within the Department of Education and Children’s Services.

Locating a professional such as a social worker in primary school settings may enable information sharing and productive intervention between school, Family Court, and mental health services over a common issue of concern with a particular child. For instance, a child whose mother has a diagnosed mental illness may be the focus of Family Court proceedings with an estranged father seeking residency on the grounds that the mother cannot look after him. Allegations of abuse are frequently made by both parents against each other in such scenarios. The child’s behaviour at school may show disturbance. His mother may be seeking help to deal with this behaviour, recognising that it is linked to her recent absences for in-patient treatment, changes of care and home circumstances. State schools are generally inadequately equipped to deal with these sorts of complex family issues.26

That consideration be given to the deployment of social workers in child care, kindergarten and school settings.27

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25 Ibid
26 Submission 107 Name not for Publication.
27 Submission 126 Helen Mayo House.
Social workers could also play a role in supporting school counsellors and individual teachers who are making a mandatory notification to ensure that their concerns are conveyed appropriately to CARL and in supporting schools in dealing with child protection issues where it may be a significant issue for a particular school. They could also act as the point of liaison between FAYS and schools on individual children and young people who are either under the Guardianship of the Minister or who are the subject of a current protective concern.

**RECOMMENDATION 139**

That DECS review the role of school counsellors to provide greater clarity on their child protection and pastoral roles in schools, with particular regard to:

- educational welfare support to students and their families
- advice to the school and staff on child protection and children in need
- support for staff training and development on students’ family environments, social and welfare needs and their connection with educational attainment, especially as this relates to child protection and
- support for the development of whole school/community approaches to the prevention of child abuse and neglect.

That School counsellors, where these positions are available in schools, be designated as school child protection officers for the purposes of responding to a child at the time of disclosure. Part of their role would include working with FAYS and other agencies in the child protection network and supporting case management plans. In the absence of a school counsellor, such role to be performed by another designated person within the school.

That where schools do not have a school counsellor position due to school student numbers or low risk, DECS develop a plan to provide accessible school counsellor support to these schools.

**Reason**

Schools counsellors have a capacity to provide a number of services relevant to child protection and training of other staff. Teachers and children’s service providers struggle with fully understanding the role of FAYS and the tier system classification when a notification is made to FAYS. Improving the knowledge and skills and expanding the role of school counsellors in child protection will assist in improving role clarification for teachers and other education personnel as well as improving building cooperative relationships with FAYS in supporting children in need and children for whom there are protective concerns.

It is acknowledged that there are financial limitations to the provision of school counsellor positions to all schools. Other options for the provision of this service and support to schools should be explored by DECS to ensure students and teachers in some schools do not miss out.
RECOMMENDATION 140

That non-Government schools investigate the feasibility of establishing school counsellor positions to provide child protection advice and support to children and their families, school personnel and whole school community.

Reason

Non-Government schools have an obligation to protect the welfare and safety of children in their care and respond to their protective needs. Presumptions cannot be made about the child protection needs of their school populations. Establishing school counsellor positions provides students with improved opportunity to disclose abuse, appropriate support within the school community and their family and improved liaison with FAYS to protect these children. The establishment of these positions also serves the wider public interest of children and their rights to protective services in non-Government schools.

RECOMMENDATION 141

That the DECS consider the expansion of the numbers of social workers employed within the department on a regional basis rather than on an individual school basis to provide a social work service and liaison and support role in case management with FAYS, CAMHS, other relevant services and DECS/schools focused on the needs of children and young people at high risk or with protective concerns.

Reason

Many, though not all, children and young people who are subject to child protection concerns require significant support within their school to promote their integration in the school community and their opportunities for learning and educational attainment. This may both be provided in a cost efficient way through regional based social workers.

GUIDANCE OFFICERS

DECS also employs a small number of guidance officers whose role is to provide support to children with high needs and particularly in relation to school truancy. The small number of guidance officers has meant that the capacity to provide students with adequate support has diminished.

Other models of support are also being trialed in South Australia. A few secondary schools have joint initiatives involving the employment of a youth worker to provide support to adolescents at risk. This initiative has great merit but requires significant development and support by FAYS, DECS and community organisations involved to deal with the different roles and responses provided by youth workers in formal education settings.
There has been recommendation made in Chapter 7 on the development of improved case management of children and young people with protective concerns. The provision of social work support in schools and children's services will provide a basis for improved case management of children and young people across FAYS and DECS, removing barriers and establishing an improved capacity to work together.

**PASTORAL CARE**

Pastoral care is a broader concept of care emerging in the United Kingdom and Northern Ireland which focuses on whole school community needs and the roles and responsibilities of schools to support all children as well as ensure appropriate policies and practices for responding to child protection. For example, all schools are expected to comply with the UK Department of Education’s directive on pastoral care with such compliance monitored through the Education and Training Inspectorate.

Features of schools with high quality pastoral care policies and programs include:

- a whole school policy for pastoral care/child protection to which staff contribute
- additional policies and procedures within the pastoral care policy on areas such as anti-bullying, discipline, screening and dealing with complaints
- screening of all teachers, student support, non-teaching and voluntary staff, including parent helpers, who have contact with students
- appointed designated personnel who play a leadership role on pastoral care/child protection and demonstrate good understanding of their roles and responsibilities
- all staff members receive appropriate training
- all members of the School Boards attend training in pastoral care and child protection
- parents are informed and aware of school procedures for pastoral care/child protection
- systems for dealing with complaints are well documented and open to all and outcomes of investigations are agreed by parties involved
- links are developed with Child Protection agencies
- programs on personal and social development are introduced that helped children to become aware of their personal safety and wellbeing
- there are established links with agencies concerned with the wellbeing of children and
- there is involvement of parents in the production of Child Protection policies and procedures.

The example demonstrated in the Gilles Plains High School is one example of this community's focus.
RECOMMENDATION 142

That DECS, schools and children’s services work with FAYS and other service providers, identify and develop whole school community approaches to child abuse and neglect where there is evidence of high levels of child protection concerns. Such approaches may include, developing the school as a child and parenting centre offering a range of programs and services from the school site in partnership with parents and other local services such as:

- playgroups
- parenting education
- establishing after school care program and
- life skills programs.

Reason

Collaborative community development around the use of schools and school facilities is an ideal way of developing pastoral care in school in South Australia.

RESPONDING TO CHILD ABUSE AND NEGLECT

There was significant concern expressed in a number of submissions about the disillusionment felt by teachers, child care workers and other related education personnel about the lack of support provided by FAYS to support children and families when mandatory notifications are made about child protection concerns. There is clearly a role for FAYS to improve its liaison and support for children in schools, as well as an equivalent need for a mirror infrastructure of support within DECS to ensure that liaison with FAYS can be conducted on a regular basis and that there is support for teaching and education support staff as well as children’s services workers.

Both DECS and FAYS have reached a situation of systems impasse where there are not enough resources to facilitate working together to best meet the needs of children who have protective concerns or who are in alternative care or have a host of other problems. The current situation also means that there is a continuing strong perception by both FAYS’ workers and teachers and children’s services’ workers that they are required to take on responsibility for these children without adequate support from the other. Joined-up support and action for children with protective or special needs requires appropriate infrastructure and changes in practices and cannot just be seen as the sole responsibility of either FAYS or DECS. Child protection is an area where there cannot be a line drawn in the sand between different services to demarcate their different roles and responsibilities in an absolute way. There needs to be a focus on working together with an emphasis on the child and the rights of the child and mutual recognition that there may be some blurring of roles and responsibilities.
EXTRA FAMILIAL SEXUAL ABUSE BETWEEN MINORS

Two areas of serious concerns raised in submissions are:

- the schools’ responses to sexualised behaviours between students that are outside the normal developmental sexual behaviours where the offender is a minor
- FAYS’ responses to notifications of sexualised behaviours.

In one submission, it was noted that FAYS, through CARL, did not consider the inappropriate sexualised behaviour that took place in a school as a child protection concern warranting further investigation. The school itself was not prepared to intervene. Given the relationship between child abuse and sexualised behaviours, this failure to appropriately respond creates frustration and significant community concern about the level of knowledge and understanding about child protection among FAYS, teaching and school personnel across all education sectors, and the risks to other children as well as the risk to the child, who has inappropriate sexualised behaviours, of not receiving early treatment.

One of the issues of concern to Government secondary schools is the complexity of dealing with allegations of sexual offence by a student against another student. This situation requires the school to keep both students at school until interviewed by police. The difficulty of the situation is further compounded by the fact that each student has a right to continue attending the school until such time as a student is charged with an offence. Within the Government schooling system, both victim and offender have equal rights to continue their schooling at the same school. If the offender is acquitted of the charge they have the right to return to the school. In this context, it is difficult to provide appropriate support to the victim and the victim is often forced to leave the school and attend another at additional cost, losing the supportive environment of long-established friendships, peers and relationships with teaching personnel.

DECS has noted that there is a perception that student-to-student sexual abuse is increasing and that some schools may deal with it using internal procedures rather than reporting such abuse to FAYS and police. DECS has developed a set of three draft documents entitled *Guidelines for an Education Response to Sexual Abuse and Sexual Harassment*.

The three documents that form the basis of these guidelines are:

- Responding to sexual harassment or sexual abuse by a child less than 10 years against a child of any age in a school or children's service
- Responding to sexual abuse and sexual harassment by children 10 years and older against children of any age
- Children’s sexual behaviours from age 0-10 years

The latter provides information about the normal sexual behaviours of young children.

These guidelines require further development in consultation with experts but they nevertheless highlight the importance of educational organisations taking immediate action following all reported or observed incidents of sexual abuse by reporting to FAYS.
It has been a policy of FAYS not to involve itself in incidents of violence involving extra-familial sexual abuse between minors. It is noted that FAYS may, however, be involved if a child has committed a criminal offence and they are remanded to appear before the Youth Court. FAYS will also continue to be involved if the child is convicted and detained and it will often continue to be involved on the child’s release from youth detention. The Review considers that this policy distinction by FAYS to exclude responding to abuse perpetrated by minors against minors on the grounds that it is extra-familial, does not help the victim or the offender nor does it support SAPOL and DECS in dealing with such offences in the short term. It seriously ignores the evidence on the development of patterns of sexual offending in adolescents against other children, the need to enter these children into appropriate treatment programs as early as possible to minimise future re-offending and protection of children in the long term.

Anecdotal evidence was given to the Review about violent offences perpetrated by a child or young person against another child at the same school and the genuine conflicts and difficulties these acts raised in relation to:

- The need of the school to remove the child perpetrator from the school site but for police requiring the schools to not contaminate evidence by removing the child prior to interview.
- The legal rights of both children to continue to attend the same school until the child is remanded and the impact this has on the victim and their family as well as other students.
- The entitlement of a child to return to school once they served their sentence. Given the behaviour and high risk to other students, there is concern about safety of other students as well as the need to provide appropriate support to the child concerned to prevent re-offending.

The provisions under the Education Act 1972 (SA) place a greater obligation on State schools to provide education to all children. Non-Government schools do not have this obligation and therefore have greater power to exclude a child. The issues faced by the Department of Education and Children’s Services when a child perpetrates a violent act against another child requires a model protocol to be developed between SAPOL, DECS, FAYS, DPP and the Youth Court to promote appropriate and expeditious management that balances the needs of investigation and prosecution with the rights of the victim and their family not to suffer systems abuse. The involvement of the Youth Court is proposed because of its powers to make a variety of orders, including community service orders, which may involve the schooling sector.

There are no alternative long-term educational service options available in the schooling system for children who are at high risk of perpetrating violence towards other children outside mainstream schooling services. This situation creates a significant dilemma for the placement of these children for DECS given the broader duty of care to ensure the safety and protection of all children in the public schooling sector and in children’s services. These children need to attend a normalised school environment but within a specialised school that is able to provide ongoing structure and support to the child and deal with violent behaviours and facilitate their access to other services. These children often need long-term support and assessment prior to re-entry into mainstream schooling. One of the problems is that it is unclear how many students there are with dangerous behaviours who would benefit from a specialised school environment. Data needs to be collected on the number of children with high needs to ensure adequate resources are made available to these children.
The following recommendations are made with respect to sexual behaviour and violent student behaviour in schools.

**RECOMMENDATION 143**

That DECS in collaboration with SAPOL, FAYS, DPP and the non-government school sector, establish a policy concerning student offenders and student victims and consider any legislative modification to the *Education Act 1972 (SA)* which may be required.

Further, that a model protocol be developed to promote appropriate and expeditious management which balances the needs of investigation and prosecution with the rights of the victim and their family not to suffer systems abuse.

**Reason**

This issue is a highly sensitive policy issue that requires resolution involving services with a clear understanding of children’s rights, and the rights of victims and offenders as well as the need to provide a safe and secure environment for all students. Amendments to the *Education Act 1972* may also be required to effectively support the policy position that is to be adopted.

**RESPONDING TO ALLEGATIONS OF ABUSE WITHIN THE GOVERNMENT EDUCATION SECTOR**

The *Education Act 1972 (SA)* contains provisions related to “Disciplinary action” in Part 3 Division 5 sections 26 and 27. This Act only applies to an “officer”, which is defined in section 3 as a “teacher”. The Act does not apply to a range of staff employed in the Department of Education and Children’s Services in capacities other than teachers such as, administrative staff, school services officers, child care workers, lecturers, advisers, early childhood workers, contractors, ancillary staff and volunteers in schools, regardless of whether or not they have teaching qualifications. Thus, disciplinary processes provided for in the Act are inapplicable to this group of employees and workers.

Guidelines are issued by the Department of Education, Training and Employment in sections 2, paragraph 76 of the *Administrative Instructions and Guidelines (Schooling Sector)*, which purport to give procedural flesh to the bare bones of disciplinary process contained in the Act.

In addition section 3 paragraph 87 of the *Administrative Instructions and Guidelines (Schooling Sector)* purport to set guidelines out under the heading “Investigation of allegations of child abuse against employees or volunteers”. The guidelines indicate the manner in which the terms “employees” and “volunteers’ are used, which in general terms seem to describe a range of non-teaching staff and volunteers. The interesting aspect of these guidelines is that they refer to a process of “internal investigation” in relation to allegations of child abuse and state:

*The internal investigation should determine whether or not there has been disgraceful or improper conduct by the accused, as specified under Section 26 of the Education Act or other relevant legislation or award. The internal investigation should be conducted in accordance with procedures set out in Section 2 paragraph 76, or other relevant guidelines.*
However, section 26 of the *Education Act 1972* could never apply to this group of persons. There appears to be no statutory base for such an approach and this Review did not have any information about whether there are contractual agreements with the non-teaching staff and volunteers which could support this process.

The *Public Sector Management Act 1995 (SA)* would appear to be applicable to “employees” in the DECS sector who are not teachers, but this Act does not cover volunteers. There are specific sections in the *Public Sector Management Act 1995 (SA)* which relate to inquiries and disciplinary actions in relation to employees. Division 8, section 58 enables the Chief Executive to hold an “inquiry” to determine whether an employee is liable to disciplinary action. The Act does not refer to the process or nature of any inquiry, but does contain provisions related to the rights of an employee affected by an inquiry. Section 58 (5) of the Act also empowers the Chief Executive to take certain action if he/she is satisfied that on the balance of probabilities the employee is liable to “disciplinary action” which in turn is described in section 57 of the Act.

It is to be noted that the description of “disciplinary action” differs between section 26 of the *Education Act 1972* (SA) and section 57 of the *Public Sector Management Act 1995 (SA)*. Further that the powers of the Director-General under sections 26 and 27 of the *Education Act 1972 (SA)* differs from the powers of the Chief Executive under section 58 (5) of the *Public Sector Management Act 1995*. It is probable that the more specific *Education Act 1972* (SA) would legally apply to teachers rather than the more general *Public Sector Management Act 1995*.

With regard to employees of DECS who are not teachers, it would appear that the *Public Sector Management Act 1995* would govern their situation and not section 26 of the *Education Act 1972* (SA) as suggested in the Administrative Instructions and Guidelines (Schooling Sector). Clarity on this issue as well as the situation in respect of volunteers as well as contractors, is a matter which requires urgent consideration by DECS.

Turning now to the situation of teachers and disciplinary action, if an allegation is made for example by a child about abuse by a teacher, or an allegation of child abuse by a teacher is made by another (such as a parent, employee or volunteer), then the disciplinary proceedings for teachers as described through a combination of sections 26 and 27 of the *Education Act 1972* (SA) and section 2 paragraph 76 of the Administrative Instructions and Guidelines (Schooling Sector) apply. These disciplinary proceedings include the following features:

- On receipt of a complaint against the teacher which may lead to possible action under section 26 of the *Education Act 1972* (SA), the principal of the school “must decide initially whether a complaint against a teacher warrants investigation and possible proceedings under section 26 of the Act or whether it is of such a minor nature that it may appropriately be dealt with at the school level.”
- The principal “will also need to consider at this time whether it is desirable or mandatory that the matter be reported to the police or to another authority (e.g. Office for Family and Youth Services). Advice may be sought from the Special Investigations Unit.” (emphasis added). Later in the same document it is stated that the principal “should in consultation with the Special Investigations Unit” (emphasis added) determine whether the complaint is potentially of a criminal nature and whether a report to SAPOL is required.
- The Special Investigations Unit exists within the Human Resources Group of DECS and consists of a small team of people, which according to its Information Sheet “is the central coordination point for dealing with serious complaints of misconduct although some cases may be resolved at the local level.”

28 Section 2 Administrative Instructions and Guidelines (Schooling Sector).
Where action under section 26 of the Act is contemplated, “the Executive Director, Human Resources through the Special Investigations Unit will refer the matter to the Crown Solicitor for consideration. Where appropriate the Crown Solicitor will assign a Government Investigations Officer to investigate the allegations. In some instances it will be appropriate to await the outcome of investigations by other Government authorities. The Crown Solicitor will advise the Chief Executive.”

“If the Chief Executive suspects that there may be sufficient cause for disciplinary action, he/she may write to the teacher outlining the allegations in terms of section 26 of the Education Act and invite the teacher to respond…” (emphasis added)

“Once the Chief Executive is satisfied that there is sufficient material to decide the matter a determination will be made pursuant to section 26 of the Act…and the teacher will be advised of his/her right of appeal.”

There is also a process referred to in the Administrative Instructions and Guidelines (Schooling Sector) as a “Formal Interview” and this Review understands that this process is not used in practice.

Section 26 (4) provides for an appeal process to the Teachers Appeal Board in relation to any determination or decision, the constitution of which includes a member of the South Australian Industrial Court.

In considering the overall disciplinary process in relation to teachers, the following matters are important to note:

- The decision as to whether an allegation of abuse is appropriately to be dealt with at the school level, or whether it is a matter which should either be reported to SAPOL or FAYS, resides with the principal.
- There appears to be contradictory wording as to whether the principal, in making that decision, is required to consult with the Special Investigations Unit or whether the principal may choose not to obtain advice or consult with the Unit, even if the allegation is a serious matter. The Information Sheet of the Unit lends support to an interpretation that whether or not a principal communicated with the Unit is a matter within the discretion of the principal.
- In spite of section 26 of the Education Act 1972 (SA) referring to disciplinary action and the Administrative Instructions and Guidelines (Schooling Sector) referring to “Procedures for dealing with Disciplinary matters”, neither the Act nor the guidelines describe any investigatory process. The only reference to any investigative process is if the Special Investigations Unit refers the matter to the Crown Solicitor, who may then assign a Government Investigations Officer to “investigate the allegations”. No process of investigation is set out.
- The net result of this process is that one of the most critical decisions is made by the principal as to how allegations are dealt with and there may be no consultation with the Special Investigations Unit, which is designed to be an independent mechanism in the process. There is also no process for investigation set out in the guidelines.
- It is possible for a complaint to be made to the Ombudsman as to the process by which a disciplinary action is taken, or not taken, as the case may be.

Whilst this process involves a number of potential independent elements and may arguably be satisfactory from the point of view of DECS and teachers, there do not appear to be appropriate safeguards to ensure that an independent and transparent process is necessarily involved from the perspective of the alleged victim of child abuse or family.
RECOMMENDATION 144

That DECS in conjunction with FAYS, SAPOL, Crown Law Department and the proposed Commissioner for Children and Young Persons review:

- the legislation including Part 3 Division 5 of the Education Act 1972 (SA) and Division 8 of the Public Sector Management Act 1995 (SA)
- the Administrative Instructions and Guidelines (Schooling Sector) and any other relevant guidelines
- whether there are appropriate, articulated and enforceable provisions for investigations and/or disciplinary procedures which cover allegations of child abuse made against teaching and non-teaching staff including volunteers and contractors in the Government education sector.

That in addition, the provisions ensure that there is an independent process involved at the point of decision as to whether the matter requires any investigation, either local investigation or reporting to SAPOL, or mandatory reporting to FAYS.

That guidelines be developed which clearly identify the pathway to be taken at each level depending on whether the allegations amount to a criminal offence and whether it is a matter which should be subject of a mandatory notification to FAYS, or both.

Reason

It is important that the process of investigation of child abuse allegations in relation to teachers and non-teaching staff, volunteers and contractors working with children and young people within the Government education sector is clear, independent and accountable. See also the discussion on screening and monitoring in Chapter 17.

RESPONDING TO ALLEGATIONS OF ABUSE WITHIN THE NON-GOVERNMENT EDUCATION SECTOR

Non-Government schools are generally separate entities that must be registered under the Education Act 1972 (SA) by the Non-Government Schools Registration Board, a statutory body administered by the Department of Education and Children's Services. Each school is required to have a governing authority that oversees and ensures the proper administration and management of the non-Government school. Registration involves the production of adequate documented evidence in accordance with the Review Guidelines. Through the governing authority, the principal is responsible for student safety, health and wellbeing, human resource management and recruitment of staff, including teachers, school support staff, volunteers, tutors, caretakers, grounds staff and other personnel.

Varying procedures for investigation of complaints of alleged child abuse occur across the three non-Government schooling sectors.
The Association of Independent Schools of South Australia\(^{30}\) has developed a Student Protection Kit (2002) based on EPCAT guidelines to provide guidance on the development of child protection policy and procedures within member schools. Where there is an allegation of child abuse, these guidelines refer to the following actions:

- A mandated notification to FAYS and subsequent discussion with FAYS about appropriate action in relation to the child, other people associated with the child and the alleged perpetrator.
- Undertaking a risk assessment in order to determine further action.
- Options for responding to the allegation i.e. suspension of the employee on full pay subject to further investigation.
- Investigative process to be conducted in accordance with ‘natural justice’ principles.
- Subject to the outcome of such an investigative process, dismissal of the employee may occur if there is a finding of inappropriate behaviour or misconduct.

Though this Student Protection Kit provides valuable and detailed guidance, the procedures that may be adopted are subject to the principal’s assessment of the allegation. Apart from advice to the mandated notifier as to whether the abuse is substantiated or not, the guidelines also presume that FAYS is in a position to provide advice to the principal on subsequent investigation procedures.

In the Association of Independent Schools of South Australia, the same situation applies to that which exists in the Government schooling sector, as that, there are no appropriate safeguards to ensure that an independent and transparent process is involved from the perspective of the alleged victim of child abuse or their family. There is no investigative procedure clearly outlined nor is it independent. There is also a greater likelihood that there will be variations in approach being adopted given the diversity and autonomy of schools within the non-Government schooling sector and subsequent extent to which policy guidelines and procedures may be adopted.

The Catholic Church of Australia has issued a document entitled *Towards Healing: Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church of Australia* 2000. This document sets out the principles and procedures to be used by the Catholic Church of Australia in responding to complaints of abuse made against personnel of the Catholic Church. This document was first published in December 1996 and was recently revised in December 2000.

The document is admirable in its expression, in both the introduction and Part One, of the principles for dealing with complaints of abuse and reflecting the emotional responses of victims and the need for healing and assistance to other persons affected.

The document sets out the pathway for the processing of complaints which include the role of a Director of Professional Standards and appointment of assessors who undertake an assessment and make findings. There is also provision for a review process to an independent Reviewer. Therefore the process incorporates an independent and transparent process. By reason of the recency of the implementation of this document, its effectiveness is yet to be ascertained.

\(^{30}\) Provided as an attachment to Submission 132 Association of Independent Schools of SA.
One matter, which may require further consideration in relation to child protection, is whether the Catholic Church of Australia's guidelines sufficiently recognise the special concerns if the alleged victim is a child and whether it is envisaged that the child should be seen as the “complainant” or whether that person is a parent or a caregiver. This becomes particularly relevant in relation to sections 37.1, 37.2, 37.4 and 39.4 in respect of the role/obligation of the Church in a situation where “the complainant has not chosen to report the matter to the police” and whether it becomes a matter for the Church.

One submission was critical of formal investigations and expressed the following:

Parents who have found that their children were the object of investigations have found the process of investigation contributes to the trauma. In particular, formal investigations have left parents outside the system and without adequate information and support. As well, the process of investigation does not deal adequately with the need of family and those initiating investigations to maintain relationships with children suspected of abuse. This secrecy and separation of interests is unrealistic and can be a callous disregard for the impact of the abuse on those who have care of the child. While this may be the result of limited resources or procedural restrictions, it has a very damaging impact on the confidence of people who find themselves drawn into what will inevitably be a distressing process.31

To the extent that this is a current concern under the existing principles and procedures, this matter may be considered by the Church.

There are therefore deficiencies in the overall non-Government schooling sector which require some common best practice responses which are consistent across the Government education sector.

**RECOMMENDATION 145**

That representatives of non-Government education sectors including Independent Schools, Catholic Schools in conjunction with representatives of the Government education sector, FAYS, SAPOL and the proposed Commissioner for Children and Young Persons, develop guidelines which set out minimum standards to be applied across the schooling sector in relation to allegations of child sexual abuse by employees and volunteers.

Such guidelines to be in keeping with the processes undertaken in the Government schooling sectors and should include an independent process both within employer organisations as well as an external independent process. The guidelines should clearly articulate the interaction with FAYS and SAPOL and the processes to be followed in relation to notification and reporting.

**Reason**

It is important for the non-Government education sector to have similar processes to that of the Government education sector. These guidelines should provide essential minimum processes to be applied across the non-Government education sector. They should permit variability as to the manner of their delivery to take account of individual organisational needs. It would be ideal if agreement could be reached as to external appeal/review bodies to be used by all.

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31 Submission 147 Federation of Parents and Friends Associations of Catholic Schools in South Australia Inc.
CHILDREN UNDER THE GUARDIANSHIP OF THE MINISTER

Schools and Children’s Services play a significant role in children’s lives but they may even play a greater role in the lives of children who have been subject to child protection concerns or placed under the Guardianship of the Minister. Schools and Children’s Services play a role not only as a resource for supporting children’s progress educationally but also for providing emotional support and self-esteem and developing positive relationships with peers and adults (See also Chapter 12).

EDUCATION NEEDS OF CHILDREN WHO ARE IN OUT OF HOME CARE AND CHILDREN AT RISK

The educational attainment of children in care is increasingly becoming a major focus for Governments around the world. In July 2001, the UK Social Exclusion Unit initiated a project to investigate the educational attainment of these young people because of their greater likelihood of becoming socially excluded compared with young people from most other backgrounds. It acknowledged that:

While low educational attainment is not the only problem many children in care face,…it is one of the most significant. While low attainment is in part a symptom of the disadvantaged circumstances of many children in care, it is also an important cause of the social exclusion suffered by so many care leavers in later life.

There is evidence that children under the Guardianship of the Minister may experience particular educational disadvantage. This educational disadvantage can be the result of a number of factors including: separation from peer friendships; poor school attendance; the physiological, emotional and social impact of their experience of abuse and neglect on their personal development and health and wellbeing. Children in need under the Guardianship of the Minister require special assessment and measures to support achievement of optimal educational outcomes. There is no South Australian data on the educational outcomes of children who have needed protection or for those children and young people placed in alternative care and particularly those who have left care.

More recently, the NSW Parliament Committee on Children and Young People has established an inquiry that is dealing with issues in the education of children in out-of-home care with the following terms of reference:

1. Identify the major issues and barriers related to the education and training of children and young people living in out of home care.
2. Advise on ways to monitor the education progress and outcomes of children and young people living in out of home care.
3. Identify and advise on good practices and effective strategies for enhancing the education performance and outcomes of children and young people in out of home care.

The NSW Parliament Committee on Children and Young People recently released a report entitled Voices: The Education Experiences of Children and Young people in Out-of-home Care which highlights the experiences of people who have been in alternative care and provides both positive and negative personal accounts of how they have struggled to gain an education and how they could have been better supported by welfare and education authorities.

The recently released report by the Child and Family Welfare Association of Australia (CAFWAA) entitled A Time to Invest noted that:

Children and young people in State care are up to two years behind their peers in educational achievement.
Also cited within the CAFWAA report are the key findings of the Report Card on Education of Children and Young People in Care released by the CREATE Foundation which is the national consumer organisation of 20,000 children and young people in care. This report informed the NSW Government’s inquiry into educational issues for children in out-of-home care.

The CAFWAA report cited a number of different initiatives that together provide a comprehensive basis for supporting and knowing how children in care are progressing educationally:

- a unit established within the education authority that focuses on supporting children and young people in care (New South Wales)
- information systems in place to track educational achievement of children and young people in care (Queensland)
- provision of ongoing higher education scholarships for young people in care (Western Australia) and
- data on psychological and intellectual assessments (South Australia).

One of the issues that needs to be examined closely in looking at the education performance of children in care is the number of children in care with mental, intellectual and physical disabilities that may adversely impact on their educational achievement and whether those children are receiving additional educational supports to assist them to achieve optimum outcomes. Whilst a comparison based on the basic skills tests between the educational achievement of children in care and those not in care is useful, it is not sufficient for the reason that children in care do not necessarily represent or reflect a normal population distribution. Many of these children have been damaged physically and emotionally.

Assessing and monitoring the educational achievement of children and young people in care is an important indicator of quality of care for these children and it is equally important to compare the performance and outcomes for children in care as they progress educationally.

There have also been initiatives undertaken in some jurisdictions to improve the role of the school in supporting children in care. For example, some school systems in the USA offer special “foster care workshops” and advocacy groups that provide foster parents with up to date information on new special education rules, and other school districts work with their local child welfare officials to identify children who are in foster care, assess their educational progress, and provide effective support systems.

One of the issues raised in submissions has been the concern that children who have been or are still under State care may be at risk of school exclusion or suspensions at greater rate than children in the general population attending schools. Many of these children may have behavioural problems often arising from trauma or loss of cognitive function that result in school exclusion or suspension. UK research indicates that children in public care are two and half times more likely to be excluded from school. Further, that 63% of children “looked after” left care at 16 or above with no qualifications.

The majority of ‘looked after children’ leave care with no educational qualifications and are at great risk of falling into unemployment, homelessness, crime and prostitution.

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37 Secretary of State for Health, Modernising Social Services – Promoting independence, Improving protection, Raising standards, The Stationary Office, 1998 UK
Although Australia compares favourably with other developed countries in key competency areas ‘such as literacy and numeracy’, there is continuing concern about ‘children at risk’ or vulnerable in the education system who need to be more carefully monitored. Examples include children who enter State care, children and young people who leave school early and those who enter the workforce on leaving school.

Although information is collected, there is no South Australian database maintained on the educational outcomes for those children and young people who have required protection, been placed in alternative care and particularly those who have left care.

Educational achievement remains one of the most important means of attenuating short to medium term and life-long risks associated with needing protection or requiring placement in alternative care. These risks include homelessness, unemployment, early pregnancy or crime. In meeting young people who are members of CREATE, it was clear that many children and young people who have been under the Guardianship of the Minister can be and have been successful educationally. This outcome has often been the result of the individual spirit of the young people concerned and/or fortunate care by a foster carer who values education. Monitoring the educational outcomes of these children and young people is critical for knowing whether the quality of educational and other support being provided to them is appropriate and for assessing what kind of additional effort may be required.

There is little formal recognition of the level of educational support required for children in care and only a very few submissions, primarily from parents, foster carers and young people who have been in alternative care, highlighted this as an issue. Children in care also often have fewer chances of accessing the range of social and educational experiences that other children in the community may experience. These social and educational experiences include both formal (such as learning a musical instrument, dance, undertaking a sporting activity) and informal (such as play groups, kindergym, maintaining friendships through social activities, etc).

Children under the Guardianship of the Minister need individual education plans. Education plans represent a long-term commitment to supporting the educational success of the child and have been in place in other States. Such a plan would be lead by FAYS in consultation with school personnel, parents or guardian including foster carers, the child or young person and any other relevant individuals. Education plans also need to take into account children’s feelings, perceptions and experiences of school so that their education plans reflect these views and enhance their opportunities to succeed educationally.

Currently, children with particular educational needs may also have a negotiated curriculum plan developed between parents or guardians, the child and teaching personnel at a school. Negotiated curriculum plans provide for special additional measures for a child in recognition of their education needs within a school. Additional funding is provided to meet the costs for these plans. Although it is highly likely that many children under the Guardianship of the Minister may receive a negotiated curriculum plan for reasons of disability or other needs, there is no clear process for this to occur regularly nor is there formal recognition that they should receive a negotiated curriculum plan due to their care status.

For children with a disability who have been subject to child abuse or neglect, education and negotiated curriculum plans are particularly important to ensure that these children and young people receive additional support to promote their educational potential and wellbeing.

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38 Submission 167 Create Foundation.
RECOMMENDATION 146

That all children under the Guardianship of the Minister have a negotiated curriculum plan throughout their schooling involving all key service providers as well as other key people in the child’s life such as foster parents using the same mechanism as for children with special needs.

That education plans be developed for all children who have been placed in alternative care for six months or more and that these plans be regularly monitored and updated by FAYS in consultation with school personnel, parents or guardians including foster carers and the child or young person. Such plans to include both formal and informal educational opportunities based on the child’s or young person’s interests and needs.

That DECS and the DHS/FAYS collaborate to develop an agreed performance reporting framework on the educational outcomes for children who have been in out-of-home care for a significant time.

That DECS review any policies dealing with suspension and exclusion from schools to take special account of children who have been or are in alternative care.

That any policies in relation to suspension and exclusion be used as an absolute last resort and only after other support measures such as counselling, additional classroom support for the child or young person, and family and child conferencing involving other key service providers have been put in place.

That school exclusions or suspensions involving children in alternative care be reported to FAYS and the alternative care provider.

Reason

This bracket of recommendations specifically seeks to improve the circumstances for children under the Guardianship of the Minister and/or in alternative care.

The research indicates that children in alternate care are significantly at risk of early school leaving and lower educational outcomes. The disadvantage experienced by children in alternate care arises from their social situation rather than from a physical or intellectual or other condition. It may be the case that significant resources may not be required for some children or young people whereas others will require more. The important issue underlying these recommendations is to provide some level of additional support to promote equitable educational outcomes for children under the care of the Minister and/or in alternate care given what is known about their educational outcomes as a population sub-group.
ATTENDANCE AT SCHOOL BY STUDENTS

The issue of responsibility for attendance issues has been raised in a number of submissions specifically highlighting the overlapping responsibilities of DECS, SAPOL and FAYS in this area.

For example, section 79 of the Education Act 1972 (SA) specifies that authorised officers must take all practicable action to ensure attendance at school by children of compulsory school age. Section 80 outlines authorised officers which include: any member of the police force, any person authorised in writing by the Director-General of Community Welfare or the Director-General of Education to exercise the powers of an authorised officer under the Act. Under this section, authorised officers who observe any child who appears to be of compulsory age in any public place at a time when the child should be normally attending school, may ask the child (or their accompanying adult) the child’s name, address, age and reason for non-attendance at school. A police officer may return the child to their parent or guardian or to someone in authority at the child’s school. FAYS also has responsibilities in this area – as pointed out by one submission:

Education can be an important factor that identifies a child is at risk. It may be in some cases the only indication. A school noticing that a child fails to attend school on a regular basis may identify that the child is suffering some form of abuse at home. The Act specifies that if a child is “persistently absent (from school) without a satisfactory explanation” then the child is at risk. FAYS needs to play a more active role in this area. It should investigate truancy more vigorously. It may be that it needs to establish better protocols with the Education Department and put in place a joint effort in this area. The Minister should establish a response team that focuses on child truancy and children at risk. It may also have the flow-on effect of keeping children in schools and thus reducing the impact on a child at risk.⁴⁰

Another submission raised concern about the number of school-aged students not attending school or not approved for home-based schooling and who may not be receiving any regular or uninterrupted form of education and whether this situation constituted a form of parental abuse or neglect. The Review does not adopt the view that failure to ensure attendance of children at school constitutes a form of child abuse or neglect in itself, but instead views these young people as being at risk and argues that responses should be framed in this context. It is noted, however, that some jurisdictions have sought to place a stricter requirement that attracts penalties on parents or carers to ensure that their children attend school. The Social Inclusion Unit is currently considering the issue of school retention and truancy.

EDUCATION AND TRAINING OF MANDATED NOTIFIERS

Education and training of teachers, education support staff, child care workers and volunteers working with children in understanding normal child sexual behaviours and the identification of sexualised behaviours is a significant issue in ensuring appropriate reporting of children who may have been subjected to sexual abuse and in identifying children and young people who are at risk of offending.

DECS, through Children’s Services, has developed a training video and supporting resource material on children’s sexuality that is available to Family Day Care providers. The video and accompanying materials provide care providers with information on: children’s sexuality and sexual behaviours that may be observed in children up to 10 years of age; sexual behaviours that may be of concern; and recommendations on how care providers might appropriately respond and provide care to children. The video also outlines some ways in which care providers may protect children from abuse as well as protecting themselves and family members from allegations.

⁴⁰ Submission 103 South Australian Law Society – Children and the Law Committee.
PROFESSIONAL EDUCATION

The need for professional education for teachers and children’s services workers has been raised in a number of submissions. The professional preparation of child-care workers and kindergarten and primary teachers generally includes a focus on child abuse and neglect and child protection. Their professional education also includes reference to child development and child norms. Some professional education programs may include reference to child sexual understanding and development but a majority do not.

The professional preparation of secondary teachers is less likely to incorporate components that address child development and child norms, child abuse and neglect and child protection. The importance of secondary teachers recognising child protection and adolescents at risk is highlighted by the fact that for the AIHW annual Child Welfare Report (as of June 2000) 35% of all children and young people who have been classified in the child protection system and where abuse was substantiated were in the 10-17 age group in South Australia. The AIHW report also indicated that the highest numbers of substantiated cases of child abuse and neglect for all children between the ages of zero to 17 years occurred at the ages of 13 and 14.41

Child abuse and neglect and child protection are not necessarily a compulsory component of professional education and there has been a long-standing concern to see its inclusion on this basis by child protection advocates. The majority of teachers currently employed in the schooling sector however completed their professional education in the 1970s and it is primarily teachers who have entered the profession over the past 10 years who have been the beneficiaries of this enhanced professional education.

MANDATORY NOTIFICATION

Mandatory notification training occurs in the training of student teachers at the University of South Australia, Flinders University, University of Adelaide and TAFE. Mandatory notification training also occurs at Tabor College for students completing pre-service teacher education awards. Given the extensive discussion provided on mandatory notification in Chapter 10, this section only briefly touches on this topic and the role of education and children’s services personnel as mandated notifiers under the Children’s Protection Act 1993.

ISSUES FOR MANDATORY NOTIFIERS

There was a wide range of issues identified in submissions about the role of teachers and other children’s services as mandatory notifiers and, in particular, their relationship with FAYS. They included:

- The need for recognition of the nature of serious decision-making involved by individuals who make a mandatory notification to FAYS through the Child Abuse Report Line.
- The need for recognition of the level of experience and practice required to make a notification that receives appropriate response.
- The poor understanding by teaching and children’s services workers of the tier system used to assess child protection notifications.

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Support staff and volunteers in the schooling and children’s services sectors are required by law to make notifications and are therefore classed as mandatory notifiers. However, the mandatory notification training provided to this group of personnel is not as comprehensive as that required for teachers nor are they provided with the same opportunities for updating their knowledge.

Making a mandated notification involves risk for school and children’s services personnel from parents either finding out the source of notification, confronting personnel or going on a “fishing” exercise to determine who made the notification.

**IMPORTANCE OF TEACHERS AND CHILDREN’S SERVICES WORKERS AS MANDATORY NOTIFIERS**

Teachers and childcare workers are a critical and essential part of the network of professionals involved in the early detection of child abuse and neglect.

In 2000-01, notifications by school and childcare personnel constituted 19.6% or nearly one-fifth of all notifications investigated by Family and Youth Services (1003 investigations out of the 5124 investigations conducted by FAYS for that financial year). This indicates the importance of the education and children’s services as mandated notifiers for children with protective needs and the quality of the service they provide.

During consultations conducted by this Review, information suggested that, whilst the training programs appeared sound, regular updating by staff on mandatory notification was not necessarily occurring, or if it was it was not being recorded on staff records.

**RECOMMENDATION 147**

That mandatory notification training continue to be provided and regular refresher courses to be undertaken by staff which are recorded on their staff records.

**Reason**

This recommendation provides a mechanism for quality control of the training program.

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SHOWCASE - GILLIES PLAINS HIGH SCHOOL

Gilles Plains has high needs within its student population and families as well as a significant transient population. In Term 3 2002, 66 new children enrolled at the school and 55 had left – a situation that makes it difficult for schools to develop strong links with children and families.

The current school counsellor aims to make a difference to the lives of children at Gilles Plains Primary School by building connections with children, parents and community. She aims to give them the capacity to take charge of their lives even though they may be as young as five years of age.

The school counsellor is strongly supported by her school leadership team: the principal and two deputy principals as well as all the staff at the school. They acknowledge that her work with the children supports their work as educators.

The school counsellor conducts protective behaviours programs at the school and promotes children’s understanding of personal safety and has developed a number of strategies to assist them develop their skills in this area. Each child receives a Kids Help Line card and is advised about how to use this service and to seek help or advice when they need to.

She also supports staff to undertake mandatory reporting refresher training and staff needing to make notifications to child protection authorities.

She runs a number of programs, including the:

- Breakfast Program which runs three days a week and involves the whole school community
- Baby Club – for children at the school, in response to parents being concerned about their children hurting baby brothers or sisters
- Budgie Club – for children who are in foster care to help reconnect with parents who are in prison
- Cool Down Club to help with children with anger management and
- Kitchen Queens – a cooking and literacy program for mothers which is run in partnership with the Adelaide Central Community Health Service.

Schools can provide a safe environment for other services to provide programs, building trust and connection with students and parents and enabling the school to be used as a basis for developing community-based approaches tailored to the local needs, involving parent participation at an individual and school level. The school principal and counsellor have also built trusting relationships with parents. They are often the first place many parents turn to when there is a problem such as interpreting legal documents, needing help when the family home is destroyed by fire or just assisting when there is an injury to a parent.

The counsellor believes that also having a number of services located on or near the school grounds provides significant opportunities for the whole school community.

Services such as the:

- Gilles Plains Community Health Outreach co-located on the school campus
- Aboriginal Support Group
- Domestic Violence Group
- Toy Library and
- a range of community and other health programs and occasional child care services.
INTRODUCTION

This Chapter discusses:

- community education objectives
- the types of programs required for parent education both universally and for targeted communities and families, and
- a framework for development community education programs.
GENERAL DISCUSSION

The impact of community education on child protection involves a number of elements:

- broad public media and community campaigns
- targeted programs of wide application
- information resources at regional and local levels.

There are a number of objectives in community education in relation to child protection:

- raising community awareness about the problem of child abuse and neglect as a serious social problem
- promoting public understanding of the true extent and nature of child abuse and neglect and its impact on children and young people
- promoting parent and community understanding about how child abuse and neglect can be prevented and the role of the community, parents and individuals to achieve this
- raising community awareness of the social, physical and emotional vulnerability of children and the need for vigilance and appropriate environments to keep them safe
- raising community awareness about the rights of children to be brought up safely and in a nurturing environment and the importance of promoting their social wellbeing for children’s sake and the sake of the whole community
- developing an improved understanding among parents and the community about child development, appropriate child-rearing practices and creating healthy family environments.

The breadth of these objectives reflects the requirement for a diverse range of community education programs involving different methods for delivery of these messages to communities and families in the most effective way. There is also a need for appropriate targeting by identifying communities and individual families whose access to information is limited and whose knowledge needs to be enhanced through a range of strategies.

The need for broader whole-of-community approaches to child protection has also been recognised particularly with regard to groups or communities which are less likely to use community services, less able to access information resources generally regarded as being readily available and who need to be engaged through programs which have broad-based effects. For example, Indigenous families, families on low incomes, families where a parent or caregiver has a mental health or other health problem and families from culturally and linguistically diverse backgrounds, who may require specialised community education programs.

COMMUNITY CONCERNS

Submissions to the Review:

- indicated strong support for community education in all its forms
- requested greater availability of community education particularly parenting programs
- expressed the widely-held view that there is a need for greater community awareness regarding child protection, improved understanding of child abuse and that protecting children is also a community and family responsibility

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1 Submission 48 Family & Youth Services Noarlunga District Centre Intake & Assessment Team.
suggested that there needs to be a greater preventative approach to prevent child abuse. They recommended that people needed help to be more aware of children's social and emotional needs, child development, and parenting skills.

Further, the submissions to the Review highlighted a continuing need for community awareness programs acknowledging their importance for identifying and for creating whole community responses to child abuse and neglect:

Community education and support is a vital link to lowering cases of child abuse and neglect and, as such, should be given high priority and attention. This approach is consistent with the view that responsibility for children should be that of the whole community, not just parents or guardians.

A number of submissions to the Review highlighted the need for education and information, specifically about child abuse, and neglect and child protection:

Child abuse should be addressed in parenting courses and people should be educated as to what the early signs of abuse are.

Broader community education should be provided; such as where to report child abuse; how to recognise signs of child abuse; know when to report it; and that confidentiality is maintained.

Many services and individuals have indicated to the Review that they would like to see an extension in the range and availability of information to parents on a range of topics such as:

- healthy child rearing
- guidelines on what is considered child abuse and neglect
- a community education program targeting community organisations and other agencies about the importance of police checks and recommended processes for the recruitment of staff and volunteers
- best practice supervision.

Some submissions commented on the need to improve community education, the type of information required, and the style and the content.

Yes, there is a need to improve community education. Many within the community need to know what the law considers child abuse/neglect to be, in plain and simple language. This information needs to be provided in user-friendly language. There are many within the community who for one reason or another are illiterate.

The community should be continually educated on aspects of healthy child rearing. This should include parenting information and support, guidelines on what is considered child abuse or neglect and networks where it can be reported or where people can get advice.

More community education is needed regarding the impact of domestic violence on children. We would also advocate continued and expanded funding for parent education to prevent child abuse and neglect and the impact of domestic violence, beginning in antenatal classes.

2 Ibid.
3 Submission 137 Young Women and Children's Support Services Coalition.
5 Submission 49 Advocates of Survivors of Child Abuse.
6 Ibid
7 Submission 100 Ms Annette Aksenov.
8 Submission 37 Ms Annie Leo.
9 Submission 120 Southern Child & Adolescent Mental Health Service.
A FRAMEWORK FOR COMMUNITY EDUCATION

An overall plan for community education should include an identification of the level of community education required; whether it is primary, secondary or tertiary. Primary community education is a level which is delivered generally on a universal basis. Secondary community education is targeted education to identified groups in need. Tertiary community education focuses on individual-based delivery.

Each of these levels suggests different methods of delivery ranging from broad-based media campaigns through to community delivered education/information and then to individual education/information services.

Primary Community Education

There is a clear need for increasing community education using a public health approach and successful community education programs require a range of other activities to support the message such as:

- easily assessable services
- community development approaches and
- community capacity building activities.

Programs delivered from community-based organisations that assist with prevention can assist in promoting useful messages about parenting or about children in society.

More community education is needed regarding the impact of domestic violence on children. This Review also advocates for continued and expanded funding for parent education to prevent child abuse and neglect and the impact of domestic violence, beginning in antenatal classes.10

While community education strategies are generally endorsed, the one size fits all approach has been questioned:

...we see universal education as limited in value. The critical issue is to have a multi-faceted response to education and support services. For many it is not until they confront difficulties or concerns that they will search for information and assistance. Access to timely, responsive and respectful services and advice can determine whether the issues will be dealt with constructively for the family or carer and in the interests of the child or young person.11

Government and society together must aim for the situation where any instance of child abuse is not acceptable. As one step in this process, consideration should be given to extensive advertising campaigns promoting positive behaviour, encouraging the reporting of incidents of abuse and providing information relating to support services.12

The provision of community education programs for parents should be increased and these programs should make use of the facilities provided by schools, kindergartens, playgroups and preschools. ... Community education programs must include personal safety and protective behaviours programs for children and there is a need for a coordinated approach that ensures all children are covered, regardless of disposition. ... SACCS also supports the provision of programs educating parents, school staff and students about the dangers of paedophiles taking advantage of children and young people through chat rooms on the Internet and World Wide Web.13

10 Submission 126 Helen Mayo House.
11 Submission 131 Children’s Interest Bureau Advisory Committee.
12 Submission 137 Young Women’s & Children’s Support Services Coalition.
13 Submission 139 (1) SA Commission for Catholic Schools on behalf of Catholic Schools.
This Review agrees that a variety of strategies are called for.

*It is important that information delivery is done through a variety of means, including through verbal and visual means.*

*Every major council area could have either a mobile office or an office, at shopping centres, where trained staff are able to provide essential material to raise an awareness of what is child abuse/neglect/domestic violence as well as the effect of both domestic violence and child abuse/neglect. Professionals assume that everyone knows what child abuse, child neglect and domestic violence are. After all, there is literature galore available within the community which is geared more for the professionals and middle class audiences instead of the families you really need to reach.*

Mass media campaigns are also an important means of community education however the role of the media is complex and creates its own set of issues. Saunders and Goddard* point to the disclosure by celebrities through the media of their own experiences of child abuse and how this has assisted in lessening the shame of disclosure but also in providing a positive image that people can go on to have a successful career and life. Additionally, media campaigns educating the community about child abuse and neglect and child protection often have to compete with negative media coverage dealing with a death of a child or sensationalist cases where children have been seriously injured.

*Marketing child abuse and neglect in the media can be complex. The very serious aspects of child abuse are unpalatable in the media, and the marketing advice has been to take the soft approach. The danger in this is that the message about those factors that lead to child abuse and neglect can be lost in the marketing. Marketing advice to NAPCAN was to use the phrase, Helping parents – helping children but this somewhat dilutes our primary message about the safety of children. This is currently under review at the national level.*

### Secondary Community Education

This level of community education should specifically target groups in need who require flexible and relevant delivery of information. Examples of groups which may need this more focussed delivery are Indigenous parents and families, parents from non-English speaking backgrounds, parents with low literacy. The delivery should ideally be in local accessible venues and in a variety of mediums.

### Tertiary Community Education

This level of community education should be aimed at high need families and may require delivery in the home or in a clinic along with other services. Examples of families with high need include those where child abuse has been identified and other services such as Family Reunification Services are involved, or where therapeutic interventions are occurring.

The three levels of community education services may be diagrammatically represented using parenting education as the example, in the following table:

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14 Submission 97 Adelaide Central Community Health Service.
15 Submission 97 Adelaide Central Community Health Service.
### FRAMEWORK FOR PARENTING EDUCATION PROGRAMS

<table>
<thead>
<tr>
<th>Levels</th>
<th>Method of delivery</th>
<th>Types of Programs and target group</th>
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<tr>
<td>Primary</td>
<td>Media campaigns</td>
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<td>□ Child and Youth Heath new parent</td>
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<td>General universal</td>
<td>□ Parent advice by variety of service providers</td>
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<td>parenting education</td>
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<td>□ Targeted programs</td>
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<td>□ Parents with low literacy</td>
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<td>□ Parents experiencing high stress</td>
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18 In Western Australia there was shopfront information in Shopping Malls which provided a range of information and pamphlets and thousands of person accessed the information. This approach merits specific consideration.
FRAMEWORK FOR PARENTING EDUCATION PROGRAMS

One of the most important topics of community education, which would reap many benefits for the protection of children, is Parenting Education Programs. There are already some important community education strategies in this topic which could form part of an overall strategy.

Content of Parenting Education Programs

Significant comment was made about the lack of parenting information and programs and the need to provide broad information about parenting programs. Parenting education and support is a vital link to lowering cases of child abuse and neglect and, as such, should be given high priority and attention.

Primary prevention through the education of parents must aim at understanding the problems of parenting and at the same time offer positive suggestions for coping. Research suggests that “much abuse is the consequence of ignorance of reasonable child rearing practices and reasonable expectations of children’s behaviour.”

Not only should parents be educated in effective parenting styles which includes information about appropriate discipline, but also information about the vulnerability to physical injury as well as the importance of attachment and nurturance in the early years to ensure healthy brain growth and physical and emotional development.

Tomison points out that parenting:

...is the one occupation common to the majority of the adult population for which no training or educational qualification is required. The underlying societal assumption is that child-rearing skills and feeling protective towards children are natural and instinctive and require no additional instruction.

Parent Programs – Primary Community Education

National Association for the Prevention of Child Abuse and Neglect (NAPCAN)

NAPCAN Australia is the major non-profit, volunteer-based organisation which promotes effective care and protection of children. Their vision is for a national commitment to the nurturing and protection of children by supporting parents and communities for the prevention of child abuse in all its forms. It is the only national organisation of its kind in Australia and an office in Sydney co-ordinates participation by all the States and Territories.

NAPCAN SA coordinates the promotion of child abuse and neglect prevention activities in the State and conducts a yearly major campaign over a week in conjunction with all other states and territories. It is well recognised as one of the leading organisations for raising the community’s awareness about child abuse and neglect. Its education literature promotes good parenting practices and provides specific advice to prevent abuse from occurring. NAPCAN stresses that child abuse is the responsibility of every adult and the whole community.

By selecting a different theme for each year, the annual campaign provides the opportunity for all involved in the child protection field to promote their own projects and programs at both a national and State/Territory level. The campaign is recognised by Governments and the community as a most effective national initiative.

Examples of previous campaigns include: “It’s Not OK to Shake Babies” (1994); “Use Words that Help not Hurt” (1995); “Children Grow with Love and Care” (1996); “Putting Children First” (1997); and “Getting Together for Children” (1998); “Helping Parents – Helping Children” (1999); “Being a Father is the Most important Job You’ll Ever Do” (2001). “A child with special needs is a child like any other” (2002). Each campaign emphasises child abuse prevention strategies.

NAPCAN has developed many partnerships with other non-Government organisations, all levels of Government, corporations and individuals to promote the prevention of child abuse and neglect.

**Parenting SA**

Parenting SA has developed a profile with a recognised brand name in this State in promoting and supporting the role of parents. It was established in 1996 within DHS and in Jan 2003 was organisationally placed in Child and Youth Health. Regarded as a highly successful model for collaborative work with Governments, community organisations and the business sector, Parenting SA has established itself as a leader in its field having successfully implemented numerous programs in SA. Interstate counterparts have replicated many aspects of the program.

Parenting SA aims to

- raise the profile of the role of parenting
- encourage parents to feel supported in turning to others for assistance
- provide resources/information to help parents build on their existing knowledge and skills

With minimal resources Parenting SA is widely acknowledged as providing excellent value for money in generating resources, information and special grants on a universal scale as well as targeted. Over 6 million Parent Easy Guides (Free fact sheets on 76 topics) have been distributed throughout SA and other Government departments in QLD, ACT and NSW have license agreements to use the information. Some of its other achievements include:

- Non-English speaking communities in SA have topics in 15 different languages with a specific program over 3 years supporting most “at risk” parents in migrant and refugee families.
- A 3 year Aboriginal Homemaker program for rural and remote aboriginal communities will address most basic needs of parents in caring for children.
- Annual small grants to community groups provide for activities / courses to assist in improving the quality of parenting.
- Media messages on both radio and television and an annual Calendar provide parenting tips based on the latest research.
- A website for parents and professionals provides information as to where parents can get support as well as written information on problems parents face.
- Professionals in China and Italy have through the website requested permission to translate into relevant languages.
The importance of information resources, such as Parenting SA Easy Guides, for parents has also been raised in submissions.

*The Parenting Information Guides are, in my opinion the best in Australia, it is a pity, that they are not available in other languages as well as in Braille. I’d also like to see them made available on tape for those unable to read the guides.*

*Community education programs including Parenting SA and NAPCAN have worked well at informing the community and preventing child abuse.*

Therefore these Information Guides may be used also at the Secondary Community Education level for targeted groups.

**Parenting programs – Secondary and Tertiary Community Education Levels**

As indicated, some of the Primary Community Education level programs can be delivered at secondary and tertiary levels with a community education framework. This has been recognised as an important component of community education and, in particular, for working with parents at high risk of abusing or neglecting their children.

A focus on child protection should also form a component of most of these parenting education programs, but the extent of its inclusion cannot be ascertained without a survey and detailed analysis of the curriculum of these programs. Secondary and Tertiary Community Education levels have a higher focus on child protection as part of the therapeutic or service intervention.

In summary, parenting education programs are required at every level as part of an overall framework of community education.

### RECOMMENDATION 148

That the proposed South Australian Child Protection Board develop a community education framework to provide appropriate and strategic community education programs which impact on child protection.

**Reason**

A strategic framework is needed so that a coordinated approach is achieved in the development of appropriate community education initiatives. Currently there is no systematic process in place and no one agency charged with responsibility for implementing community education objectives. A state framework in which objectives and targets are strategically developed and implemented across government and non-government will achieve the best use of resources.
Chapter 21
Education and Training in Child Protection

INTRODUCTION

This chapter deals with professional education and training and covers:

- current education and training available in South Australia
- the need for improved availability of multi-disciplinary education and training in child protection
- the need to ensure all professionals receive an appropriate level of training on child protection in undergraduate education
- requirements for appropriate education and training, workforce development and support for professionals in child protection
- system-wide approaches to developing appropriate expertise and experience
- effective support for staff exposed to this work.
21.2 Education and Training in Child Protection

GENERAL DISCUSSION

The identification, assessment, response and treatment of child abuse and neglect involves a wide range of professionals. It also requires that professionals are able to work well together and fully understand their individual roles and responsibilities as well as those of other professionals to ensure an effective response to a child or young person who has been abused and their family.

Professional education and training in child protection covers a wide spectrum of education and training for different groups of people working with children. It covers:

- mandatory notifier training for all professionals and others working with children as identified within the Children’s Protection Act 1993 (SA) . Mandated notifiers comprise a wide range of professionals such as police, social workers, medical practitioners, nurses, teachers, schools support officers, psychologists as well as non-professionals working providing services to children
- undergraduate training for social workers, medical practitioners, nurses, psychologists, childcare workers, teachers, police, etc
- advanced education and training for social workers who are involved in statutory child protection work
- specific education and training for SAPOL in specialist child and sex crime investigations, interviewing children and providing appropriate responses to abused children and their families
- lawyers and the judiciary involved in the Youth Court, the adult criminal court and Magistrates Court dealing with children who have been abused
- education and training for health professionals working with adults with mental health, substance abuse or personality/behavioural problems who are the parents of children.

Education and training also needs to cover particular curriculum areas. Some of these areas are relevant for all practitioners in child protection whereas, for others, selected areas may be required:

- child development and implications for child protection, investigations and legal processes
- the rights of children and young people
- effective communication with children and young people
- effective communication with children and young people with disabilities
- definition and indicators of child abuse and neglect
- myths of child abuse
- law in relation to child abuse and child sexual assault
- inter-agency collaboration and multidisciplinary decision-making
- assessing child abuse and neglect
- role of counselling and treatment
- training to meet requirements for specific situations such as giving evidence in a court for SAPOL, FAYS’ social workers and other professionals.

Further, expertise is required in more specific areas to ensure that children who may not be readily identified as having been abused can be properly assessed, identified and protected.

Whilst there have been advances in training concerning identification of the effects of child abuse and neglect there is a need for corresponding training in responding to the effects of abuse and neglect for all persons who work with children and their caregivers. The labelling or dismissing of behavioural difficulties that emanate from abuse and neglect continues to be a form of abuse.1

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1 Submission 103 Law Society of South Australia, The Children and the Law Committee.
Multi-professional responses are often required to respond to child abuse and neglect and workers in various disciplines need to be aware of the roles and responsibilities of other professionals in order to carry out their work with the child effectively.

**OBSERVATIONS**

Submissions to the Review and consultations reflected a range of comment as indicated:

- Good knowledge of inter-professional roles, responsibilities and relationships are developed and maintained primarily by professionals knowing each other rather than on the basis of multi-professional education and training. This approach has greatest impact on new workers in the child protection system and where staff turnover has been high, for example, FAYS’ social workers.
- There has been a demise in the level of work-based education and training on child abuse and neglect and child protection.
- There is a significant concern about the lack of availability and affordability of mandated notifier training for many groups working with children, particularly volunteers.
- Except where this is an explicit requirement for employment, the current system for providing mandated notification training is patchy and relies on workers putting themselves forward for training rather than receiving this training as part of a systematic process for ensuring coverage of all workers working with children.
- There has been a demise in education and training in the area of child abuse and neglect for all professional groups except in two areas: interagency training for interviewing children and paediatric specialty training at the Women’s and Children’s Hospital.
- Some sectors have addressed education and training for mandatory notification well and others have not yet developed appropriate policies in this area.
- The resources for professional education and training including mandatory notifier training need to increase.
- There is no cross-sector workforce development strategy.
- There is limited system or agency understanding of the need to develop high-level professional expertise within the workforce.
- A significant proportion of education and training is provided by community-based child protection organisations or professional organisations. Whilst most are very well attended by professionals, Government agencies should be supporting the marketing and uptake of these education and training opportunities within their respective workforces.
- Work-based education and training for child protection in FAYS has improved over the past year but requires further improvement.
- There is no way of knowing to what extent the health workforce involved in working with children across public and private sectors has undergone mandatory notifier training and how often this training is updated.
- Almost all training and education in child protection, including mandatory reporter training, falls short of what is now required and needs upgrading and updating.
- A specialised education and training program is required for Aboriginal workers.
- Improved access to education and training is required to provide culturally sensitive and appropriate service delivery.
ROLE OF THE HIGHER EDUCATION SYSTEM

The bulk of base-grade professional education is undertaken through the universities and TAFE sector. The level of education and training within these courses provided on child abuse and neglect depends on other competing curriculum demands and levels of advocacy. The result has been that, in some professional education programs, training on child abuse and neglect is minimal, for example, undergraduate medical training.

The universities have some processes in place to communicate with key industry groups about their requirements and expectations regarding professional competencies for undergraduate courses. However, these processes do not necessarily systematically canvass an appropriate cross-section of opinion nor do they necessarily involve the level of regular, formal liaison and communication required to properly ascertain industry requirements.

Within the higher education sector, post-graduate training mainly involves higher qualifications at Masters or Doctorate levels. These postgraduate qualifications do not necessarily equip people with the work-related knowledge, skills and competencies required for identifying and responding to child abuse and neglect. They may provide individuals with expert knowledge on a particular aspect of a topic area. Applied knowledge and skill-based competencies and training in the higher education sector remains under-developed.

Postgraduate education and training is also undertaken by some professional organisations as part of a specific qualification enabling one to work in a particular specialty such as general practice or paediatrics or as part of the requirements for continued professional recognition and registration with the professional body. For example, the Australian Association of Social Workers (SA Branch) Profession Education Committee (PEC) provides continuing education programs for AASW members. These opportunities are also available to other social workers as well as being patronised by both members and non-members.

This program is the main source of continuing professional education specifically tailored for practising social workers in relation to ongoing development in their professional knowledge, values and skills. The program forms an element in continuing professional education requirements qualifying members for accredited status in the association. The Professional Education Committee has representatives from the two university schools of social work in South Australia.

Child abuse and neglect needs to be regarded as a basic area of knowledge and practice that should be incorporated in undergraduate training in the following areas: social work, medicine, nursing including mental health and midwifery, psychology, police and teaching. The extent to which it is incorporated requires considerable investigation in its own right in relation to the content of the curriculum and extent to which it is taught by higher education institutions.

Improved responses to child abuse and neglect also require a more highly qualified workforce with advanced knowledge and skill. It should also be regarded as a component of advanced specialty in paediatrics, general practice medicine and basic postgraduate social work in child protection. In the US, social workers working in child protection are required to undergo two year postgraduate training to work in child protection. There is no equivalent post-basic training available in South Australia. Police also working in the area require advanced training.

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2 Hawtin, A & Wyse, D Children’s rights - A national and international perspective: A consultancy report for the British Council, noted that teachers are ideally placed to recognise signs of abuse which may be physical, psychological and/or developmental. They are often in a position of trust in relation to children and enjoy the benefit of long term sustained contact with children, particularly at primary school level. The full inclusion of teachers in the child protection process is an area which requires urgent attention, both in the UK and in other countries wishing to develop an effective child protection system. This needs to be addressed in pre and post qualification education and in providing support systems for teachers in order that they may carry out their role effectively.
**RECOMMENDATION 149**

That an across-agency, comprehensive review be undertaken by the proposed South Australian Child Protection Board on the education and training programs that are available in South Australia and elsewhere in Australia and the extent to which curriculum on child abuse and neglect is delivered in relevant professional undergraduate training in liaison with the higher education sector.

**Reason**

The extent to which child protection is incorporated in undergraduate professional training programs requires full investigation in relation to the content of the curriculum and extent to which it is taught by higher education institutions. Further, such investigation should include an assessment of the scope and adequacy of post-basic training programs on child protection to provide an accurate picture of quality and adequacy of training available for all practitioners working in child protection.

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**RECOMMENDATION 150**

The proposed South Australian Child Protection Board investigate the potential for establishing a multi-disciplinary postgraduate education and training “centre of excellence” in child protection.

**Reason**

An improved focus for collaboration for research, training and education is required in South Australia. There is a need to examine how South Australia could establish better linkages on a multi-disciplinary basis that will enable it to improve and sustain quality post-basic training and education. This approach will also support inter-professional linkages and provide greater focus on the value of working together.

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**CERTIFICATE IV IN INTERAGENCY PRACTICE (CHILD ABUSE)**

Multi-disciplinary training is an important mechanism for ensuring that professionals from different agencies are required to coordinate their responses in child protection. Since March 2001, the Department of Justice Studies, Adelaide Institute of TAFE, has offered interagency training entitled the Certificate IV in Interagency Practice (Child Abuse) and the interagency modules of the Certificate IV in Child Abuse Investigation.

This course is examined in detail because it is the main multidisciplinary program of formal education offered to staff in a range of agencies in South Australia that equips them with the skills and knowledge to collaborate in the investigation of child abuse or neglect. The course is premised on the following principle:

> No single agency has the pre-eminent responsibility in the assessment of child abuse generally and child sexual abuse specifically. Each agency has a prime responsibility for a particular aspect of the problem. Neither children’s needs nor parents’ needs or rights can be met or protected unless agencies agree on a framework for the interaction.

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3 Refered to in the Child Protection Review Discussion Paper at p13 under the heading ‘Education and Training’.
The program is an intensive course conducted in eight consecutive full working days and delivered four times per calendar year.

This training program is based upon the *Interagency Code of Practice – Interviewing Children and Caregivers (Child Abuse and Neglect)*, a significant achievement in the history of interagency practice in child protection. The major aims of the program are to:

- bring practitioners from diverse child protection agencies to a level of collaborative practice where they can focus on the needs of the child, and
- develop participants’ skills and techniques in interviewing children who may have been the subject of abuse and neglect.

Core participants in the program are selected employees from FAYS and SAPOL. Others may include employees of the following agencies with key roles in child protection: Child Protection Services located respectively at the Women’s and Children’s Hospital and Flinders Medical Centre; the Crown Solicitor’s Office; and the Office of the Director of Public Prosecutions.

The program has been developed in collaboration with expert practitioners in the field of child protection from the participating agencies listed above. It also draws on contributions from a wide range of valuable resources:

- members of the judiciary – judges of the Youth Court and the District Court of South Australia
- academics recognised internationally for their work in training professionals in the interviewing of children
- forensic paediatricians recognised internationally for their work in training of paediatricians in the forensic investigation and medical treatment of children who have been abused and neglected
- the Director of the Sexual Offenders Treatment Assessment Program
- psychologists who are experts in the needs of abused and neglected children and of professionals working in this area
- lawyers working as the child’s separate representative in proceedings instituted in the Family Court of Australia
- lawyers working as defence counsel for persons accused of serious criminal offences against children
- cross-cultural workers in the South Australian Female Genital Mutilation Program
- parents of child victims, with the support of the Victim Support Services, a community organisation dedicated to supporting the rights and needs of victims of crime.

The program is structured to focus on the needs of the child by following the experience of the child through the process of investigation and assessment from the time a notification of alleged abuse and/or neglect is made through to a possible court hearing. In order to follow the child’s experience, the needs, rights and interests of the child are articulated throughout the program.

The key features of the program:

- the significant breadth and diversity of perspectives brought to the program by a dedicated group of expert practitioners as noted above
- participants are able to explore the diverse values held by individual practitioners, different professional groups (including but not limited to social workers, police, psychologists, doctors, nurses, teachers, lawyers and judges) and the agencies in which they work.
This work in exploring values and stereotypes builds the foundation for effective collaborative practice. Such learning opportunities are crucial in guarding against the risks of miscommunication and professional dangerousness in child protection work.

“Professional dangerousness” is a process whereby individual practitioners and agencies can be drawn into maintaining situations of risk unintentionally, for example, by being overly optimistic about a child’s safety despite evidence to the contrary. Professional dangerousness can exist at an individual, agency or societal level.

Unexamined values and assumptions about family life (for example, that all parents naturally love their children) and about the role of individual practitioners and agencies contribute to professional dangerousness. Accordingly, exploration of the dynamics of professional dangerousness and diverse values held by individuals, professionals, and agencies are invaluable learning experiences in overcoming such barriers and in developing effective collaborative practice.5

Participants are able to develop an understanding of the roles of each agency in the investigation and assessment of child abuse and neglect in South Australia. The program is founded upon respect for the distinct and primary role of each individual agency with respect to particular aspects of child protection. Where agency practices vary, these differences are articulated and acknowledged so that all practitioners understand the process for an individual child and his or her family. The program is based upon the recognition that child abuse and neglect is a shared responsibility.

Participants are able to build informal networks between practitioners of different agencies. These networks are acknowledged by the Interagency Code of Practice as a vital ingredient of effective working relationships in both formal and informal interagency processes:

… there is a myriad of collaborative acts which occur every day and it is in the person-to-person elements of cooperation, coordination and service delivery that schemes succeed, falter or fail.6

Participants report consistently, in both written evaluations and informal feedback, that a key benefit of the program is the development of relationships with practitioners from different agencies. This view has also been supported in a number of submissions. The intensive structure of the program contributes to the development of these informal networks that are also actively encouraged by the course facilitators.

Participants are able to rehearse collaborative work and identify and resolve conflicts in such work. One of the key components of the program is the work on strategy discussions which are the “corner-stone of planning the initial interagency response”7 to a child in need of immediate protection from current and serious harm.

In this work, participants work in interagency groups to formulate their response to hypothetical cases. In the words of participants, this work enables the participants to:

…learn how each (agency) works and the differences…and how we can work together for the common purpose (of protecting the child). The work “promoted better understanding of where the parties are coming from…to build partnerships [to] seek outcomes suitable to all.”8

6 Ibid.
8 Participants’ evaluations, July/August 2001.
The purpose of these learning experiences is to promote collaborative practice to a level where practitioners are able to focus on the child and share information in the best interests of the child:

*Research and experience have shown repeatedly that keeping children from harm requires professionals and others to share information. Often it is only when information from a number of sources has been shared that it becomes clear that a child is at risk of, or is suffering, harm.*

Another key benefit of effective collaborative practice is the coordination of interviews required in the investigation and assessment of child abuse and neglect. A further aim of the training program is to develop participants’ skills and techniques in interviewing children who may have been the subject of abuse and neglect.

In order to serve the best interests of the child, practitioners must conduct effective interviews with children. An effective interview ensures the best opportunity for the child to give her or his own account and to feel supported in that process. Effective collaborative practice and effective interviewing skills have the combined effect of reducing the number of interviews of the child thereby:

- minimising the risk of trauma for children and their non-offending caregivers and
- enhancing the evidentiary value of the interview.

The interviewing skills development part of the program is conducted with an expert academic and practitioner in the field of interviewing children. This part of the program requires participants to interview a child aged five to six years. The participants are instructed in performance evaluation and are required to analyse their interviews. This methodology provides a sound foundation for ongoing skill development in this challenging and difficult task.

Although the Child Protection Services, the Crown Solicitor’s Office and the Office of the Director of Public Prosecutions have endorsed the *Interagency Code of Practice* and contribute as lecturers, it remains a challenge to extend their participation as students in the program. The Department of Justice Studies acknowledges that the training in its current form is difficult for the staff of these agencies to undertake. Accordingly, alternative technologies are being developed with a view to addressing this issue.

For the training program to be effective, there must be workplace support for the new skills learned. It also remains a challenge for the interagency training program to increase the participation of senior staff from FAYS. The TAFE Department of Justice Studies and Family and Youth Services have had preliminary discussions about this issue.

Although the *Interagency Code of Practice* offers some guidance on the difficult issues of access and equity and aims to respond to these concerns with contributions from Aboriginal people and people from non-English speaking backgrounds, there is awareness of the limits of this response. Furthermore, the program provides only limited input on the particular needs of children with disabilities. The challenge remains for the program to respond more effectively to these sensitive and complex issues.
TRAINING IN RELATION TO THE FAMILY COURT

Increasingly, allegations of abuse occur in a Family Court context. The Chief Justice, Alastair Nicholson, describes one aspect of the problem:

*The federal courts may be, and often are, faced with a situation where genuine child protection issues emerge, such as the realisation that the children are likely to be at risk from both parents. Yet these courts have no means or jurisdiction to protect the child, save for requesting the relevant child welfare authority to investigate and intervene. There is no power to compel the authority to be joined as a party.*

In South Australia there is an agreed protocol between FAYS and the Family Court. There is also limited guidance on the collaborative handling of these matters in the Interagency Code of Practice. However, anecdotal information reveals uncertainty amongst practitioners as to roles and responsibilities that risks a loss of focus on the child.

While the issues are addressed to a limited extent in the program, it is an area in which further training should be offered. The benefits to children and their families from the “extremely strong collaborative arrangements” established in that project are well documented.

RECOMMENDATION 151

That DHS examine the extension of the interagency training program to incorporate joint inter-agency training to support extension of Project Magellan in South Australia.

Reason

The implementation of Project Magellan will require significant training and support of staff to establish effective collaborative mechanisms. This training is best located in an education and training institution where there is ongoing commitment and capacity to review and update education and training requirements.

AGENCIES’ RESPONSIBILITIES FOR STAFF DEVELOPMENT AND SUPPORT

Responsibility for education and training is both a personal professional responsibility and also a responsibility of Government and non-Government agencies for ensuring the effectiveness of the child protection system. All Government and non-Government organisations that are either directly working with children or are involved in child protection services and therefore have responsibility for ensuring targeted child protection education and training for all staff and volunteers to improve:

- understanding of responsibilities for mandatory reporting and the quality of information reported
- understanding of cultural issues and their implications for appropriate interventions
- their capacity to identify child abuse, especially in its more subtle forms
- their responses to suspected abuse
- understanding of the different levels of abuse, the kind of intervention required and by whom
- their understandings of codes of practice protocols
- their skills for effective intervention work with families and communities.

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14 Interagency Code of Practice-Interviewing Children and Caregivers (Child Abuse and Neglect) p 96, 97.
RECOMMENDATION 152

That Government and non-Government agencies develop a clear policy on child protection education and training and ensure the provision of targeted child protection training for all staff and volunteers.

Reason

The implementation of such a recommendation will improve the quality of child protection responses.

TRAINING FOR SPECIALISED UNITS

Professionals in South Australia working in small specialised services focused on delivery of services to particular groups of clients such as CAMHS, Child Protection Services and Sexual Offender Treatment and Assessment Program have particular education and training requirements that are not appropriately recognised outside their service areas. Staff in these services require a combination of education and training opportunities to maintain and upgrade their knowledge and skills. Participation in national and international conferences, undertaking placements in similar services interstate and overseas all need to be considered as basic requirements given the highly specialised nature of these services and the knowledge and skills required.

RECOMMENDATION 153

That DHS support the development of an education and training strategy for small specialised units which incorporates:

- appropriate funding for CAMHS, CPS and SOTAP reflecting the highly specialised education and training requirements of these services (such as participating in conferences on their service and practice issues)
- supporting staff exchanges in other similar services overseas or interstate
- undertaking advanced training.

Reason

The issue of investing in workforce development is critical for professionals working in highly specialised services. The State's capacity to provide choices for clients is limited and so it is important to ensure that there is effective workforce development strategies in place that promote quality, evidence-based practices.
THE LEGAL PROFESSION

The need for training of lawyers and judges is referred to in Chapter 15. Submissions and the research indicate that ongoing training is required for lawyers and members of the judiciary concerning the recognition of the effects and long-term consequences of abuse and neglect. Lawyers also require training in the skills required to interview and represent children and young people in the legal processes.16

Judges, magistrates and court staff, police officers and lawyers (especially those employed by the Department of Public Prosecutions given their role in prosecuting crimes against children) are not specifically trained or qualified to deal with the special interests of child victims and witnesses. Specific training programs should be made available for judges, magistrates, court staff, public prosecutors and specialist police officers.17

In addition, a compulsory module on the issues surrounding child victim witnesses should be considered and incorporated into all accredited law schools. The Law Society, which is cognisant of the need to update its members’ professional knowledge, should offer courses on working with child victims and encourage practising lawyers to update their knowledge and skills in this area.18

Of particular relevance to judges and court staff when dealing with child victims or witnesses is a clear understanding of the developmental stages that children go through and the implications of this for concept and language development. Of importance also is an understanding of a child’s physical capabilities and physical needs within the context of a courtroom.

RECOMMENDATION 154

That the Child Protection Board and the Department of Justice set up a working party to discuss the best means of providing training programs for Judges, Magistrates, Court Staff, Police and Lawyers and to include the following areas:

- the special interests of child victims and witnesses in legal processes
- working with child victims and witnesses
- child development and its implications for concept and language development and a child’s physical capabilities and physical needs within the context of a courtroom and
- interviewing and representing children in legal processes.

Reason

The training of the judiciary, court staff and lawyers received significant comment in the report Seen but not Heard produced by the Australian Law Reform Commission. There has been some progress made but not to the extent recommended by the report. This situation requires urgent review and a clear process led by a partnership across key professional bodies and lead agencies.
FAMILY & YOUTH SERVICES (FAYS)

FAYS mainly employs social workers who primarily have undergone training at one of the two universities offering social work training. Flinders University and the University of South Australia aim to provide students with strong basic social work knowledge and skills to work in a range of service areas, not just child protection. The view is that there is limited capacity within the curriculum to impart knowledge and skills in specialist areas such as child protection practice.

Education and training for staff employed by FAYS is of critical importance to the effectiveness of child protection system in South Australia and to outcomes for children, young people and families. FAYS also plays a critical role in supporting mandated notifier training. For these reasons, it warrants particular attention. Staff training and support are amongst the critical ingredients for a well functioning child protection system. In order to empower families in the protection of children, practitioners must first be empowered and supported by the organisation for which they work.

Over the past 20 years, there has been significant change within the FAYS training and development system. In the late 1980s and early 1990s, FAYS employed staff using block recruitment processes followed by intense orientation programs. The Training and Development Unit was disbanded in the mid 1990s. Until recently, District Centres have had to facilitate on-the-job training within an already pressured environment.

The nature and quantity of work has led to high expectations that staff be ‘job ready’ as soon as possible. This has placed additional pressure on management within locations. Morrison emphasises the complexity and dangerousness of child protection work and the critical need for expert training and quality supervision.

A strong need was identified for FAYS to influence university curriculum especially given the high number of graduates employed by FAYS. Staff have expressed a need for training programs to be developed in partnership with the universities and for FAYS to advocate for increased focus on statutory practice within current curriculum. Universities should also be supported to promote and market FAYS as an attractive career option for graduates.

There is some level of collaboration between FAYS and the higher education sector with recent initiatives developed with both the University of South Australia and Flinders University to provide internal induction training to students on FAYS placements. The universities also provide training for FAYS staff in the supervision of students within the FAYS learning environment. A FAYS’ Principal Social Worker currently lectures on statutory practices within the university system.

The current FAYS Training and Development Unit was established as a result of the June 2000 COPE report Training Directions for Family and Youth Services. The unit was reinstated and staffing was finalised in October 2001. Currently the unit comprises of one Senior Training Coordinator, three Generic Training Coordinators, one Aboriginal Training Coordinator, 1.6 Mandated Notifier trainers/consultants, and 2.5 administrative support staff. In the 2001-2002 financial year, 49 different training courses were made available to FAYS staff.

FAYS accesses registered training providers to deliver competency-based training. Currently the following competency based training programs are offered to FAYS staff:

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Certificate 4 in Inter-agency Practice (Child Abuse);
Certificates three & four in Youth Work;
Writing Court Reports and Mandatory Notification.

The Certificate 4 in Inter-agency Practice (Child Abuse) is viewed by staff as positive; however, again, staff express the need for the program to be made more widely available.

The Internal FAYS Training Unit designs and delivers non-competency based training programs to meet staff need in a variety of topic areas including child protection. The reintroduction of the Training and Development Unit within FAYS has been received positively by staff. The essential/introductory training programs designed for new staff have also received positive feedback. Full enrolment to programs occurs within days of advertising and participation levels are high.

Staff training on working with families using alternative approaches was provided in 2002. In undertaking intensive family preservation work beyond confirmation, FAYS would require additional resources to provide staff with appropriate training.

Training and development initiatives are also developed and delivered by individual District Centres/locations that access outside training facilitators or utilise the expertise of senior staff within the location. Senior practitioners have expressed the need for further clarification in relation to their role and expectations of them in local training and development initiatives.

**CURRENT ISSUES IN TRAINING FOR FAYS STAFF**

The following issues have been identified for FAYS staff in relation to training:

- the need for further development and maintenance of professional education and practice standards in relation to child protection
- the inadequacy of preparation of social work students to work with children, young people and families in a statutory capacity, taking into account the complexity, level of responsibility, and emotional demands of the work
- the need for further training in the court processes and evidence giving that is essential for child protection workers who often find themselves intimidated in the legal arena
- inadequate initial and ongoing training for social workers and other professionals employed to work with children, young people and families in a statutory capacity, resulting in poor assessment leading to interventions that are ineffective and minimalist in nature
- assessments need to be based on theoretical frameworks of child development, family functioning and relationships and intervention needs be based on models for engaging involuntary clients
- lack of resources for trainers
- often the least experienced workers are undertaking the most difficult, front-line work
- the problem of training workers on temporary and short-term contracts
- training programs being full and waiting times too lengthy
- ensuring essential/core training programs being made available to new staff as near as possible to the beginning of their employment in FAYS
- ongoing training for more experienced staff to either refresh or extend their knowledge and skills
- training programs to be available to meet the specific needs and issues of country locations
- training programs developed in partnership with the higher education sector
- a higher commitment to and resourcing of training and education within FAYS.

Staff suggest that training be a priority for FAYS and resourced accordingly. Training needs to be mandatory.
RECOMMENDATION 155

That the Department of Human Services and FAYS initiate discussions to develop with the universities and the AASW

- an accreditation process for social workers in child protection
- specific competency based child protection training for FAYS staff
- processes for monitoring issues with regard to the training needs for new social workers in the workforce
- examination for options of a more systematic approach to the provision of continuing professional education.

That DHS pursue the potential for developing an across interagency training agenda for FAYS, C&YH, CAMHS, hospital and CPS staff on topics such as child protection, mandatory notification, child development, medical ethics and legal issues.

That DHS/FAYS develop an individually based training analysis to identify and prioritise training needs for FAYS staff which could be linked to the performance enhancement processes.

That DHS/FAYS develop specific training for non-Aboriginal staff to increase knowledge, skills and competency in working with Aboriginal families. Specialised training programs also need to be considered to meet the specific training needs of Aboriginal staff.

That DHS/FAYS develop specific volunteer training for volunteers involved in complex cases.

That FAYS staff be given training to develop a higher level of skill, in relation to:
- engaging reluctant and resistant families
- brief and longer term interventions with families
- supervising social work students on field placement
- managing and chairing complex interagency meetings.

That such training include coverage of essential topics such as working with culturally and linguistically diverse families, mental health, drug and alcohol and disability issues.

That appropriate training also be available for social work students on placements and volunteers.

Reason

Collaborative partnerships between the universities, AASW and DHS/FAYS are required to expand options in training for FAYS staff and for new workers in child protection and students.

Training both on recruitment and ongoing is essential for the maintenance of a skilled workforce. Unfortunately, when budgets are stretched, this is often the area which is either dropped or limited. Investment in workforce development is required to build an effective, capable and sustainable workforce in child protection practice.

Participation of FAYS staff in training is currently ad hoc with limited focus on meeting individual need or the needs of district centres and other service locations. Processes for identifying training needs for individuals should be encouraged within locations so that appropriate registration and delivery may occur.
RECOMMENDATION 156

That FAYS undertake a review of the roles and responsibilities of its volunteer staff and devise a training program that reflects these responsibilities.

Reason

Volunteers within FAYS have been increasingly utilised to meet the needs of children and families, especially in the area of court-ordered access and transport. Minimal training is available for volunteers to assist them in these roles and responsibilities, and to understand the associated occupational health, safety and welfare issues. Volunteers are used increasingly in the role of ‘social work aid’ which could be expanded with the implementation of this Review and therefore training for volunteers should reflect the complexity of their changing role.

RECOMMENDATION 157

That FAYS examine options for the delivery of training to country areas, taking into consideration the specific needs of individual locations.

Reason

Staff in rural and remote areas are disadvantaged by the focus on delivery of training only be made available in the metropolitan area. Further, the training needs to take account particular issues faced when working in rural and remote communities.

MANDATED NOTIFIER TRAINING

The provision of mandated notifier training was one of the areas of significant concern across a number of submissions. One of the concerns raised by many submissions was that the extent of mandated notifier training required was often beyond the capacity of individual services and organisations to fund and provide to employees and volunteers. For example, a number of organisations such as the Playgroup Association of SA that involve significant participation by volunteers held strong views about the need for mandated notifier training even though volunteers in these organisations are not strictly mandated notifiers under the Children’s Protection Act 1993 (SA).

There was a view that where agencies had contracts of service with the Government, mandated notifier training and other child protection training and education issues should be addressed within the contract. Another view was that the obligation for organisations working with children to provide training on child protection issues could be considered within a similar framework to the occupational health, safety and welfare obligation for manual handling training (mandatory and requiring regular updates and subject to audit).
It is apparent that it continues to be difficult to ensure all professionals and other workers who are mandated notifiers receive training. This problem has become exacerbated by the absence of a training unit that targets particular service or community areas and monitors participation.

The FAYS’ Mandated Notification and Consultancy Services are responsible for mandated notifier trainer training, maintaining a register of trainers and the content of the training package. One of the shortcomings of the current approach is that it tends to result in training being provided en bloc to a particular professional group and does not provide opportunities for multi-disciplinary mandated notifier training thereby giving greater opportunity to see how the child protection system operates as a whole.

Given the scope of the recommendations made about expanding the range of professionals who should be mandated notifiers, the current unit within FAYS, which provides valuable support to organisations coordinating the provision of mandated notifier training, needs to be increased to enable greater coordination of mandated notification training and an improved system for ensuring delivery to targeted groups in the community, particularly those whose participation rate is considered to be very low or where affordability is a major issue.

There was also significant commonality in views across the child protection system about the need for an expansion and upgrade of the content of the mandated notifier training to take into account issues such as the complexity of child protection including psychological maltreatment.

One of the other important issues to be acknowledged in the provision of mandated notifier training to professionals and other mandated notifiers is the need for appropriate support for course participants who may have previously experienced child abuse or sexual assault. It is not unknown for participants, during the training, to vividly recall their past trauma requiring counselling support at the time from trainers or other personnel.

**RECOMMENDATION 158**

See Chapter 10 for specific education and training requirements for mandatory reporting.
Chapter 22
Children in Detention

INTRODUCTION

This Chapter discusses:

- International Conventions and standards
- the circumstances of children in detention centres in South Australia
- the findings of Human Rights bodies
- the Memorandum of Understanding between the Commonwealth and the State Government and
- recommendations for child protection.
In considering the situation of children in detention the Review expressly makes no comment or judgment about the Federal Government policy on immigration detention but discusses only the issue of children in detention.

Children are detained in South Australia under the *Migration Act 1958 (Cth)* in a variety of places, mostly in detention centres at Woomera and Baxter in the far north of South Australia, but also in hospitals (country or metropolitan) or community detention in alternative care homes or facilities in Adelaide.

The circumstances in which children come into detention are usually that they have arrived in Australia without a visa either with or without parents or relatives and are seeking refugee status in Australia. Almost all have arrived by boats through Indonesia and are largely from Iran, Iraq or Afghanistan. All non-citizens who are unlawfully in Australia must be detained.\(^1\) The detention requirement continues until the child is determined to have a lawful reason to remain in Australia or is removed from Australia. Once detained, the unlawful non-citizens are kept in detention until they are granted a visa\(^2\) or they are deported or removed from Australia as soon as reasonably practicable.

Immigration detention is defined\(^3\) in the Act as being in the company of, and restrained by, an officer or any other person as directed by the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), or being held by or on behalf of an officer in: a detention centre established under the Act;\(^4\) a State or Territory prison or remand centre; a police station or watch house; a vessel; or any other place approved by the Minister in writing.

Children who are with a parent are entitled to be included in the parent’s application for a Temporary Protection Visa (TPV), and will gain a visa if the parent is successful in claiming refugee status. If a child is unaccompanied by a parent, the child personally makes an application for a TPV.

In some cases the Minister can issue a bridging visa to “eligible non-citizens” which importantly provides for the release from detention pending the processing of a visa.

In relation to an unaccompanied minor who has arrived in Australia without family support, the Minister for Immigration is the legal guardian of the child.\(^5\) This is not the case with regard to a child who arrives with family or whose family is already in Australia.

There is specific legislation in relation to unaccompanied minors contained in the *Immigration (Guardianship of Children) Act 1946 (Cth)*. Further, by virtue of section 5 of this Act, the Minister for Immigration may delegate certain powers and functions to others. The *Immigration (Guardianship of Children) Delegation 2002*, dated 18 September 2002, delegates certain powers and functions of the Minister\(^6\) to certain named officers of DIMIA\(^7\) or to State officers.\(^8\) In relation to the State officers the powers and functions apply to a non-citizen child who is in alternative care\(^9\) or alternatively is not in immigration detention.\(^10\) Thus the Federal Minister retains guardianship in relation to all unaccompanied minors who are in detention.

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1. Section 189 *Migration Act 1958 (Cth)*.
2. Such as a Bridging Visa or Temporary Protection Visa.
3. Section 5(1) *Migration Act 1958 (Cth)*.
4. Immigration Detention Centres are established under section 273 *Migration Act 1958 (Cth)*.
5. *Immigration (Guardianship of Children) Act 1946 (Cth)* section 4AAA.
6. The functions and powers delegated exclude those under sections 4AA, 6 and 11.
7. Examples of such officers are State Director of DIMIA as well as Managers of the detention centres at Woomera and Baxter.
8. In South Australia the powers and functions are re-delegated to the Chief Executive of DHS; the Executive Director, Country Services, Disability Services, Family and Youth Services; Director, Family and Youth Services.
9. Defined in section 6 of the delegation to refer to an arrangement made between DIMIA and DHS in relation to a child who is in immigration detention under the *Migration Act*.
10. Such as if the child is on a TPV or Bridging Visa.
In addition to the above legislative provisions there is also a Memorandum of Understanding (MOU) dated 6 December 2001 between DIMIA and DHS in regard to the mutual obligations between the respective departments in cases of possible child abuse or neglect and child welfare issues relating to all children in immigration detention whether they are with the family or are unaccompanied minors. The MOU is discussed later in this chapter.

**INTERNATIONAL CONVENTIONS AND STANDARDS**

There are a number of international instruments which reflect the minimum standards reached by international consensus, which are expected to be applied in relation to children seeking asylum protection and the circumstances in which they are cared for during that process. These are summarized below:

**UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)**

- **Article 7**: prohibition of torture, cruel, inhuman or degrading treatment or punishment
- **Article 9**: no one shall be subjected to arbitrary detention
- **Article 13**: everyone has the rights to freedom of movement and residence within the borders of each State
- **Article 14**: everyone has the rights to seek and to enjoy in other countries asylum from persecution

**DECLARATION OF THE RIGHTS OF THE CHILD (1959)**

- **Principle 2**: that a child shall enjoy special protection and be given opportunities and facilities to enable him to develop physically, mentally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration.
- **Principle 6**: a child of tender years shall not be separated from his mother save in exceptional circumstances. There is also a duty to extend particular care to children without family.
- **Principle 7**: the right to education and full opportunity for play and recreation.

**CONVENTION RELATING TO THE STATUS OF REFUGEES (1951) AND ITS PROTOCOL (1967)**

Apart from providing for the right of refugees to seek asylum, this Convention includes prohibition against punishing people seeking asylum by virtue of the illegal nature of their arrival.

**INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1976)**

- **Article 2**: contains a general non-discrimination clause with regards to human rights contained in the covenants.
- **Article 7**: the right not to be subjected to torture of to cruel, inhuman or degrading punishment.
- **Article 10**: requires that detained persons be treated with humanity an respect for human dignity.

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11 Adopted by the General Assembly of the United Nations on 10 December 1948 and to which Australia is not a party and therefore is not legally bound but the Declaration represents the standards which reflect the consensus of the international community.
Children in detention

- Article 9: everyone has the right to liberty. No-one shall be subjected to arbitrary detention. No-one shall be deprived of his liberty other than in accordance with law.
- Article 12: everyone lawfully within the territory of a State shall have the right of liberty of movement and freedom to choose his residence.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1976)

- Article 2: general prohibition of discrimination regarding human rights.
- Article 10: States to recognise the fundamentality of family unification.
- Articles 13 and 15: recognition of right to education.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1984)

General recognition of equal and inalienable rights of all persons as well as the right not to be subjected to torture or to cruel, inhuman or degrading punishment.

BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION (1988)

There are 39 principles and a summary of the more relevant is set out below:

- Principle 1: all persons under any form of detention shall be treated in a humane manner and with respect for the inherent dignity of the human person.
- Principle 2: detention shall be carried out strictly in accordance with the provisions of the law.
- Principle 3: there shall be no restriction upon or derogation from any human rights of persons under any form of detention recognised or existing in any State pursuant to law, conventions, regulations or custom.
- Principle 4: any form of detention and all measures affecting the human rights of a person under any form of detention shall be ordered by, or be subject to the effective control of, a judicial or other authority.
- Principle 5: measures taken under the law and designed solely to protect the rights and special status of women, children and juveniles shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by judicial or other authority.
- Principle 7: officials who have reason to believe that a violation of the Body of Principles has occurred or is about to occur shall report the matter to the superiors of the officials.
- Principle 8: persons in detention shall be subject to treatment appropriate to their status as persons who are not convicted of any crime. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.
- Principle 11 1: a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority and shall have the right to be assisted by counsel.
- Principle 11 3: a judicial or other authority shall be empowered to review the continuance of detention.
- Principle 19: a detained person shall have the rights to be visited by and correspond with, in particular, members of his family.
- Principle 24: a proper medical examination shall be offered to a detained person as promptly as possible after admission to the place of detention and thereafter medical care and treatment shall be provided whenever necessary free of charge.

12 To which Australia is a party.
13 Resolution 43/173 adopted by the General Assembly of the United Nations 76th plenary meeting 9 December 1988 and which is not legally binding on Australia but represents standards reflecting the consensus of the international community.
Children in Detention

- **Principle 28**: a detained person shall have the right to obtain within limits of availability of resources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order.

- **Principle 29**: places of detention to be regularly visited by qualified and experienced persons appointed by, and responsible to a competent authority distinct from the authority directly in charge of the administration of the place of detention.

- **Principle 35 1**: damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules on liability provided by domestic law.

### CONVENTION ON THE RIGHTS OF THE CHILD 1989

- **Article 2**: requires States to take measures to ensure that children are protected from all forms of discrimination or punishment on the basis of activities, opinions or beliefs of the parents, legal guardians or family members.

- **Article 3**: provides that in any actions taken by States concerning children, the best interest of the child shall be the primary consideration.

- **Article 9**: grants the rights not to be separated from their parents against their will.

- **Article 18**: requires appropriate assistance to be provided to promote the child’s wellbeing.

- **Article 29**: provides that the education of a child shall be directed to the development of the child’s personality, talents and mental and physical abilities.

- **Article 37**: prohibits arbitrary detention of children except as a last resort and for a minimal period of time.

### UNHCR REVISED GUIDELINES ON THE APPLICABLE CRITERIA RELATING TO THE DETENTION OF ASYLUM SEEKERS (1999)

These guidelines recommend that detention is inherently undesirable and should not be automatic or unduly prolonged and that children should not be detained [the UNHCR’s emphasis]. Further, the guidelines stress the importance of ensuring normalcy in home environment, and appropriate linkage to schooling and to care and support systems must take priority.

### UNHCR GUIDELINES ON POLICIES AND PROCEDURES IN DEALING WITH UNACCOMPANIED CHILDREN SEEKING ASYLUM

These UNHCR Guidelines recommend that children who are unaccompanied should not be detained.

In addition there are also standards which are set for treatment of prisoners. As the conditions for immigration detainees should be no less than those conditions, they can provide minimum standards. Examples of such international standards include:

- **Standard Minimum Rules for the Treatment of Prisoners (1955)**


- **United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

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14 It is to be noted that this Convention is the most ratified convention in the world and was ratified by Australia in December 1990 and scheduled to the Human Rights and Equal Opportunity Act (Cth) in 1993.

These Rules set out a standard of treatment for juveniles which recommends alternatives to institutional detention to the maximum extent possible bearing in mind the specific requirements of the young.

**SUMMARY OF INTERNATIONAL INSTRUMENTS**

In summary, immigration detention is not prohibited under the international human rights instruments provided that it is lawful and not arbitrary. Detention will not be arbitrary where it is for minimal time and it is a reasonable and proportionate means of achieving a legitimate aim. Further, in *A v Australia*, the Human Rights Committee stated:

> ...remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example, to prevent flight or interference with evidence; the element of proportionality becomes relevant in this context.

In addition, prolonged detention may be more likely to be arbitrary as it will be more difficult to justify such detention as being a proportionate or reasonable means of achieving a legitimate aim or as reasonable and just in the circumstances.

The UNHCR has determined that due to the hardship involved with detention, it should normally be avoided, but if necessary, it should be resorted to in four cases:

- to verify identity
- to determine the elements on which the claim to refugee status or asylum is based
- to deal with asylum seekers who have destroyed their travel or identification documents so as to mislead authorities or
- to protect national security or public order.

In relation to children in detention the combination of the above and the *Convention on the Rights of the Child* indicates that children should only be detained as a measure of last resort and for the shortest possible time. Thus alternatives to detention should be considered first in relation to children.

It is also necessary to note that Australia is a party to and has ratified the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which are then binding in international law. However, under Australian law such treaties and conventions even if ratified by Australia and are not automatically incorporated into domestic law unless they are the subject of domestic legislation. The only domestic legislation which has incorporated a relevant international convention is the *Migration Act 1958 (Cth)* which has incorporated the *Convention Relating to the Status of Refugees (1951)* and the associated Protocol (1967).

This does not mean that ratified treaties which are not incorporated are irrelevant under Australian domestic law; they can be expected to inform administrative decision-making unless expressly legislatively excluded.

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16 ICCPR Article 9 (1) and CRC Article 37.
20 UNHCR Executive Committee, Conclusion No. 44 (1986)-Detention of Refugees and Asylum Seekers.
22 Ibid.
Similarly, while the *Universal Declaration of Human Rights* (1948); *UNHCR Revised Guidelines on the Applicable Criteria relating to the Detention of Asylum Seekers* (1999); *UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum; Body of Principles for the Protection of All Persons under Any Form of Detention* (1988); *Standard Minimum Rules for the Treatment of Prisoners; United Nations Rules for the Protection of Juveniles Deprived of their Liberty* and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”)* are not legally binding upon Australia, they are still relevant as:

> …principles adopted by [United Nations Organizations], represent standards which broadly reflect the consensus of the international community.23

### CIRCUMSTANCES OF CHILDREN IN DETENTION IN SOUTH AUSTRALIA

A number of submissions provided information as to the detention circumstances of children and unaccompanied minors. Some were largely historical, but they are still relevant because of the effect that past treatment in detention has had on children and their families as well as on unaccompanied minors. The Review also notes that some families with children have recently now shifted to Baxter, where the circumstances are in a number of respects different from those which existed or still exist in Woomera.

The concern expressed in all submissions made in relation to the subject of detention was the deleterious effect which indeterminate long-term detention has directly on children as well as an indirect effect on children because of the effect of such detention on their carers and to the overall detention environment.

Some of the direct circumstances affecting children which were referred to in submissions included:

- Children are denied anything remotely resembling normal family life.24
- Lack of adequate and proper nutrition for children, particularly babies25 and toddlers, who require frequent and small meals throughout the day which is not compatible with the three set adult mealtimes.26
- Lack of privacy, family space and activities.27
- Lack of adequate and safe sleeping places for very young children. They often share a single hut with five other families in small partitioned rooms with usually no doors.28 In some cases they are placed within largely adult male compounds where they are at risk of abuse29, and their frequent crying, particularly at night, upsets adults who put pressure on parents to keep their children quiet.30
- Children see parents and others under severe stress witnessing hunger strikes, attempts at suicide and depression,31 thereby placing the children at risk of severe long-term psychological harm.32
- Explicit and highly disturbing first-hand accounts of self-harm and mutilation were set out in an occasional paper published by the Catholic Commission for Justice Development and Peace Melbourne in May 2002.33
- Inadequate education and activities for adolescents who are also more likely to take responsibility for the support of their siblings and parents who are unable to cope.34

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24 Submission 117 Name not for Publication.
25 Submission 117 Name not for Publication, and also Desert Camps Australia’s Detention Policy to Deter Asylum-seekers, INAA Peoples Commission of Inquiry into Australian Detention Practices, Interim Report, March 2002 p 20 which referred to cow’s milk or chicken stock being suggested for babies if women were unable to breastfeed.
26 Submission 97 Adelaide Central Health Service.
27 Submission 117 Name not for Publication.
28 Ibid.
29 Submission 97 Adelaide Central Health Service; Submission 117 Name Not For Publication.
30 Submission 117 Name Not For Publication.
31 Ibid.
32 Submission 117 Name not for Publication.
34 Submission 117 Name not for Publication.
Numerous examples where parents have been removed from Woomera and either imprisoned or hospitalised and the children are left without the support or protection of sometimes their only caregiver.  

Children have few programs or activities in which they can be engaged and lack stimulation through inadequate school, education, games or toys or appropriate books.

Whilst the MMR vaccine (for Measles Mumps Rubella) is provided, immunisation is not adequately provided for measles and polio.

In addition to those factors which directly affect children, there are also some very serious secondary effects on children due to the physical and mental vulnerability of their carers and the ambient depressing and sometimes violent behaviour and atmosphere which exists in the detention centres.

In particular:

- Parents have no rest or respite from child-minding which is a 24-hour responsibility.
- There are no support systems to assist parents of young children, often parents for the first time with children born in detention. The ante and post natal care is inadequate and brief and no education provided on early stages of child development.
- Parents are frequently de-attached or disengaged from their children by reason of depression which adversely affects the children.
- The majority of the adult population in detention centres is affected by psychological disturbance and depression. As the Human Rights Commissioner Dr Sev Ozdowski OAM said in a speech given in October 2002:

  On my last visit to Woomera, there was almost no detainee I spoke with whom I would consider to be mentally healthy…They have become detached from children and spouses; many have trouble expressing any emotion; they blame themselves for everything; small incidents to us have become major matters; their life has become a series of negative results.

- Women are demeaned by having to receive either sanitary wear or contraceptive pills by lining up each day and reporting to usually a male member of staff, and
- Some particularly disturbing information was contained in one report in relation to the isolation cells in the Sierra compound of Woomera (as that compound was then known), involving serious deprivation of food, light and deliberate degradation of inmates in turn leading to anger and suicidal tendencies.

Findings based on children upon release demonstrated:

- younger children tended to have lower weight than average indicating inadequate nutrition
- some children were diagnosed as having had polio when they had not been so previously diagnosed and others required immunisation for mumps and polio and
- children demonstrated a variety of problem behaviours including regressive behaviours and anxiety and suffered from symptoms ranging from bedwetting, night terrors to suicidal ideation.
As one submission expressed the situation:

_If a child in the community exhibited these symptoms, assumptions of abuse or trauma would be made and intervention offered. In detention, these are commonplace symptoms exhibited by children..._ 50

Although some of the above circumstances may have changed over time up until the time of this report, as at June 2002 significant concerns still existed relating to the education and services available for children in respect of their physical and mental health.

The Human Rights Commissioner Dr Sev Ozdowski OAM visited Woomera in June 2002 for the purpose of conducting the inquiry into detention centres and said this of Woomera:

_I can make no final judgment in the middle of my Inquiry; however, I can report that some of the emerging themes are:_

▫ the despair of those long-term detainees who can’t understand why they are being detained when they only came here for protection
▫ the lack of adequate education – however I wish to acknowledge the recent move to use outside school facilities – this seems to be the way to go
▫ health and mental care is still a concern with a lack of appropriate and timely medical and psychological care
▫ there is limited access to services for children with disabilities
▫ there is limited availability of child specific nutrition, for example, an unreliable supply of infant formula milk
▫ no adequate protection from witnessing of self-harm or violence. 51

Similar findings were expressed by Justice P N Bhagwati, Chairman of United Nations Human Rights Committee, who was delegated by the United Nations High Commissioner for Human Rights to conduct a mission and report on Human Rights and Immigration Detention in Australia.

His Honour reported of the children he saw in detention at Woomera in June 2002 that:

_He saw boys and girls, who instead of breathing the fresh air of freedom, were confined behind spiked iron bars with gates barred and locked preventing them from going out and playing and running in the open fields. He saw gloom on their faces instead of the joy of youth. These children were growing up in an environment which affected their physical and mental growth and many of them were traumatised and led to harm themselves in utter despair._ 52

Whether it be indirect or direct, the combined effect of the circumstances of immigration detention of children in detention centres is incompatible with them being in a situation which is in their best interests instead the detention centre environment is positively detrimental to their wellbeing. The inherent character of their detention in a centre for an indeterminate period of time places children at significant risk of abuse or neglect. As one submission summarised the situation:

_The very nature of detention creates an environment that places children at significant risk of psychological damage, and neglect of the basic rights of the child to a secure, nurturing, environment in which to grow and develop...the extent of privation suffered by children [in] detention is of such magnitude that it constitutes a neglectful environment in itself, with children consequently at greater risk and more vulnerable._ 53

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50 Ibid.
51 Dr Sev Ozdowski OAM, Human Rights Commissioner, Lessons from the UN Special Session on Children Keynote presentation to Association of Children’s Welfare Agencies Conference 3 September 2002.
53 Submission 117 Name not for Publication and similar views were expressed in Submission 128 Ms Helen Whittington.
Another submission stated the situation from another approach:

> Children should be free to grow and develop in the least restrictive and normalised environment possible. A child's physical, intellectual, emotional and spiritual wellbeing is best met in a community-based environment where they have access to housing, food, health, care, school, church and recreational activity.\(^\text{54}\)

In addition such detention is contrary to the international standards as reflected in the words of Justice Bhagawati:

> From a human rights point of view, the detention of children in the context of immigration procedures is certainly contrary to international standards…it would nevertheless appear obvious that detention of children for immigration purposes is not in their best interest…With regards to education services, while children are in fact given access to education to some extent, it would appear that, at least in the Woomera detention centre, the education services are at best wholly inadequate… Further the policy of detaining unaccompanied minors also appears seriously flawed and must be regarded as totally unacceptable from a human rights perspective. A particular issue of concern is the fact that the Minister for Immigration is both the “detainer” and the guardian, which represents a serious conflict of interest.\(^\text{55}\)

Since June 2002, a number of detainees have been moved from Woomera and Curtin\(^\text{56}\) detention centres to Baxter. The only information supplied to the Review which refers to conditions in Baxter was a supplementary submission received by the Review in December 2002\(^\text{57}\). That supplementary submission provided information with respect to the conditions in the Baxter detention centre was said to have been compiled from first hand observations by visitors and information supplied to them by detainees.

The concerns which were expressed in the supplementary submission relevant to this Review, were that in comparison with the conditions which had previously existed in Woomera, the increased levels of security, surveillance and restriction of freedom of detainees closely resembled a “maximum security prison”. In particular it was said that:

- The fencing was “extremely high” around the compounds, it was also “energised” and visually impenetrable. The fencing around living compounds is made of corrugated iron which is curved inwards at the top and “therefore the residents can only see skyward”. The effects are that “DIMIA offices, the gatehouse, the outer fences, the car park and the surrounding countryside is blocked from view.”
- Interview rooms “had padded walls and double glazing”.
- Detainees cannot move freely between one compound and another to, for example visit family members in another compound. Instead of being able to walk escorted as had occurred at Woomera, they are driven in a van and accompanied by guards.
- There are many surveillance cameras which permit surveillance of detainees in the compounds as well as cameras permitting 24 hour surveillance of persons kept in the “Management Compound”, being solitary confinement rooms.
- There is increasing use of the “Management Compound” for periods which appear to be at the discretion of the guards. These periods may range from a few hours to a few weeks. The reasons for which a person may be kept in the “Management Compound” may be either medical, or for behavioral modification. Also the security which surrounds the movement of a person kept in the Management Compound was seen to be far greater than in Woomera.

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\(^{54}\) Submission 155 Children's Protection Advisory Panel.


\(^{56}\) A detention centre in Western Australia.

\(^{57}\) Supplementary to Submission 117 Name Not For Publication.
The overall effect of these conditions, as described, is that although there is a significantly improved comfort in the facilities and services available at Baxter in comparison to Woomera, many detainees have expressed and displayed greater stress levels as a consequence of the greater restrictions of freedom and surveillance. Most of the detainees spoken to said that because of the increased restriction on freedom they preferred detention at Woomera, even though the physical facilities were much less comfortable.

These continuing features, which significantly magnify the loss of human freedom and movement with resultant increase in stress levels of detainees, will further impact on the children.

Apart from a short period needed for health checks and subject to any serious concerns for safety or security which may require the continued residency of (usually) the male family member in detention for a period of time, there is no proper foundation for the indefinite long-term detention of children and their families.

**RECOMMENDATION 159**

That the State Government urge the Federal Government to release all children and their families currently in detention centres into the community as soon as possible, on a cost-sharing basis.

**Reason**

The effects of detention in detention centres is so devastating to the wellbeing and development of children and will have such lasting consequences during their lifetimes, which may in fact be spent in Australia, the State Government has a responsibility to take a strong position on this issue.

**THE LEGAL RESPONSIBILITY OF THE STATE IN RELATION TO CHILD PROTECTION FOR CHILDREN IN DETENTION**

This simple statement of the topic belies a number of complex issues.

There is a need to consider and distinguish:

- the interaction and operation of the provisions of the *Migration Act 1958* (Cth) and the provision of the *Children’s Protection Act 1993* (SA) and whether the latter is excluded in operation as a matter of law
- the different forms in which children may be in detention, namely, whether it be in detention centres on Commonwealth land or whether they are in State institutions or alternatively in the community
- whether or not the children or youth are with their parents and family or whether they are unaccompanied minors and
- the effect or the Memorandum of Understanding between DIMIA (Federal Government) and the DHS (State Government) dated 6 December 2001.

The legal situation is unclear and debatable. The fact that the children are physically on Commonwealth land does not of itself exclude the operation of State legislation on child protection of children within the boundaries of the State. Nor would the fact that the detention centres are set up under Commonwealth legislation and run by persons under contract to the Federal Government of itself necessarily exclude the operation of the State legislation. There would appear to be no attempt by the Federal Government to “cover the field” of child protection in the Migration Act 1958 (Cth). There is arguably no inherent direct or indirect conflict between the provisions in the Migration Act 1958 (Cth) and the Children’s Protection Act 1993 (SA); it is to be noted that detention under the Migration Act 1958 (Cth) does not require that it take place in a detention centre. Further, it is questionable as to whether the Federal Government has the constitutional power to legislate to exclude the State’s right to protect children resident within its borders.

The legal situation in relation to children who are not in detention centres but are in detention in State institutions or in community detention pose some different questions. There is a stronger argument that the provisions of the Migration Act 1958 (Cth) do not exclude the operation of the State Children’s Protection Act 1993 (SA) for children outside Commonwealth owned and run detention centres.

There is a particular difficulty concerning the application of the Migration Act 1958 (Cth) in relation to the needs of the children, in the context of their families who are in detention centres. The State has no jurisdiction to require the release of a child’s family from the detention centres in order to ensure the best interests of the child. This can only be achieved with the cooperation of the Federal Minister. Thus, even if the State had jurisdiction to investigate and take action in relation to the child, it does not have jurisdiction to seek orders in relation to the family in detention.

It is not necessary to give a legal opinion in this report on this issue, which would require detailed legal analysis by others. Instead, attention is drawn to the complex and important legal issues and it is recommended that the matter be fully legally investigated to articulate the respective coverage of the State and Commonwealth.

RECOMMENDATION 160

That the State Government obtain a detailed legal opinion on the extent of the applicability of Children’s Protection Act 1993 to children and their families in detention, whether they be in detention centres or in detention outside such centres, having regard to the provisions of the Migration Act 1958 (Cth).

Reason

The interaction and operation of the provisions of these Acts involves complex legal issues and need to be clarified for the purposes of understanding how best the State is able to protect children, the subject of detention under the Migration Act 1958 (Cth).

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58 For example, the commission of a crime by a person on Commonwealth land does not exclude the applicability of State legislation to such a situation. Furthermore, the Commonwealth Places (Application of Laws) Act effectively allows State legislation to apply to Commonwealth places unless inconsistent with Commonwealth law.

59 The question of direct and indirect inconsistency would involve detailed consideration of all of the relevant powers and functions under the Children’s Protection Act and the provisions of the Migration Act.

60 Save for example children of a marriage under the Family Law Act (Cth).

61 Absent any ability to challenge the continued detention of the family as being penalizing.
The important provisions of the MOU are contained in paragraphs 3 and 4 of the agreement. In essence, paragraph 3 provides that the role of DIMIA is to manage movement of people into and out of Australia in accordance with the Migration Act 1958 (Cth), while the function of DHS is to provide support and assistance to those experiencing disadvantage or who are in need of care and protection and to provide services under the Children’s Protection Act 1993 (SA) and the Family and Community Services Act 1972 (SA). Paragraph 4 provides that DIMIA maintains the ultimate duty of care and ultimate responsibility for the welfare of those in detention but that the DHS has the legal responsibility to investigate child protection concerns for children in immigration detention. There is an important qualification to this responsibility, which is stated in these terms:

Any interventions undertaken to secure care and protection of detainees must be actioned by DIMIA [which] will consider carefully DHS recommendations to ensure that the best interests of the child are protected.

Other particularly relevant paragraphs relate to DIMIA officers and staff who are required to comply with the mandatory notification provisions of the Children’s Protection Act 1993 (SA).

There are also specific provisions in relation to unaccompanied minors. Paragraph 11.2 provides that:

On request from DIMIA, DHS will provide advice and assessments on appropriate care arrangements… In the event DIMIA makes a determination that it would be in the best interests of the unaccompanied minor to be released from immigration detention, DHS agrees to ensure appropriate arrangements are in place for the care and accommodation of the minor.

In relation to this provision of the MOU, it is to be noted that the advice and assessment of an unaccompanied minor is entirely dependent on a request being from DIMIA. It assumes that DIMIA would be both alert and prepared to make the request when, for example, the minor may be at risk as a consequence of the conduct of either itself or its contractors ACM. This underscores the conflict of interest referred to in the report of Justice Bhagwati.

The State Government has been placed in a precarious situation as a consequence of this MOU. At one and the same time in the MOU, the Federal Government asserts and the State Government agrees that:

- the Minister of Immigration is the guardian of minors
- the State has “the legal responsibility” to investigate child protection concerns for children in immigration detention and make recommendations to the Federal Government on interventions required and
- the Federal Government reserves the right to act or not to act on any recommendation made by the State Government and any interventions must “be actioned” by DIMIA.
The dilemma arises because the State is given mandatory responsibilities to investigate under the MOU in relation to child protection which is more limited than its statutory mandate of protection as to applies to all other children within its state boundaries. In particular:

- It can only advise and not decide.
- It cannot take action or otherwise exercise its powers in accordance with its obligations under the *Children’s Protection Act 1993 (SA)*.
- It does not have access to the detention centre automatically on demand in order to investigate a complaint.
- It is placed in a situation of compromise in relation to the welfare of the children if the Federal Minister as a matter of policy is not prepared to release the whole family into the community (which appears to be the case in practice up to date). In that case the department is trying to weigh up and make recommendations on potential options all of which are likely to be detrimental to the best interests of the child, such as:
  - that the child remain with his or her family in the detention centre, or
  - that the child be taken away from both of his or her parents or other family in the detention centre and placed in alternative care or
  - that the department try and negotiate a compromise such as release with the child’s mother into community detention leaving the father in the detention centre.

A limited choice between inappropriate options is not only contrary to the Convention on the Rights of the Child\(^\text{68}\), it also exposes the State Government to criticism and potential liability for damages if it compromises its recommendations in order to achieve a negotiated less than optimum outcome for the child by reason of trying to accommodate the policy of the Federal Government.

There are other serious flaws in the MOU. Whilst the MOU does not preclude reporting against ACM or DIMIA staff or the Federal Minister as the guardian of unaccompanied minors, this is clearly not its focus. Instead the MOU appears to assume that the need for protection of the children will be from family members or other detainees.\(^\text{69}\) This situation also results in a conflict of interest in that the arrangement is also dependent on DIMIA reporting on itself.\(^\text{70}\) Most importantly, the MOU does not recognise the serious systemic abuse of children in detention and that the most serious abuse does not come from individuals, but arises from the circumstances of detention itself.\(^\text{71}\)

A further concern is that if, for example, the State decides to recommend what it perceives to be the least damaging of the limited available options, namely, that the child remain with his or her parents and family in the detention centre, when it would have otherwise have recommended that the child and his whole family be removed into community detention and if, as a result of the child remaining in the centre, a particularly serious event should occur such as the child self-harming causing serious injury, the Federal Government will be able to point to the State recommendations and seek to shift any blame from itself to the State.

The State Government is thus being placed in an impossible legal and moral position. The Federal Government and its employees and or contracted staff are not in a position to be appropriately alert and trained to deal with this very vulnerable group of children. At the present time, in order to achieve some modicum of improvement in the protection of children in detention as a matter of human concern, the State Government has had to try and quietly negotiate these matters with the Federal Government on a case by case basis in a manner which if the children were not in detention, would offend the terms of the *Children’s Protection Act 1993 (SA)*.

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\(^{68}\) As well arguably amounting to discrimination against such children by reason of race.

\(^{69}\) Submission 117 Name Not For Publication.

\(^{70}\) Submission 155 Children’s Protection Advisory Panel.

\(^{71}\) Submission 117 Name Not For Publication.
RECOMMENDATION 161

In the event that the provisions of Children’s Protection Act 1993 (SA) do not apply as a matter of law in all respects to children in immigration detention and that the State Government has no jurisdiction to require complementary release of the parents or family of the children from detention centres, the State Government endeavour to either negotiate an agreement or legislative amendment with the Federal Government which:

- appropriately recognises the full jurisdiction of the State Government in relation to protection of children in immigration detention
- specifically accedes the jurisdiction to the State Government to protect unaccompanied minors in detention
- permits access on demand to detention centres
- permits an independent body to monitor the conditions in the detention centres and publicly report
- is predicated on a holistic, rigorous and frank evaluation of the need for and types of services which should be provided
- specifically gives power to intervene and remove children at risk and their families from detention centres if it is in the best interests of the child, subject to specific riders such as serious security and safety issues for the community.

Reason

Children in immigration detention are a highly vulnerable group of children and should not be denied their rights to protection merely because their parents or family have brought them to Australia to seek asylum. The State Government has a specific legislative mandate and administrative structures which are capable of providing protection to these children and their families whilst their applications for asylum are being processed. The State Government and not the Federal Government is the appropriate body to ensure the proper protection of children. The Federal Government should also share the costs of providing such assistance to the children and their families.

RECOMMENDATION 162

If the DHS makes recommendations under the MOU it should make them as if the children and their families were not in detention. In this way the Federal Government will be informed of what is regarded as being in the best interests of the child and will thereby remain at all times responsible if such recommendations are not activated. Any alternative lesser option recommended by the State Government as a secondary option should clearly be identified as such.

Reason

This will assist in the process of ensuring that the best possible recommendations in the best interests of the child are made by the State and also minimise the extent to which the Federal Government will be able to inappropriately shift blame to the State for its own deficiencies in protection of children in detention.
INTRODUCTION

This chapter:


☐ discusses comments and submissions received in relation to content and administration

☐ poses recommendations for amending existing legislation to strengthen and enhance child protection policies and practices in South Australia.

Other Acts affecting children and young people such as the Evidence Act 1929, the Youth Court Act 1993 and Family Law Act 1975 (Cth) are discussed within Chapter 15. In relation to the Education Act 1972 and the Children’s Services Act 1985, Chapter 19 deals with proposed changes to the Acts.
GENERAL DISCUSSION

There is need for considerable overhaul of legislation in relation to children protection. The Review has recommended a range of changes to advance the interests and protection of children and young people and to enable the establishment of statutory bodies to ensure appropriate structural reform. It has made specific recommendations to amend the Evidence Act, 1929 and to enhance the interests of children appearing as witnesses in the adult criminal court. (See Chapters 5, 15, 17, 18)

The recommendations propose substantial legislative reform and will require considerable work. It is feasible that consideration could also be given to the general review of other Acts such as the Family and Community Services Act 1972 and the South Australian Health Commission Act 1976 to ensure they are sufficient and effective in relation to protecting the interests of children in this State.

The Review notes that reforming legislation in and of itself will not effectively change the lives of children and young people at risk in the community unless those involved in the administration and implementation of the various acts are suitably trained, supported and resourced to undertake the work. While other Acts may have relevance to children’s interest and protection1 the Review has not been able to cover in any detail the myriad of statutory provisions which may affect children, young people and their families.

CHILDREN’S PROTECTION ACT 1993 (SA)

Comments to the Review ranged from a need to completely revise the legislation affecting the protection of children and adopting the recently developed Queensland legislation, to amending substantial sections of the current Children’s Protection Act 1993 (SA), including changing its name to be more broadly inclusive of young people and providing emphasis on care as well as protection.

Whilst the administration of the Act principally rests with the Department of Human Services (DHS), through its service delivery arm Family and Youth Services (FAYS), the work needed to be undertaken to protect and safeguard children in the community requires the commitment and dedication from a range of people including families and workers from health, education, justice and community services.

It is important to acknowledge that the ‘child protection system operates in social context in which families, especially the most disadvantaged, experience stress and challenges that require not only legislative response but also resources and on-the-ground support’.2

During consultations, many people commented on the need for child protection legislation to articulate that it is for the protection of all children: infants, children, and young people. Depending on their particular focus, some said that the Act was not sufficiently indicative that it was for the protection of infants; others said that the reference to children alone suggested that the legislation was not so applicable to young persons and adolescents. In the interests of having an Act with a practical title, it is suggested that instead of changing the title it would be preferable to indicate the scope of application in section 1. This will not satisfy all, but there appears to be no single short title that would.

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2 Submission 155 Children’s Protection Advisory Panel.
RECOMMENDATION 163

That the short title of the Children’s Protection Act 1993 in section 1 be amended to reflect that the Act is for the protection of “children including infants, young persons and adolescents.”

Reason

Submissions expressed concerns that “children” were sometimes not considered as including all ages from birth to the age of 18 years and that this should be made manifest in the Act.

CONTEXT FOR ACTION – WHEN SHOULD THE STATE INTERVENE?

The Child Protection Discussion Paper posed two questions regarding State intervention:

In what circumstances do you think a child’s relationship to his or her parents becomes a matter of State concern?

and

What must have happened to a child before the State should be authorised to intervene?

Many submissions to the Review considered these two questions. Overall there was general agreement that the State must intervene to protect children and young people when they are at risk from harm, whether this be within their family or outside of the family and reinforces the current mandate for intervention by the State in certain circumstances.

Questions concerning what is abusive and neglectful behaviour and where the ‘threshold’ should be set for intervention presented more taxing issues.

What then must justify the presumption in law that parents are free to determine what is best for their children in accord with their own beliefs, preferences and lifestyles3 and to override this by sanctioning the State to intervene?

Some submissions suggested:

A child’s relationship to his or her parents should always be a matter of State concern – family support initiatives should always reflect this. An act of intervention – when the State’s concerns for the wellbeing of the child within the family requires it – is not a matter easily determined, nor perhaps should it be.4

Intervention should occur when there is a suspicion that the parents are not able or willing to protect the child from abuse and neglect in all its forms and inter-relatedness or in fact are not doing so. When there is evidence that the child is at risk of being abused or neglected by parents or caregivers.5

When there is a reasonable indication that a child/young person is being abused/neglected.6

As soon as any suspicion or report of neglect of abuse occurs. Not attending school regularly or when there is physical, sexual, mental abuse occurring.7

4 Submission 127 Parents Want Reform.
5 Submission 155 Children’s Protection Advisory Panel.
6 Submission 58 Ms Nina Weston, Foster Care Consultant.
7 Submission 27 Ms Jenny Boughen.
When a child becomes ‘at risk’ due to the acts of a significant adult in their lives. Such behaviour includes physical (including sexual) emotional and neglect of the child’s basic right to feel safe, secure, respected and supported.8

The State should be authorised to act on behalf of a child at any time when that child has been a victim of abuse or is at high risk of abuse. In this context we use the term ‘abuse’ to mean instances of sexual, physical, emotional, psychological abuse and/or neglect.9

The State has a responsibility to act according to the principles enshrined in the United Nations Convention of the Rights of the Child and within the South Australian Child Protection Act, 1993.10

Any form of abuse …should be investigated in the first instance, regardless of the source of the report.11

…the State should intervene in a child’s situation where emotional and verbal abuse are at high levels. Better response and recognition is required of the risks children face in verbally and emotionally abusive situations from State agencies.12

The child needs to have suffered some form of abuse or neglect; however, it is difficult to recognise emotional abuse and neglect.13

When the parent is unable to meet the child’s material and physical needs (food, clothing, housing). When the parent is unable to provide a safe standard of care for the child. When the parent is physically or emotionally abusive to the child. When the parent is sexually abusive to the child. When the parent is unable to protect the child from abuse by others, including the other parent.14

Intervention by the State is not without its difficulties and finding exactly the ‘right’ balance between when to intervene and when not to intervene is very challenging, as is the way in which it can be accurately expressed in legislation to cover the appropriate circumstances. Determining when the State should be authorised to investigate, modify or terminate an individual child’s relationship with his or her parents is full of dilemmas.

The state of child protection in any given society is an uneasy mix of several competing ideologies regarding State power and obligation and parents’ and children’s rights. South Australia’s system, like other Australian States, reflects strongly held societal values of the minimalist role of the State and the protection of parents’ rights against unwarranted intrusion into family life…

Contrary to public opinion the power of social workers to intervene with families is severely limited – a socio-legal context ensures that social workers have reduced professional discretion and a high degree of accountability before the courts. The focus of intervention is on the failing of ‘dysfunctional’ families rather than the social and economic contexts in which child abuse arises.15

Two major factors come into play:

- the rights and safety of the child, and
- the rights of the family to be intrinsically involved in the resolution of the issues for mutual benefit.16
There must therefore be some justification for intervention based on reasonable grounds, before the State has the authority to exercise its powers.

The conclusion reached by this Review is for balanced State intervention within clear parameters, and a continuance of making a child's interest paramount once his or her care has become a legitimate matter for the State to decide. This does not mean that a broad family support and strengths approach is thereby excluded. On the contrary, greater efforts to ensure that families receive effective assistance is crucial and families must be a part of the decision-making process.

OBJECTS UNDER THE ACT – SECTION 3

This section sets out the two objects to be considered when applying the Act:

3 (1) The object of the Act is to provide for the care and protection of children and to do so in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential.

3 (2) The administration of the Act is founded on the principle that the primary responsibility for a child's care and protection lies with the child's family and that a high priority should therefore be accorded to supporting and assisting the family to carry out that responsibility.

Addressed directly in submissions the following remarks are noted:

The objectives are reasonable. Commentators state that the objectives can be contradictory, and that in practice the second objective is not emphasised.17

Others were concerned the opposite was the case:

Section 3 (1) clearly addresses the child's best interests as the first and highest priority, and that section 3 (2) places the family as a high priority but yet is subservient to section 3 (1). While the group considers this appropriate, concerns were raised …regarding the operation of these in practice, including the present practice which appears to give more credence to section 3 (2).18

The objects appropriately include the child's need for safety, stability and adequate development and also the significance of the birth family in the child's life. However, there is a proportion of children for whom birth family is secondary to their needs for safety and stability. Whether the objects are insufficiently clear, or it reflects a failure of policy in clarifying the objects, the interpretation of these objects has been that nothing can substitute for the birth family… Written during a time of family preservation fervour, the objects as they currently stand fail to adequately capture the complexity of the children's need for alternative family when their birth family cannot meet their needs.19

Overall as these objects are written one would expect them to be sufficient. However, they do not take into account the reality of the lack of support and assistance services both quantifiable and qualitative which are available to enable certain families to carry out their responsibility for the care of their children… A further object that should be added and clearly stated is to ensure the physical and psychological safety for the child.20

17 Submission 39 Noarlunga Health Service Community Care Team.
19 Submission 130 Ms Anne Nicolaou.
20 Submission 155 Children's Protection Advisory Panel.
RECOMMENDATION 164

That the two objects of the Section 3 of the Children’s Protection Act 1993 be retained and a further object be considered for inclusion, namely, that when a child or young person’s need for physical and psychological safety and stability cannot be met within existing family arrangements, that the child or young person be provided with adequate and stable alternative care arrangements.

Reason

The competing interests of the first two objectives of the Act are noted however, both should remain, as it is through supporting and assisting a child’s family that in most cases a child’s best interests are met. For those situations when a child’s physical and psychological safety and protection cannot be guaranteed within their birth family, adequate and stable living arrangements must be made available.

PRINCIPLES TO BE OBSERVED IN DEALING WITH CHILDREN – SECTION 4

Currently there are two major principles that guide the administration of the Act. They are:

- the safety of the child is the paramount consideration and
- the powers must always be exercised in the best interest of the child.

In addition, serious consideration must also be given to the desirability of:

- keeping the child within his or her family
- preserving and strengthening family relationships
- not withdrawing a child unnecessarily from the child’s familiar environment or neighbourhood
- not interrupting unnecessarily the child’s education or employment
- preserving and enhancing the child’s sense of racial, ethnic, religious or cultural identity and making decisions consistent with these
- if the child is able to form and express his or her own views, those views must be sought and given serious consideration, taking into account age and maturity and
- all proceedings must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

Various views were forthcoming regarding the principles of the Act:

*The retention of the existing guiding principles is supported but their strengthening through the addition of two new principles is advocated:*

- children and young people are supported to provide their views in proceedings and arrangements secured under the Act and
- permanency planning principles are used to offer young people stability and long-term security when removed from the care of parents.21
Another submission suggested a complete rewriting of the Act and its principles incorporating all sections of the Queensland Children’s Protection Act 1999 in that:

- every child has a right to protection from harm
- the welfare and best interests of the child is paramount
- families have the primary responsibility for the upbringing, protection and development of their children
- the preferred way of ensuring a child’s wellbeing is through the supports of the child’s family and
- powers conferred under this Act should be exercised in a way that is open, fair and respects the rights of people affected by their exercise…etc.22

Further suggestions included:

Feedback …received from stakeholders in relation to the principles indicated a common perception that the need to keep the child within his or her family seemed to take precedence over the two primary principles, and that judgements then were made, particularly by the court for the child to remain in the family in spite of significant evidence that this would not be in the best interest of the child.23

There is discrepancy between the principles of the Act and its implementation. There is an overemphasis on reunification with the family at the expense of the wellbeing of the child, especially as families are not assisted monitored to care for and protect the child.24

The ‘child’s views’ is a crucial principle, but one that can easily fall prey to paternalistic thinking. It is the perception of many that the Youth Court now heavily discounts the child’s expressed wishes, believing it to have been contaminated by biased professionals.25

The primary principles emphasise first that the safety of the child is paramount, and second that powers must always be exercised in the best interests of the child. This introduces an adversarial approach that polarises members of the family, leading to contentions about the relative importance of the needs of individual in the family, and to a sense of competition where the interests of one family member is pitted against interests of family members.26

The principles expressed …are reasonable, but have not been routinely implemented. There is still a need to provide services that support vulnerable families at times of difficulty, to assist the family to function independently.27

A number of submissions to the Review have also suggested changes to the legislation in relation to Aboriginal children and young people. In particular the need for the legislation to be underpinned by United Nations Convention on the Rights of Children (UNCROC) and a clear human rights framework but also a need to provide for a stronger consideration to the question of Aboriginal children’s and young people’s identity.

An amendment to this section of the Children’s Protection Act, 1993 (SA) is suggested,

…which acknowledges that, particularly in relation to Aboriginal children the best interests of the child are served by preserving and enhancing the child’s sense of Aboriginal social and cultural identity and by making decisions that are consistent with Aboriginal traditions and cultural/religous values.28

22 Submission 127 Parents Want Reform.
23 Submission 155 Children’s Protection Advisory Panel.
24 Submission 186 Education Advisory Group.
25 Submission 130 Ms Anne Nicolaou.
26 Submission 39 Noarlunga Health Services Community Care Team.
27 Ibid.
28 Submission 146 Aboriginal Legal Rights Movement.
Also that the ‘best interests of the child’ be re-interpreted within the framework of Aboriginal and family kinship context and that the Aboriginal Child Placement Principle be more clearly expressed in legislation. Whilst the intent of the current legislation is in keeping with the principle, it does not fully articulate it in the manner set out in the Bringing Them Home report. Recommendations 50 through to 51e state the following:

That, when an Indigenous child must be removed from his or her family, the placement of the child, whether temporary or permanent, is made in accordance with the Aboriginal Child Placement Principle in that placement is to be made according to the following order of preference:

- placement with a member of the child’s family (as defined by local custom)
- placement with a member of the child’s community in a relationship of responsibility for a child according to local custom and practice
- placement with another member of the child’s community and
- placement with another Indigenous carer.

The report further states that the preferred placement may be displaced where:

- that placement would be detrimental to the child’s best interests
- the child objects to that placement, or
- no carer in a preferred category is available.

Where placement is with a non-Indigenous carer the following principles must determine the choice of carer:

- family reunion is a primary objective
- continuing contact with child’s indigenous family, community and culture must be ensured and
- the carer must live in proximity to child’s Indigenous family and community.

No placement is to be made except on the advice and with the recommendation of the appropriate accredited Indigenous organisation. Where the child or parents disagree with the recommendation, the court must determine the best interests of the child.
RECOMMENDATION 165

That the principles outlined in Section 4 of the Children’s Protection Act 1993 be retained in their current form and further that five additional principles be considered for inclusion:

- That children and young people be supported in providing their views in proceedings and/or arrangements provided for under the Act.
- That permanency planning principles be used to offer children and young people stability and long-term security when removed from the care of parents.
- That in relation to Aboriginal children and young people, the Act be amended to ensure that within the principles of the Act it is stated that the best interests of an Aboriginal child are served by preserving and enhancing the child’s sense of Aboriginal social and cultural identity; and by making decisions that are consistent with Aboriginal traditions and cultural/religious values.
- That the Aboriginal child placement principle be specifically mentioned in the Act and that recommendations 51b through to 51e of the Bringing Them Home report be incorporated into the Act.
- That all powers conferred under the Act be exercised in a manner that is open, fair and respects the rights of people affected by their exercise.

Reason

The existing principles are sound and reflect the complex balance of competing interests within child protection work. They could be further strengthened to ensure a better balance of competing interests.

The current Act states if a child is able to express his/her own views these views must be sought. It does not provide any form of support or guidance about how these views should be sought. By stating explicitly that children and young people must be ‘supported’ in providing their views it effectively strengthens the principle of the right to be heard and the right to participate in decision making that directly affects their lives.

The current principles are silent in regard to securing a child’s long-term alternative care, for those children who do not have a parent able or willing to provide them with appropriate care and protection. The need for permanency care arrangements for children who cannot remain in the care of their birth family is critical for functional development, and a principle is required that will strengthen this fundamental right to stable, secure long-term care.

The need to ensure open, fair and accountable processes that respect the rights of all people affected by the administration of the Act is an essential principle. It strengthens the requirement to seek and consider the views of all affected, and to do so in a manner that values the integrity and worth of all those involved.
The definition of child abuse and neglect in section 6 (1) needs to be read in conjunction with section 6 (2).

The definition of abuse or neglect in relation to a child currently means the:

- sexual abuse of the child
- physical or emotional abuse of the child, or neglect of the child
  - to the extent that the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child’s well being or
  - the child’s physical or psychological development is in jeopardy.

Defining abuse and neglect in legislation presents significant dilemmas and one submission stated:

…the current definition raises more questions than answers…It is recognised that that it is the psychological impact of an act of omission or commission that defines it as abusive, but the wording of the Act tends to place the focus on the incident of physical, sexual, emotional abuse or neglect. 33

The subject of definition raised considerable discussion amongst submissions. Comments included:

The definition is currently worded as a tautology (abuse is abuse) and additionally provides no clarification of sexual abuse…The current definition that encompasses both actual injury and potential injury is problematic. 34

There is no definition of sexual abuse. In relation to emotional abuse, the legal process and welfare professionals struggle with the notion of ‘good enough’ parenting as child welfare legislation is framed to respond to child protection problems supported by clear evidence…The legislation needs to be far more explicit about the appropriate threshold for intervention. 35

SACCS considers that the current definition of abuse and neglect in section 6 (1) adequate but could be broadened to include reference to ‘emotional injury’ rather than just physical and psychological injury. SACCS also considers that the definition lacks clarity. 36

The definition does not adequately capture the psychological impact of abuse or child neglect or look at the potential (or likely) harm to the child. In this sense harm and risk are inadequately addressed. 37

These definitions are not sufficiently clear. These definitions do not assist in deciding when a parent requires assistance, or when a child requires protection from a predatory parent. The definitions are very subjective. 38

In relation to Aboriginal children the definition of a ‘child at risk’ has been raised as one that may unduly be detrimental or restrictive to the child’s best interests or ‘is very broad and needs clarification’. The current risk criteria does not consider cultural factors, nor is it viewed as an adequate definition of risk. 39

At the very least, definitional issues in the legislation require more clarification for agency staff. The current use of ‘abuse and neglect’ does not take into consideration the broader issue of poverty and Aboriginal child rearing practices, ‘ways of growing up children’. 40

33 Submission 179 Family & Youth Services.
34 Submission 130 Ms Anne Nicolaou.
35 Submission 179 Family & Youth Services.
36 Submission 139 (1) South Australian Commission for Catholic Schools on behalf of Catholic Schools.
37 Submission 155 Children’s Protection Advisory Panel.
38 Submission 39 Noarlunga Health Services Community Care Team.
40 Ibid.
In particular, it has been put forward that the definition of a child at risk should reflect objective circumstances, in relation to the carers of a child, regardless of whether they are the formal carer or guardians. A child may be at risk in the company of ‘formal guardians’ but under perfectly satisfactory arrangements by other members of the extended family, who do not fit the legal definition of a guardian.\(^{41}\)

It has been suggested that the definitional problem is as much about the term ‘guardian’ and that consultation is required in relation to particular kinship networks/societies to determine the extent of ‘family’ in these situations. An amendment to take into account members of a child’s extended family has been suggested\(^{42}\), as well reframing the definitions of neglect and abuse moving towards the concept of a ‘harm approach’\(^{43}\) is required.

Submissions offered a number of solutions to the definitional problems and recommending that the legislation be amended to:

…introduce the concept of “significant harm”, and “risk of significant harm” and that sufficient clarity be provided as to the appropriate threshold for statutory intervention.\(^{44}\)

Separate the two situations, where there is actual psychological injury from where there is a potential for psychological injury, and introduce different criteria for the two situations.\(^{45}\)

…replace abuse or neglect in relation to a child with harm in relation to a child, which means physical and sexual abuse of the child, psychological abuse of the child, neglect of the child to the extent that the child has suffered or is likely to suffer significant psychological harm or is likely to suffer significant physical or psychological harm.\(^{46}\)

### DEFINITION OF RISK – SECTION 6 (2)

Under the current legislation, in order to make a determination regarding whether a child is ‘at risk’ and therefore warranting some form of intervention, the following must be taken into account:

- if the child has been, or is being, abused or neglected; or (as set out in 6 (1))
- if a person with whom the child resides (whether a guardian or not):
  - has threatened to kill or injure the child and there is a reasonable likelihood of threat being carried out; or
  - has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected
- if the guardians of the child:
  - are unable to maintain the child, or are unable to exercise adequate supervision or control over the child
  - are unwilling to maintain the child, or are unwilling to exercise adequate supervision over the child or
  - are dead, have abandoned the child, or cannot, after reasonable inquiry, be found or
  - child is of compulsory age but has been persistently absent from school without satisfactory explanation of the absence or
  - the child is under 15 years of age and is of no fixed address.

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41 Submission 146 Aboriginal Legal Rights Movement.
42 Ibid.
44 Submission 179 Family & Youth Services
45 Submission 39 Noarlunga Health Services Community Care Team
46 Submission 160 Child Protection Services, Women’s & Children’s Hospital.
Some of the central issues raised in submissions regarding the definition of ‘at risk’ are as follows:

The Act’s definition of ‘at risk’ recognises the danger to children to a violent person in the same household. The definition is, however, restricted to action – threatened or real to a child. This does not recognise violence against a partner…Further, a child is deemed at risk only if they are under 15 and of no fixed address. This does not recognise that young people aged 16-18 are at risk if homeless – they are – and the age discrimination should be removed.47

…two categories of client where there are vexed placement authority issues should be specifically included as children ‘at risk’. One is children with significant disabilities unable to be maintained at home…the second group is Indigenous children who are placed in non-Indigenous care, whether placed by FAYS or privately by family.48

We recommend that the term ‘maltreatment’ be added to the ‘at risk’ criteria. The term is more encompassing as it covers harmful situations and experiences that are more covert, such as the impact of abuse to child’s self-esteem and cognitive development, and will also include developmental delay. It is also a concept that covers areas of omission as well as commission. The provision…should be broadened to cover not only perpetrators with whom the child resides, but also the person who may from time to time visit…49

In summary, an examination of the legislation in conjunction with the matters raised in submissions suggest that the concerns with the present legislation in sub-sections 6(1) and (2) are as follows:

- That the combination of the definition of “abuse or neglect” in section 6(1) and the definition of “risk” in section 6(2), is excessively complex and confusing.
- That the definition of abuse and neglect is itself defined by the use of the same words so that the definition is tautologous and abuse equals abuse and neglect equals neglect.
- That the overall effect of the combination of the two sections is to focus on the past and present, by the use of the words “has” and “is”, but does not properly take into account future potential harm to the child.
- The overall effect of these two sections is that the language refers to incidents and the word “injury” is used as though it was an occurrence rather than incorporating an environment which results in a psychological state. That is, there is a failure to refer to harm (which is the consequential effect on the child due to either positive actions or absence of action or ambience) and instead a reference to “injury” in the sense of an occurrence or incident.
- There is a lack of clarity about what is meant by “sexual abuse” and, for example, whether it refers to all forms of sexual conduct and behaviour including exposure to pornography or exposure to inappropriate behaviour by others and or exploitation.

The legislation should to be expressed as simply as possible and should include the following features:

- That state intervention in relation to a child is appropriate where there are three factors, namely:
  - a “risk” at a level which is real, unacceptable and not insignificant, of
  - “harm” which is significant and not minimal, which
  - may be caused by “abuse” or “neglect” or failure to take action which may arise from inability or unwillingness.
- That intervention need not await a specific incident or injury either having already occurred or to still be occurring. It should also be able to take place when there is a real risk of harm in the future. This may occur where, for example, the child is living in conditions in which the child may not be receiving proper nurturing with risks of future harm. It should also be wide enough to be able to describe an adolescent at risk of suicide.
- An example of more simply expressed legislation on this specific point is contained in the combination of sections 9, 10, 14 of the Children’s Protection Act 1999 (Qld).

47 Submission 181 Aboriginal Advisory Group.
48 Submission 130 Ms Anne Nicolaou.
Section 9 of the *Children’s Protection Act 1999 (Qld)* defines harm as:

1. 
   *Harm, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.*
2. 
   *It is immaterial how the harm is caused.*
3. 
   *Harm can be caused by:*
   - *(a)* physical, psychological or emotional abuse or neglect or
   - *(b)* sexual abuse or exploitation.

Section 10 of the *Children’s Protection Act 1999 (Qld)* defines a child in need of protection as:

- *A child in need of protection is a child who*
  - *(a)* has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm and
  - *(b)* does not have a parent able and willing to protect the child from the harm.

Section 14(1) of the *Children’s Protection Act 1999 (Qld)* which relates to when the State may investigate alleged harm and includes where the chief executive:

- *“becomes aware…of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need for protection.”*

What is apparent from these comments is support for the move towards a broader definition of maltreatment, one that incorporates not only actual abuse and neglect but also has the capacity to intervene when a child may "at risk" of harm. It should also be noted that describing in more detail legislative operational definitions and the types of situations that may be abusive or neglectful is not supported.

**RECOMMENDATION 166**

It is recommended that sub-sections 6(1) and 6(2) of the *Children’s Protection Act 1993* be amended and replaced by 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)* as a suitable guiding precedent.

**Reason**

Placing the focus on 'significant harm' and/or 'risk of significant harm' shifts the focus away from whether an 'incident' has said to have occurred to one that focuses on whether there has been any detrimental effect by the behaviour of persons towards a child.

It should lead to a broader assessment approach being undertaken that incorporates reviewing the protective capacity of the parents and the ability of the parents to meet the child’s needs.

It places the child at the centre of the process in that the focus is one in which the critical question is whether the child’s development is in jeopardy, not necessarily on how or why the harm was caused. Whilst the hows and the whys are important, it is a subtle shift in emphasis that will require considerable discussion and debate.
GENERAL FUNCTIONS OF THE MINISTER – SECTION 8

Under the Children's Protection Act 1993 the Minister responsible for the Act (the Minister for Social Justice) must endeavour to ensure the following occurs:

- promote a partnership approach between the Government, local Government, non-Government agencies and families in taking responsibility for and dealing with the problem of child abuse and neglect
- promote and assist in the development of coordinated strategies for dealing with the problem of abuse and neglect
- provide, or assist in the provision of, services for dealing with the problems of child abuse and neglect and for the care and protection of children
- provide, or assist in the provision of, preventative and support services directed towards strengthening and supporting families, reducing the incidence of child abuse and neglect and maximising the well-being of children generally
- assist the Aboriginal community to establish its own programs for preventing or reducing the incidence of abuse or neglect of children within the Aboriginal community
- provide, or assist in the provision of, information or education services for parents, prospective parents and other members of the community in relation to the developmental, social and safety requirements of children
- provide, or assist in the provision of, education to persons who are required to notify the department on forming a reasonable suspicion that a child is being abused or neglected
- provide, or assist in the provision of, services to assist persons who as children have been under the guardianship or in the custody of the Minister, in making a successful transition into adulthood
- collect and publish relevant data or statistics or to assist in their collection or publication
- promote, encourage or undertake research into child abuse and neglect
- encourage the provision, by tertiary institutions in relevant courses, of instruction about child abuse and neglect and its prevention and treatment
- and generally to do such other things as the Minister believes will further the objects of this Act.

There was little concern raised regarding the current functions of the Minister as set out in legislation; more in the implementation and administration of the functions:

- The current functions are comprehensive and sound. The problem lies at the funding and administration levels.\(^{51}\)
- The functions of the Minister are reasonable. Services are not currently being delivered to parents with a mental illness.\(^{52}\)
- The existing functions of the Minister under the Children's Protection Act 1993 are supported.\(^{53}\)

Others were concerned about specific areas such as the partnership approach; the lack of information about the collection of data and the recommendation that research is undertaken and the need for more preventative and supportive measures:

- A number of representative groups stated that the way the partnership philosophy underpinning the Act is interpreted can lead to a situation where children’s needs are seriously compromised.\(^{54}\)
We are unsure about the state of collection of relevant data and statistics and their publication and recommend that this research is promoted, encouraged and undertaken…. It is recommended that the philosophy of the Act be reviewed to enable much clearer child focus, and recognition of foster parents in the promotion of a partnership approach to care and protection.55

…provide leadership in promoting a partnership approach between stakeholders involved in the provision of alternative care services for children and young people...promote, encourage or undertake research into alternative care...engage an appropriate ‘advisory panel’ consisting of key stakeholders’ representatives to provide information and advice regarding alternative care services...56

…that the general functions of the Minister be reviewed to include a reference to the significance of providing such preventative and supportive services in families with infants and very young children.57

The function relating to the provision of assistance to young people who have left the Minister's guardianship is vague and needs to be more specific.58

In relation to Aboriginal children and young people the Act states that the Minister should endeavour to assist the Aboriginal community to establish its own programs preventing or reducing the incidents of abuse or neglect of children within the Aboriginal community.

It has been suggested that this does not take into account the cultural diversity of Aboriginal groups in SA and should be amended to reflect the 'plurality of Aboriginal communities and require the Minister to maintain equitable policies between those communities for the granting of resources'.59

RECOMMENDATION 167

The current functions of the Minister contained in section 8 of the Children’s Protection Act 1993 are generally viewed as comprehensive and appropriate save that, sub-section 8 (e) of the Children’s Protection Act 1993 be amended to take into account the cultural diversity within the Aboriginal communities.

Reason

The functions are regarded as sufficient and that the only amendment relates to recognition of Indigenous cultural diversity.
Section 9 of the Children’s Protection Act 1993 (SA) provides for the guardians of a child and the Minister to enter into a consent agreement under which the Minister has “custody” of the child during the term of the agreement.

Sub section 9 (3) provides that negotiations for such an agreement may be initiated by either a guardian or by a child of or above the age of 16 years. Sub section 9 (7) indicates that the term of such an agreement is not greater than 3 months but may be extended for more than 6 months.

There is nothing in the legislation which indicates the types of situations or circumstances in which such voluntary agreements are appropriate.

The Family and Youth Services Child Protection/Alternative Care Manual of Practice, Volume 2 states:

> A voluntary custody agreement should not be entered into if the guardians are not fully cooperative and receptive to intervention. In cases of serious abuse and neglect when the safety of the child cannot be ensured within the family home a Voluntary Custody Agreement (VCA) should not be used. Rather an application for an Investigation and Assessment Order or a Care and Protection Order should be made to the Youth Court.60

Further the Manual of Practice provides guidance on seeking consent in such and similar circumstances.

> There are a variety of circumstances under which FAYS social workers must seek consent. In many situations written consent is mandatory, in others it is preferable. In some circumstances verbal consent is sufficient if recorded in case notes.

> In every situation the act of obtaining consent must be based on the legal and ethical requirements which underpin the notion of ‘informed consent’.61

During consultations the Review understood that there was a lack of clarity concerning the following:

- the frequency with which Voluntary Custody Agreements were being used in circumstances of parent/teenage conflict situations
- the procedures for ensuring that guardians entering into such agreements fully understand the ramifications before signing the Agreement
- the frequency with which children and young people in alternative care situations involving serious child protection, utilised the Voluntary Custody Agreement rather than proceeding before the Youth Court
- the circumstances appropriate for children over 16 years who have an intellectual disability or mental health issues62
- whether consent of both guardians is required when they no longer live together and their whereabouts are known63
- who should be required to consent as guardians where there are a number of persons who may qualify as guardians under the Act.

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60 Ibid.
62 Submission 179 Family & Youth Services.
63 Ibid.
With regard to the circumstances of a child over 16 years who has an intellectual incapacity and/or a mental health problem, it is noted that whilst in Sub section 9 (4) there is explicit reference to a child under the age of 16 years having “sufficient understanding of the consequences of a custody agreement”; this is not a requirement for children over 16 years as provided for in Sub section 9 (3) although their consent must be sought. The qualification “sufficient understanding of the consequences of a custody agreement” should be added for those 16 years and over as well.

The application of this test to children with mental illnesses has been a cause of some concern. It is important to understand that the fact that a young person has a mental health problem does not necessarily indicate a lack of sufficient understanding. If a dispute arises as to the consent of a child effected by a Voluntary Custody Agreement, this Review considers that these matters should be dealt with through the Youth Court.

In relation to the need to obtain consent of both guardians where their whereabouts are known, this Review considers that the consent of both is required and if not obtained, the matter be referred to the Youth Court.

In circumstances where there are a number of persons who could be described potentially as “guardians” by reason of the broad definitions of “guardian” and “parent” in section 6 of the Children’s Protection Act 1993 (SA) any conflict as to who may consent should be resolved by the Youth Court.

With regard to the frequency and circumstances in which such agreements are entered into, this should not be the subject of legislation but is best left to practice guidelines. A reading of the Manual of Practice would suggest that there are appropriate guidelines not being implemented when they should be. However, in the procedures to the Manual of Practice it could be made more explicit that before obtaining the necessary consents of the guardians and a child over 16 years, that they should be fully informed of all aspects of such an Agreement including:

- their rights either as guardians or as children
- the consequences of such an agreement
- the alternatives to entering such an agreement.

**RECOMMENDATION 168**

That the qualification of “sufficient understanding of the consequences of a custody agreement” be added to sub section 9 (3) of the Children’s Protection Act 1993 to provide consistency with sub section 9 (4).

That the procedures in the Child Protection/Alternative Care Manual of Practice relating to Voluntary Custody Agreements, explicitly articulate that before obtaining the necessary consents of the guardians and a child over 16 years, they should be fully informed of all aspects of such an Agreement including:

- their rights either as guardians or as children
- the consequences of such an agreement
- the alternatives to entering such an agreement.

**Reason**

This recommendation will assist in clarifying some areas related to entering into a Voluntary Custody Agreement.
The need for flexible ‘shared care arrangements’ for children and young people requiring out-of-home care over a long period of time has been raised with this Review. There is limited flexibility within the current Children’s Protection Act 1993 (SA) to enable long-term shared care arrangements. The Act allows for ‘guardianship’ to be given to another person or to the Minister until a child reaches the age of 18, but does not permit custody to be delegated in a similar manner.

There may be considerable advantage to be gained for families who wish to retain the ‘guardianship’ of their children but share the care and ‘custody’ with others. This may be particularly relevant for children and young people with disabilities, or those who have significant care needs which their guardians are unable to meet without assistance. This may also be applicable for parents who have some form of incapacity but are willing and able to care for their child on a shared care basis.

The current Act does not allow for such an option in the long-term, and would require amendment to permit this. While voluntary agreements are provided for under section 9, they are limited in duration to a maximum of six months. This makes them inappropriate for situations that require planning to give children stability in the long-term.

The Review has also considered whether it is appropriate to secure long-term shared care arrangements without going through a formal court process. For those situations in which the Minister has some responsibility (including payment of placement), it is important for a proper legal process to be undertaken, to ensure that children and young people are offered the most appropriate care. This may be accomplished without resort to a full Youth Court hearing. Instead, a voluntary agreement may be registered with the Court, which would be subject to the same types of review process as recommended for children under guardianship. See also Chapter 9, Recommendation 44 for further information regarding the review mechanisms for children under the guardianship of the Minister.
RECOMMENDATION 169

That consideration be given to amending the Children’s Protection Act 1993 to allow for ‘shared care agreements’ permitting custody of a child to be given to the Minister, or to other persons the Minister deems appropriate.

Such agreements would only be available in particular circumstances such as where the guardian/s by reason of:

- some disability or other impediment (of their own) or
- the disability or special needs of the child

are prevented from retaining full custody and care of the child.

Consideration should be given to a process in the Youth Court whereby documents including consent agreements, case plans and review mechanisms be registered, to simplify the Court procedures.

Consideration should also be given to applying provisions similar to those outlined in section 9 (1) (2) (3) (4) of the current Act, including any amendments proposed in Recommendation 168.

Reason

There is presently limited flexibility within the Children’s Protection Act 1993 to enable shared care long-term arrangements in particular for children and young people who have significant care needs and/or disabilities and who have family who are able and willing to remain their guardians. A ‘shared care agreement’ provides for a parent/s who wish to retain guardianship of their child to enter into a consensual agreement with the Minister, without having to relinquish guardianship. These amendments will enable greater options for the care of children and young people and reduce the necessity of parents relinquishing custody and guardianship of their child.

MANDATORY NOTIFICATION – SECTION 10 & 11

In South Australia some form of mandatory notification in relation to child protection has been in existence since 1969. Progressive amendments and the enactment of the Children’s Protection Act in 1994 have extended the range of persons required by law to notify and remain one of the most extensive in Australia.

This section of the Act has specific relevance not only to those who are mandated by law to provide information to the relevant authorities, but it also provides guidance to members of the community who are not statutorily mandated to notify but choose to do so for moral and ethical reasons.
Mandatory notification is required:

- where a person to whom this section applies (see below) suspects on reasonable grounds that a child has been in or is being abused or neglected
- the suspicion is formed in the course of the person’s work (whether paid or voluntary) of carrying out official duties and

if these circumstances exist the person must notify the Department of that suspicion as soon as practicable after he or she forms the suspicion.

Those mandated by law to notify include:

- medical practitioner, pharmacist, registered or enrolled nurse, dentist, psychologist, member of the police force, community corrections, social worker, a teacher in any educational institution, approved family day care provider or
- any other person who is an employee of, or volunteer in a Government department, agency or instrumentality, or a local Government or non-Government agency, that provides health, welfare, education, child care or residential services wholly or partly for children, who:
  - is engaged in the delivery of those services to children or
  - holds a management position that includes direct responsibility for, or direct supervision of, persons engaged in delivery of services to children.

There has generally been considerable support for the current system of mandatory notification. This Review covers mandatory notification in detail Chapter 10 and is recommending an extension of the persons required by law to notify. Further, that Section 10 requires amendment to take into account changes to the definitional aspects of abuse and neglect and at risk, as set out previously in relation to Section 6 (1) and 6 (2) of the Act, in this Chapter.

**RECOMMENDATION 170**

That Section 10 of the Children’s Protection Act 1993 be amended to reflect the suggested amendments to sub-sections 6 (1) and 6 (2) of the Act as set out in Recommendation 166. In particular, if the contents of sub-section 6 (2) (c) (d) and (e) (presently excluded from applying to mandatory notification), are still regarded as necessary to be articulated in the legislation, these circumstances should be relevant to mandatory notification. Further, subsection 6 (2) (e) of the Act should not be limited to children under 15 years, but to all children.

That the persons specified as mandated notifiers under Section 11 of the Children’s Protection Act 1993 be extended to include additional persons identified in Chapter 10, recommendation 54.

**Reason**

The amendment will provide continuity with the previous recommendation and extend the circumstances as to when, those mandated by law, are required to notify. It also removes the age discrimination which applies to children who are of no fixed address.
## CONFIDENTIALITY OF NOTIFICATION OF ABUSE OR NEGLECT – SECTION 13

The abuse of children in any society provokes strong emotional reactions and families who are subsequently investigated often feel overwhelmed and angry at the State intervening in their personal family life. On some occasions workers and those who are suspected of having reported the matter to authorities are subjected to threats of (or actual) violence and anger. It is one of the reasons that the identity of the notifier is highly protected and remains confidential (except in special circumstances).

For the purposes of this section:

- A notifier is a person who notifies that he or she suspects that a child has been or is being abused or neglected.
- A person who receives a notification of child abuse or neglect from a notifier, or who otherwise becomes aware of the identity of a notifier, must not disclose the identity of the notifier to any other person unless in specific circumstances such as in the course of official duties, with the consent of the notifier or by way of evidence in court.

Submissions on the subject of confidentiality made the following remarks:

- **Protection of notifiers – yes it is sufficient protection.**
- **Legislative changes to limit the disclosure of a notifier's name in court proceedings are required.**
- **SACCS does not consider that the section itself is inadequate. To assist in adherence to confidentiality requirements of this section, it may be advisable to increase the penalty for failing to keep the notifier's identity confidential.**
- **The legislation should additionally make provisions for an organisation to be able to make a notification.**
- **Recognition of the difficulty of maintaining confidentiality, especially for schools in country locations. Employees fear and suffer intimidations and retribution (teachers have left schools because of this).**

The issue as to whether a provision should be included that mandates an organisation to notify has been considered. While this suggestion has some merit in that it may reduce disincentives for staff as they would be less identifiable and it may give organisations more responsibility for ensuring staff are trained, it would not be in keeping with current privacy provisions. Information would be extended to more people than necessary within the organisation, rather than the individual responsible for making the notification. It also does not take into account situations where staff may make a report against other personnel in the same organisation.

In relation to the identity of the notifier being further protected in court, in reality, the notifier's identity is rarely, if ever, revealed in court. Chapter 10 covers preserving confidentiality of the notifier and makes a number of recommendations in this regard.

Confidentiality and information sharing has been raised as a significant area of importance and is dealt with in Chapter 7 Interagency Coordination and Relationships.

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64 Submission 155 Children’s Protection Advisory Panel.
65 Submission 146 Aboriginal Legal Rights Movement.
66 Submission 139 (1) South Australian Commission for Catholic Schools on behalf of Catholic Schools.
67 Submission 143 Office of Youth.
68 Submission 186 Education Advisory Group.
69 Submission 143 Office of Youth.
RECOMMENDATION 171

The current confidentiality provisions in section 13 of the Children’s Protection Act 1993 are generally viewed as comprehensive and appropriate. No legislative changes are proposed.

Reason

While the issue of confidentiality of the identity of the notifier has been raised a serious issue, changes required are best dealt with, in procedures and guidelines, rather than in legislation. This is covered in detail in Chapter 10 and Chapter 7.

CHIEF EXECUTIVE NOT OBLIGED TO TAKE ACTION IN CERTAIN CIRCUMSTANCES – SECTION 14

In certain circumstances information received by State authorities does not require further investigation. For example where police are already dealing with the matter, a protective parent or relative has provided safety for the child, or there is a malicious report. However, when a decision is made that no action is to be taken, the Minister or Chief Executive must be satisfied:

- the information or observations on which the notifier formed his or her suspicion were not sufficient to constitute reasonable grounds for the suspicion or
- that while there are reasonable grounds for a suspicion, proper arrangements exist for the care and protection of the child.

Comments in relation to this section included:

…Section 14 provides no guidance at all as to what constitutes reasonable grounds…

“Proper arrangements” still need investigating if a notification is made.

Of concern is the interpretation which seems to be given to ‘proper arrangements exist for the care and protection of the child’… The current anecdotal evidence suggests that knowledge that the Family Court is involved is taken to equate with ‘proper arrangements exist’ which is simply not the case.

The Review should consider, that for accountability purposes, this section…needs to require that the DHS Chief Executive through his/her delegates, documents on a client file system why no action is taken in relation to a child abuse notification.

The phrase “proper arrangements exist for the care and protection of the child” is not defined. It is not clear how far a mental health service should go in caring for a dependent child of a registered client.

These concerns appear to have some substance. It is acknowledged that it is entirely appropriate that the Minister and/or delegates have capacity not to investigate some circumstances, such as when a report is not substantive or is malicious, thereby not warranting some form of State intervention, or when a child is ‘safe’ and it is known that counselling and/or medical attention is being provided.

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70 Submission 155 Children’s Protection Advisory Panel.
71 Submission 76 Ms Janice Sands.
72 Submission 155 Children’s Protection Advisory Panel.
73 Submission 143 Office of Youth.
74 Submission 39 Noarlunga Health Services Community Care Team.
In application, however, the difficulty rests with assessing ‘safety’ and the capacity of the person notifying in determining ‘safety’. It may be that the child is safe today and not with an alleged perpetrator but that the situation may change tomorrow or the notifier is unable to protect the child if the alleged perpetrator returns.

The Minister and/or delegates need to be satisfied that circumstances are not likely to change or in an event of change that the informant will be reliable in notifying of the circumstances of the change. It may also be difficult to ascertain whether appropriate treatment has been provided without a proper assessment of the child’s circumstances.

As it would appear that the necessary satisfaction in relation to the requirements in section 14(b) should only be reached after an assessment is made as to proper arrangements and that it should include satisfaction both as to the present and likely future arrangements, nothing is gained by the existence of this sub-section which could lead to inappropriate application. It would seem that section 19, whereby the Chief Executive Officer may cause an investigation into the circumstances of the child is sufficient in coverage. This is also similar to the approach which exists in Queensland in Section 14(1) of the Children’s Protection Act 1999 (Qld).

RECOMMENDATION 172

That consideration be given to repealing section 14 (b) of the Children’s Protection Act 1993 in relation to the Chief Executive Officer not being obliged to take action in certain circumstances.

Reason

As this sub-section may be inappropriately used it is suggested that it be deleted and that sufficient protection is given by reason of the discretionary wording under section 19 of the Children’s Protection Act 1993 (SA) regarding whether an investigation is warranted.

POWER TO REMOVE CHILDREN FROM DANGEROUS SITUATIONS – SECTION 16

This section empowers members of the police force and employees of the department authorised by the Minister to remove children. If an officer believes on reasonable grounds:

- that a child is in a situation that, if not removed, the child's safety would be in serious danger and
- the child is not in the company of any of his or her guardians

the officer may remove the child from any premises or place using such force (including breaking into premises) as is reasonably necessary for the purpose.

The section’s intended use is to provide the legal basis for action in situations where there is an urgency and need to take immediate protective action to secure the safety of a child or young person.
In Review consultations and submissions the community has raised concerns about children and young people who are at significant risk while not in the company of parents. Young people who may be homeless, living with older ‘unsuitable’ persons or drug taking and displaying suicidal tendencies have been highlighted as needing urgent and stronger State intervention.

There is considerable frustration and anger at the perceived inadequacies of the legislation and the inability or unwillingness of Police and/or Family and Youth Services to intervene in these situations:

*My daughter was 13 when she ran away from home and started living with a man who was 35. She started taking drugs and not attending school. Nobody would do anything. She would not listen to me and he would not let me in the house. I now don’t have a daughter.*

*In relation to section 16 (1)(a) children’s ‘safety’ is not defined. We do not believe that this term is broad enough and recommend that this be amended to read ‘children's wellbeing’ which has broader meaning and should be defined to include ‘moral, physical and psychological wellbeing’.*

Also there is concern about the literal interpretation of this section and in its application has failed to protect children and young people:

*As presently worded, this section leaves members of the police force and FAYS in difficulties where the child is in fact safe where they are but their safety will be in serious danger if such a situation were to change and it appears imminent that the situation will change.*

The Review considers that there is a need to reflect the same circumstances in section 16 as suggested in the amendments to the definitions in section 6 discussed above. This would mean that instead of section 16 being referable to ‘serious danger’ only, the powers should apply to circumstances in which a child’s physical and/or psychologically safety would be at serious risk.

Further, there will be a need for guidelines to express examples of circumstances in which this amended section would apply.

In the *Children’s Services Act 1965 (Qld)* the circumstances are clearly articulated and include some of the following situations:

- the child is in custody of a person who is unfit by reason of the persons conduct and habits to have custody of the child
- the child begs or gathers alms
- the child is found apparently abandoned, or loitering or sleeping in a public place and has no visible lawful means of support or no settled place of abode or
- being under school leaving age...the child is regularly absent from school without reasonable and adequate excuse.

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75 Submission 87 Anonymous.
76 Submission 196 Justice Advisory Group.
77 Submission 155 Children’s Protection Advisory Panel.
RECOMMENDATION 173

That Division 2 be amended so that:

- the title of Division 2 referring to “Removal of Children in Danger” be substituted by the phrase “Removal of Children from Situations of Serious Risk”
- the heading above section 16 of the Children’s Protection Act 1993 be amended to read “Power to remove children from situations of serious risk”
- the phrase “the child’s safety would be in serious danger” in sub-section 16 (1) (a) be substituted by the phrase “the child’s physical and/or psychological safety would be at serious risk”.

Reason

The initial intent of this section was to ensure the safety and protection of children and young people who may be in unsafe circumstances due to their behaviour, lifestyle or persons with whom they are associating, and who are not currently in the company of their parents/guardians.

It has not had the desired effect in its implementation, as there would appear to be significant disagreement as to what constitutes a child’s safety and ‘serious danger’. A broader definition is proposed which would provide those responsible for the administration of the Act, with greater capacity to intervene when a child or young person's safety was at serious risk.

SAFE KEEPING ORDERS

A matter associated with this topic is whether there is a need for a safe keeping order to help children who require secure care in which they may require restraint for a short period of time in their best interests. Such situations may arise where they have drug addiction problems seriously affecting their health or safety or where they may also be exploited. It may also arise when the exploitation may be sexual and they are at considerable risk. Usually such safe keeping would be associated with undergoing treatment, but not necessarily.

It is suggested that the legislation be amended to include obtaining orders for such secure care.

The Review notes that in amending the Act in this way, full consideration will be required to determine the manner in which safe-keeping will need to occur for a child or young person.

78 FAYS Manual of Practice suggest that serious danger is “real physical danger” and refers to “serious physical or sexual abuse or remain in life-threatening danger”.
RECOMMENDATION 174

That the Act be amended to include permitting an application and order to be made for safe-keeping. (See also Chapter 13)

Reason

There are circumstances in which a child or young person’s physical and/or psychological safety may be at serious risk by reason of circumstances, such as use of drugs, sexual exploitation or prostitution, and they may need to go to a place of safe-keeping to allow them to undergo a treatment program or obtain respite from their situation.

POWER TO REMOVE CHILDREN FROM GUARDIANS – SECTION 17

Currently the Act provides that if, during the course of an investigation, an officer believes on reasonable grounds:

- that the safety of a child who is in the company of his or her guardian or guardians is in imminent danger and
- the child is a child who is at risk

the officer may remove the child from the guardian or guardians, using such force (including breaking into premises) as is reasonably necessary for the purpose.

Since its enactment, this section of the Act has been one which has seen considerable debate about its application. In FAYS procedures it states:

“Imminent danger implies that the risk is something that is about to happen without delay. The danger is likely to be interpreted in most cases to be some physical danger, and further acts of neglect would not satisfy the test. In order to remove a child under this Section, they must be in the physical presence of the parent or guardian.”

There is considerable concern about the meaning and application of this section.

There is a need for legislative clarity concerning children who, although not in immediate serious danger, may be placed in that predicament if action is not taken to avert that possibility.79

There is a need to provide a clear basis for the emergency removal of children who are not literally currently in dangerous situations and who may not literally and currently be in the care of their guardians (because they are in hospital, at school, in the FAYS office or at a police station) but would be in danger if they were to leave…and return to their guardians.80

In our view the Act needs to include a provision for these children in situations where they were likely, or about to be, returned to the guardian. The current wording does not cover this situation. It is therefore recommended that Section 17 (1)(a) be amended to read “that the safety of a child who is in, or is soon likely to return to the company of his or her guardian or guardians is in imminent danger”.81

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79 Submission 179 Family & Youth Services.
80 Ibid.
81 Submission 196 Justice Advisory Group.
“Imminent” should be interpreted as ‘impeding’, ‘soon to happen’ and, if so interpreted, would cover a situation where shortly the child will, in the company of his/her parents be in danger. Amend Section 17:...that the physical or psychological safety of a child who is... 82

‘Imminent danger’ does not sufficiently cover children or young people who are in danger if returned home, as this has occurred. It also does not allow for danger that is not physical, such as danger of sexual, emotional, psychological abuse or neglect. The wording needs to be changed to reflect this.83

A similar concern was expressed by the Coroner in relation to Indigenous children at risk from petrol sniffing advising that proper consideration must be given to children who sniff petrol or to infants who are in the company of parents who sniff petrol.

One submission argued that:

...it is not whether they are in ‘imminent physical danger’ (since arguably all sniffers are in constant physical danger); rather, the question is whether powers can or should be exercised to remove them from the continuing danger.84

RECOMMENDATION 175

That section 17 be amended so that the wording sub-section 17 (1) (a) and (b) be substituted by the following: “that a child or young person who is in a situation such that if the child remains with or is returned to the company of his or her guardian, the child’s physical, psychological and emotional safety would be at serious risk”.

Reason

Many dilemmas in decision-making have arisen as a consequence of a child or young person not being in a situation which strictly fulfil the criteria for action of the Act, because at the time of notification, they are currently safe and the risk occurs if they return to the care of the guardian. This amendment is designed to overcome that problem, together with a consistency of the expansion of risks in both sections 16 and 17 as well as recognition that the risk is not limited to physical danger.

DEALING WITH A CHILD AFTER REMOVAL – SECTION 18

It was indicated to the Review that the current requirement to return a child or young person to their family by the end of the next working day or proceed to court to apply for an extended custody under an Investigation and Assessment Order as provided in section 18 of the Children’s Protection Act 1993:

…puts enormous pressure on both FAYS and the Crown Solicitor’s office and the District Centre in the preparation of the report, the affidavits and application documents.85

The duration of these powers of removal (currently the next working day) has also been carefully considered. The 24 hour time frame can cause practical problems…It is recommended therefore, that consideration be given to extending the time period to 48 hours.86

Whilst there may be difficulties in the short turnaround time, such practical problems must be weighed up against the serious nature of the actions and therefore no change is recommended to this timeframe.

82 Submission 155 Children’s Protection Advisory Panel.
83 Submission 167 Create Foundation.
84 Submission 146 Aboriginal Legal Rights Movement.
85 Submission 179 Family & Youth Services.
86 Submission 196 Justice Advisory Group.
RECOMMENDATION 176

No change is recommended to the time in which an order for custody is required before removal of a child pursuant to Section 18 of the Children's Protection Act 1993. But the legislation be amended to ensure that when an Aboriginal child is removed under this section, consultation with designated Indigenous advisers or a gazetted agency takes place at the time of removal or as soon as possible thereafter or within a 24-hour limit.

Reason

Removal of a child from guardian/or situation of risk is a very serious action. If a child is not to be returned to the guardian the basis for that decision, and the authority for such an action, must be placed before the Youth Court as soon as possible.

Children must be protected and children who are in serious danger require immediate steps to ensure their protection, regardless of race or background. Aboriginal children with potential extended family and kin arrangements may well be able to be placed with family, until proper assessment of the situation can take place. Every effort must be made by SAPOL/FAYS to ensure proper consultation and placement within the child's Aboriginal community if at all possible. These steps, however, should not compromise the child's right to immediate protection.

INVESTIGATIONS – SECTION 19

This section gives departmental officers the authority to investigate allegations of suspected abuse or neglect. If the Chief Executive Officer suspects on reasonable grounds that a child is at risk, the Chief Executive may cause an investigation into the circumstances of the child to be carried out.

For the purposes of investigation, the Chief Executive Officer may require a person who has examined, assessed, carried out tests or treated a child to furnish a written report. A person who is required to answer a question or furnish a report does not, insofar as he or she has acted in good faith, incur any civil liability in complying with this requirement.

It would appear that this section which allows the department to investigate is generally viewed as adequate:

*The panel has received no feedback that would indicate this is not working.*

SACCS considers that this section is sufficient in its coverage and protection from the perspective of interviewees and supports retention of the indemnity in Section 19 (13) for persons who are required to answer questions and furnish reports…

*It would be helpful if this indemnity could be extended to protect staff in Government, local Government and non-Government agencies or organisations and the police so that they can exchange critical information relating to abused, neglected and at-risk children.*

87 Submission 155 Children's Protection Advisory Panel.
88 Submission 139 (1) South Australian Commission for Catholic Schools on behalf of Catholic Schools.
With the enactment of the legislation in 1993, this provision was seen as important in providing the Minister and delegates with clear powers to investigate child abuse and neglect and other certain circumstances.

At that time, concern was raised about the multiplicity of roles regarding the same agency being responsible for receiving notifications, assessing them for severity, investigating and prosecuting, as well as providing family support and acting as legal guardians. This concern is still expressed today, with many people concerned about the multiple roles FAYS currently undertakes.

Specifically in relation to investigations, comments have been received regarding the approach taken by FAYS when it conducts its investigations, rather than in the way this section of the legislation is framed.

Comments have been received, however, in relation to the types of assessments that can be requested for the purposes of investigation.

These include:

Section 19 needs to make provision for FAYS to obtain any reports or information on children from other agencies/professionals, whether or not they fit the examined, assessed or treated definition. This would, in many situations, avoid the need for court action to order assessment.

The gathering of assessment information about parents that is already held by other helping agencies, including DHS service provider units, would be of significant assistance in such assessments. It is appropriate that the information be confined to that which may impact on parental capacity to safely care for a child (for example, mental health, disability etc).

**RECOMMENDATION 177**

That sub-section 19(2) be broadened as to the information which may be requested by the chief executive so that it is not limited to situations in which the child has been “examined, assessed, carried out tests or treated the child”, but include situations in which a person or agency has had professional contact with a child, and to require a report on such contact.

That consideration be given to providing an immunity to persons or agencies who share information in relation to the protection of children in similar terms to that expressed in section 19(13).

**Reason**

This recommendation is consistent with the overall theme expressed in this Review of sharing of relevant information between organisations so that the decision-maker is in the best situation to assess the risk to the child and take appropriate steps to protect the child.
ORDERS COURT MAY MAKE: SECTION 21 – INVESTIGATION AND ASSESSMENT ORDER

Once an application to the Youth Court for an Investigation and Assessment Order has been made, the Court may make a range of orders if it is satisfied there are sufficient grounds. If an order is granted, the maximum period will be for 28 days with only one extension for up to 28 days allowable. Orders of the court may include:

- an order authorising examination and assessment of the child
- an order granting custody of the child to the Minister
- an order directing a party who resides with child to cease or refrain from residing in the same premises as the child
- an order directing a party to refrain from having contact or
- any other ancillary orders the court thinks fit.

RECOMMENDATION 178

That there be an amendment to section 21 of the Children’s Protection Act 1993 as suggested in Chapter 15 Recommendation 118 in relation to investigation and assessment orders.

FAMILY CARE MEETINGS

If the Minister believes that a child is at risk and arrangements should be made to secure the child’s care and protection, the Minister should hold a Family Care Meeting. The Minister cannot make an application for an order granting custody or guardianship before a Family Care Meeting has been held unless satisfied:

- that it has not been possible to hold a meeting despite reasonable endeavours to do so, or
- that an order should be made without delay, or
- that the guardians of the child consent to the making of the application, or
- that there is other good reason to do so.

RECOMMENDATION 179

That there be an amendment to Division 1 of the Children’s Protection Act 1993 regarding Family Care Meetings as suggested Chapter 15, Recommendation 117.
DIVISION 2 – CARE AND PROTECTION ORDERS

Under this division the Minister may make application to the Youth Court if he or she is of the opinion:

- that a child is at risk and
- that an order should be made to secure his or her care and protection.

If the court finds that the grounds of application are made, it may make a number of orders, including placing the child or young person under the custody or guardianship of the Minister.

SECTION 38 - COURT POWERS TO MAKE ORDERS

Section 38 of the Children's Protection Act 1993 contains a number of discrete powers for the court to make orders. These include custody for a period not exceeding 12 months to the Minister and others; guardianship to 18 years to the Minister and others; as well as powers which allow for undertakings; requiring persons to do certain things or refrain from doing certain things and ancillary orders providing for access and other matters.

In relation to custody orders there is a specific requirement which limits the time of that order, to a period not exceeding 12 months. There is no explicit power for the court to allow extensions of time. It has been a recent practice of the Youth Court to interpret section 38 as permitting multiple orders, each not exceeding 12 months. This interpretation has on occasions resulted in a lack of certainty in relation to the long term planning arrangements for children.

Submissions were made which suggest that the time of operation for custody and guardianship orders should be able to be extended beyond 12 months. This was considered appropriate in circumstances in which it was important for the child and family to have an opportunity to assess the situation before a long-term plan was put in place. In addition, it would allow an adequate period for attempting reunification, if it was seen to be in the best interest of the child to do so.

There appears to be good reason for permitting the court to make an order extending a period of time for the application of an order for custody or guardianship beyond 12 months in such circumstances. However, it would be usually inappropriate for a court to be making a series of rolling 12 month orders.

The best solution may be to permit the court in the exercise of its discretion to increase the period of time for the initial order under section 38 to a period of up to 18 months in particular circumstances. Further, in exceptional circumstances, the court should have the power to allow a subsequent order to be made for a further period of 12 months. This may have particular relevance for Indigenous families, allowing important time for culturally appropriate placements to be made.

This means that most orders should be for a period of 12 months only. In some cases the order could be up to 18 months, but in exceptional circumstances a further period of up to 12 months may be permitted.
RECOMMENDATION 180

That the legislation be amended to permit the Court in the exercise of its discretion to increase the period of time for the initial order under section 38 to a period of up to 18 months in particular circumstances. Further, in exceptional circumstances, the Court have the power to allow a subsequent order to be made for a further period of 12 months.

Reason

This flexibility would assist in attaining settled and permanent living arrangements for children at the earliest possible time, whilst permitting adequate opportunity for reunification of children and young people to their family of origin, if it is in their best interests to do so.

RECOMMENDATION 181

Further, that there be an amendment to section 21 and 38 of the Children’s Protection Act 1993 to enable the court to make an order that a parent or caregiver undergoing an assessment with an appropriate professional as set out in Chapter 15, Recommendation 126.

POWERS OF MINISTER IN RELATION TO CHILDREN UNDER THE MINISTER’S CARE AND PROTECTION – SECTION 51

The Minister may make provision for the care of a child who is under the Guardianship or Custody of the Minister in any of the following ways:

- by placing the child, or permitting the child to remain, in the care of a guardian of the child or some other member of the child’s family
- by placing the child in the care of an approved foster parent or any other suitable person
- by placing the child in a home or in any other suitable place
- by making arrangements for the education of the child
- by making arrangements for medical or dental examination or treatment of the child or for such other professional examination or treatment as may be necessary or desirable
- by making other provision for the care of the child as the circumstances of the case may require.

In making provision for the care of a child, the Minister must have regard to the desirability of securing settled and permanent living arrangements for the child.

The Minister must also keep the guardians of the child informed about where the child is placed and how the child is being cared for, unless the Minister is of the opinion that it would not be in the interests of the child to do so.

In the discussion paper the question was asked whether the terms ‘custody’ and ‘guardianship’ required greater definition. In relation to the current Act the powers and functions of the Minister are not inherently different when a child is under the custody or guardianship of the Minister.
A number of submissions were received on this subject. The following comments are noted:

Over time there seems to have been a blurring of any distinction between the two terms in relation to FAYS’ practice.\(^{92}\)

The confusion that exists regarding the meaning of ‘in loco parentis’ was discussed. It was agreed that to avoid confusion, the definition be amended to exclude foster parents as guardians.\(^{93}\)

Understanding and using creative solutions in the application of ‘Custody’ and ‘Guardianship’ arrangements has failed in practice partially due to lack of across sector understanding and collaboration…Custody orders could be utilised more readily when parents seek to retain full guardianship responsibility but require out-of-home care placement to meet the needs of their child and the State to financially support the child.\(^{94}\)

Changes to the Family Law Act 1995 (Cth) altered the terminology from one of ‘custody and guardianship’ to ‘parenting, residence and contact orders’ in an attempt to reduce the likelihood of viewing children and young people as property and to ensure as far as possible a child’s birth parents were jointly involved in decision making about a child’s development. However:

…in the child protection arena, the continued involvement of the birth parent is not always possible or in the child’s best interest.\(^{95}\)

The clarity of the distinctions between residence and contact under the Family Law Act 1995 (Cth) is not so apparent under the Children’s Protection Act 1993 (SA) in relation to guardianship and custody which is not defined, although the terms and also the defined expression “guardian”\(^{96}\) are used throughout the Act.

By contrast the Queensland legislation defines the effect of custody and guardianship and two submissions recommended that these definitions be adopted in South Australia.\(^{97}\)

The Queensland definitions are as follows:

**Custody**

The chief executive, or other person granted custody of the child, has –

(a) the right to have the child’s daily care and
(b) the right and responsibility to make decisions about the child’s daily care.

**Guardianship**

If the chief executive or someone else is granted guardianship of a child under a child protection order, the chief executive or other person has –

(a) the right to have the child’s daily care and
(b) the right and responsibility to make decisions about the child’s daily care and
(c) all the powers, rights and responsibilities in relation to the child that would otherwise, have been vested in the person having parental responsibility for making decisions about the long-term care, welfare and development of the child.\(^{98}\)

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92 Submission 179 Family & Youth Services.
93 Submission 196 Justice Advisory Group.
94 Submission 161 Department of Human Services Disability Services Office.
95 Submission 179 Family & Youth Services.
96 Section 6 of the Children’s Protection Act 1993
97 Ibid and Submission 127 Parents Want Reform. Submission 179 Family and Youth Services
98 Child Protection Act 1999 (Qld)
RECOMMENDATION 182

That the terms custody and guardianship be clarified and consideration be given to using the definition as described in the Children’s Protection Act 1999 (Qld) but replacing the words ‘chief executive’ with the word ‘Minister’.

Reason

Delineating ‘custody’ and ‘guardianship’ in this manner provides greater clarity to the roles, responsibilities and functions carried out, and provided by the Minister, for children and young people under the custody or guardianship of the Minister. This is particularly relevant in relation to children with significant disabilities, whose parents want to retain long-term guardianship but cannot provide day to day care of the care.

RECOMMENDATION 183

That the legislation be amended to take into account broader concepts of family and kinship within Aboriginal and Torres Strait Islander communities. Definitions of ‘family’ and ‘guardian’ for Aboriginal children need to include the wider circle of significant relationships.

Reason

Such amendments give appropriate statutory recognition of Indigenous cultural circumstances.

LEAVING CARE AND AFTER CARE

Chapter 12 discusses problems faced by children and young persons under the Custody or Guardianship of the Minister leaving care and the assistance which they need during a transition stage.

Sections 165-170 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) require the Minister to provide for children and young people above 15 years who leave out-of-home care until the age of 25 years.
RECOMMENDATION 184

That provisions along similar lines to those contained in sections 165-170 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) be incorporated into the Children’s Protection Act 1993 (SA) in relation to leaving care.

Reason

Additional assistance is required until the age of 25 for children and young persons under the custody or guardianship of the Minister, who leave care. Such assistance should be incorporated into the legislation as a statutory function of the Minister.

CHILDREN’S PROTECTION ADVISORY PANEL – SECTION 55

The Minister must establish a panel under the Act. The panel is to consist of not less than three or more than eight persons who have expertise in the field of child welfare. At least one must be from the non-Government sector and one other a legal practitioner. The functions of the panel are:

- to monitor and keep under constant review the operation and administration of the Act and
- to report to the Minister, on the panel’s own initiative or at the request of the Minister, on any matter pertaining to the operation or administration of the Act and
- to make such a recommendation to the Minister as the panel thinks fit for the amendment of this Act or for the making of administrative changes or otherwise to further the objects of this Act.

It is vitally important to ensure appropriate monitoring and review of child protection legislation.

Comments received during the Review suggest that the existence of and roles and functions of the panel have not been widely known within the broader community. In recent years advice provided to Government by the panel has not been generally been acted upon. The panel’s ability to access timely information about child protection has been limited. The lack of resources and the fact that panel members give their time voluntarily has resulted in difficulty in carrying out their legislative mandate.

RECOMMENDATION 185

That the following interim arrangements be considered. The existing Children’s Protection Advisory Panel continue in its current role until such time as legislation is enacted to establish the Child Protection Board, at which time the panel will be formally disbanded and this section of the Act repealed.

Reason

A specific panel to oversee the administration and operation of the Act is not deemed necessary given the structural reforms being proposed. In particular the establishment of the South Australian Child Protection Board and the Commissioner for Children and Young Persons will take over many of the roles and functions currently being undertaken by the Advisory Panel.
DUTY TO MAINTAIN CONFIDENTIALITY – SECTION 58

A person engaged in the administration of the Act who obtains personal information relating to a child, a guardian of the child or any other family members or any other person alleged to have abused, neglected or threatened a child, must not divulge this information. Also a person who attends a family conference (not being the child, a guardian of the child or any other member of the child’s family) must not divulge any personal information obtained at the conference to any of those persons.

This section has a maximum penalty of $10,000.

It does not, however, prevent a person from divulging information if authorised or required to do so by law.

A discussion of this section is considered in Chapter 7. There is no recommendation made to amend legislation but to instead improve guidelines.

RECOMMENDATION 186

No change to Section 58 of Children’s Protection Act 1993 pertaining to confidentiality is deemed necessary. (see Chapter 7)

FAMILY AND COMMUNITY SERVICES ACT 1972

The Family and Community Services Act 1972 (SA) preceded the focus on child protection which emerged in the 1980’s, and the new orientation toward juvenile justice that formed the basis of the Young Offenders Act 1993 (SA). The Family and Community Services Act 1972 enables the Minister of Social Justice to establish a range of services for those in the community who are in need or under stress in order to enhance the quality of family life. The Act relates to the provision and promotion of services to assist a variety of vulnerable population groups (including migrants, ethnic communities, Aboriginal community, disabled, women, single parents, etc).

The Act is broad in its application and gives powers to the Minister to undertake a variety of functions. The range of responsibilities covered is now more likely to be shared and undertaken by a number of Government and non-Government agencies.

The general functions of the Act include:

- To promote the welfare of the community generally and of individuals, families and groups within the community.
- To promote the dignity of the individual and the welfare of the family as the bases of the welfare of the community.
Some of the specific functions include the:

- establishment of advisory panels to provide advice
- appointment of community aides to act as volunteers
- approval and registration of foster parents
- establishment of training centres and other facilities for the care, correction, detention, training or treatment of young offenders
- establishment of care facilities for children in need of care and protection
- consultation with community members on matters relevant to the provision of services
- providing services to members of the public within the localities in which they live and
- providing appropriate complaints mechanisms for clients receiving services.

The Act also enables the Government to enter into agreements for the provision or promotion of family or community welfare services or other related services with:

- a person or group of persons with appropriate experience, qualifications or expertise in the provision or promotion of the relevant services; or
- an organisation, established for the purpose of providing or promoting family or community welfare services, or other related services, that employs staff with appropriate experience, qualifications or expertise in the provision or promotion of the relevant services; or
- a local government authority.

It specifically requires that the Minister should avoid entering into agreements with agencies or individuals providing for long-term care of persons in need, who may do so, with the object of making a profit.

Comments received in relation to the *Family and Community Services Act 1972 (SA)* strongly supported the need to update and modernise the Act. 50

This Review would agree with this view for a number of reasons including the following:

- Considerable changes to Government contractual and procurement arrangements have occurred in the public sector and consideration is required as to whether the provisions contained within this Act are in keeping with current arrangements.
- The Act also contains arrangements for ‘maintenance obligations’. This function is generally now undertaken by the Federal jurisdiction, through the establishment of the Family Court and the Child Support Agency and therefore requires review.
- In relation to the functions of the Children’s Interest Bureau which is specifically established under the Act in section 26, this Review is making a number of recommendations including the appointment of a Commissioner for Children and Young Persons. If Government accepts this proposal, the functions designated to the Children's Interest Bureau will be ceded to the Commissioner and the other statutory bodies proposed.
RECOMMENDATION 187

A detailed review of the *Family and Community Services Act 1972* is required, so that it is in keeping with current community standards, and expectations and meets required service and contractual arrangements.

Further, until the statutory bodies for advancing and protecting the interests of children as proposed by this Review are established, principally the Commissioner for Children and Young Persons and the Guardian for Children and Young Persons, the Children’s Interest Bureau continue in its current form.

Reason

This Act is significantly outdated and requires substantial amendment. While some of the broad objects and functions are compatible with the current social justice approach, the language and content is anachronistic and in some cases covered by other jurisdictions.

Significant structural reform is being proposed by this Review. The functions of the Children’s Interest Bureau as currently set out in the Act, will no longer be necessary once the statutory bodies recommended by this Review are established.

SOUTH AUSTRALIAN HEALTH COMMISSION ACT 1976

This Act provides for establishment of the South Australian Health Commission to ensure the provision of public health services that include public hospital, public health, community health and other specialist health services. The majority of public health services, including regional health services, are incorporated under this Act. These incorporated health services include hospital and health centres.

The objects of the Act in section 3 are to achieve the rationalisation and coordination of health services and to ensure the provision of health services for the benefit of South Australians based on principles such as providing health care through a properly integrated network of hospitals and health centres and integration of mental health services within a unified system of health care.

Division 2, section 15 outlines the powers and functions of the Minister and the Commission. Some of the powers and functions of the Minister include:

- instituting, promoting or assisting research in health and health services
- collecting or assisting the collecting of health and health service data and statistics
- ascertaining health and health service requirements of the public (or any section) and determining how these will be met to its best advantage
- planning and implementing the provision to the public of a comprehensive, coordinated and readily accessible system of health services
- establishing, maintaining and operating health services as the Minister thinks desirable
- providing or assisting in the provision of education, instruction or training in such professional or other fields of knowledge or expertise related to the provision of health services as the Minister thinks desirable
disseminating knowledge in the public health field to the advancement of the public interest
keeping Department policies and standards of health and health services under constant evaluation
and review and
ensuring as far as possible that people in South Australia live and work in a healthy environment.

The powers and functions of the Commission in section 16 include the function of providing information
and advice to the Minister on these functions.

Health Services
A ‘health service’ is broadly defined in section 6 as ‘any service designed to promote health’ or ‘any
therapeutic or other service designed to …alleviate or afford protection against any mental or physical
illness, abnormality or disability.’

Health services play a critical role in identifying children and young people who have been abused or
neglected or are at risk of being abused or neglected, in determining the severity of such neglect, in
assessing parent and family requirements and in providing treatment services. Health services, for
example, mental health services, play a role in providing treatment and care to parents and caregivers,
whose condition may prevent or inhibit the appropriate care and protection of children and young people.

A number of health services play a collaborative role with child protection and other authorities in the
provision of care, treatment and support to children and young people. The Act, however, does not
incorporate or acknowledge this wider collaboration either in its objects or in the powers and functions
of the Minister or the Commission.

There is growing national and international recognition that, along with other forms of violence such as
domestic violence, child abuse and neglect is a significant public health concern.

Whilst it may be considered that the definition of ‘health service’, particularly when delivered through the
public health system of hospital and health centre, is broad enough to include child abuse and neglect,
these may need more recognition as health issues. Many people argue that more explicit recognition of
child abuse and neglect is required within the Act.

The Review is recommending that there be greater collaboration across Government departments in
responding to the needs of child protection. The Act does not acknowledge or endorse collaborative
services, part of which may comprise a component of a ‘health service.’

It is noted that the Generational Health Review may also be making recommendations on the review of
or specific changes to the Act. It would, therefore, be appropriate to undertake work on amending the
Act in concert across both this Review and the Generational Health Review.
RECOMMENDATION 188

That the South Australian Health Commission Act 1976 be reviewed to ensure that the principles of integrated care, collaboration and coordination across different Government and non-Government authorities and service providers are incorporated to facilitate improved outcomes of care and treatment for children who have protective concerns.

Reason

The Act implies that the provision of health services for the purpose of providing health care is the primary mechanism for advancing the health of the community including sections of the community. The Act, therefore, does not facilitate integration, collaboration or coordination with services other than health services and may serve to limit the application of these principles for improving care outcomes for children and young people with protective needs and for addressing child abuse and neglect as a public health concern.

RECOMMENDATION 189

That consideration be given to incorporating recognition of responsibility to improve the health and welfare of children and young people who are subject to child abuse and neglect concerns within the South Australian Health Commission Act 1976.

Reason

Though there is some recognition that child abuse and neglect is a public health concern, explicit reference may be required to ensure that health services meet their obligations for child protection, including ensuring staff receive mandatory notification training and the development of appropriate service policies and protocols and generally supporting improved identification of and responses to children and young people who may be the subject of a child protection concern.

Confidentiality provisions - Section 64

There are two provisions which impact upon disclosure of personal information, sections 64 and 64D

Section 64 (1) of the South Australian Health Commission Act states that:

64 (1) Subject to subsection (2), an officer or employee of the Department, an incorporated hospital or an incorporated health centre must not divulge any personal information, relating to any patient, obtained in the course of employment otherwise than as he or she may be authorised in the course required to divulge that information by law or by his or her employer.

Penalty: Division 5 fine.

64 (2) This section does not prevent a person from divulging statistical or other information that could not reasonably be expected to lead to identification of patients to whom it relates.
This section of the Act has meant that service providers are generally not able to provide:

- confidential information about a child to another Government authority involved in the care of that child and where such information may be important to his or her care and protection, or

- provide information to others about a child’s or young person’s parent or caregiver whose mental health or physical health condition may be such that they are not able to adequately care for or protect the child in question.

Section 64 D of this Act also makes provision for the disclosure of confidential information for certain purposes, that is:

64D (1) This section applies to a person, or the members from time to time of a specified group or body, authorised by the Governor, by instrument in writing, to have access to confidential information for the purpose of

   (a) conducting research into the causes of mortality and morbidity; or
   (b) assessing and improving the quality of specified health services,
   and to any person providing technical, administrative or secretarial assistance in the performance of such functions.

(2) Confidential information may be disclosed to a person to whom this section applies without breach of any law or any principle of professional ethics.

(3) Subject to this section, a person must not in any circumstances (including proceedings before any court, tribunal or board) divulge confidential information obtained directly or indirectly as a result of a disclosure made pursuant to this section.

Penalty: Division 5 fine.

(4) Subsection (3) does not prevent a person to whom this section applies disclosing confidential information to another person to whom this section applies.

(5) A person must not, when appearing as a witness in any proceedings before a court, tribunal or board, be asked, and, if asked, is not required to answer, any question directed at obtaining confidential information obtained by that person directly or indirectly as a result of a disclosure made pursuant to this section and any such information volunteered by such as person is not admissible in any proceedings.

(6) In this section “confidential information” means information relating to a health service in which the identity of the patient or person providing the service is revealed.

Thus, section 64 D of the Act provides for absolute confidentiality of information relating to a health service in which the identity of the patient or the person providing the service is revealed. This section of the Act has been regarded as insurmountable in the provision of information for the purposes of child death and injury review where a structure is established outside the parameters of the Act under separate legislation.
Section 64 of the *Health Commission Act 1976* (SA) is in similar terms to the provisions of section 58 of the *Childrens Protection Act 1993* (SA). However, the *Health Commission Act* does not have objects or principles such as are contained in sections 3 and 4 of the *Childrens Protection Act 1993* (SA). These sections articulate that the object of the Act is the ‘care and protection of children’ and that the principle in the exercise of powers is that the safety of the child is to be the paramount consideration.

This articulation of objects and principles permits a less rigid approach to the divulgence of personal information under the *Childrens Protection Act 1993* (SA) than may be appropriate under the *Health Commission Act*. There are two other aspects which impact on divulgence of information under section 64. The first, that the mandatory notification provisions of the *Childrens Protection Act 1993* (SA) which apply to such employers, would permit divulgence of such information. Second, divulgence is permitted if a criminal offence may be involved.

The circumstances under which there can or should be divulgence of information is discussed in Chapter 7 in respect of which Recommendation 27 is made. This Recommendation is also apposite to the provisions of section 64 of the *Health Commission Act 1976* (SA).

With regard to section 64 D of the Act, there are two aspects which may impede the work of the proposed Child Death and Serious Injury Review Committee. Such Committee is to review the circumstances in which a child has died or experienced serious injury and to make findings and recommendations for improvement of departmental systems. Even if that body was authorised by the Government to have access to confidential information in accordance with section 64 D the Committee’s task is greater than described within the sections and further would inhibit the subsequent use and further divulgence of information when making its findings and recommendation.

**RECOMMENDATION 190**

That section 64D be amended to ensure that appropriate confidential information may be provided to the Child Death and Serious Injury Review Committee.

**Reason**

The effective operation through the provision of relevant and often confidential information of the Child Death and Serious Injury Review Committee will depend on amendment of section 64D of the South Australian *Health Commission Act*. Whilst legislation is proposed for the establishment of the Child Death and Serious Injury Review Committee, it will be important to ensure any other legislative barriers to the free exchange of information are removed to ensure the appropriate exchange of required information so that this Committee can effectively carry out its proposed statutory role and responsibilities.
Chapter 24
Domestic Violence and Child Protection

INTRODUCTION

This chapter highlights the following:

- the research findings on the links between child protection and domestic violence
- the need for improving the recognition of domestic violence as a critical pathway for identifying and addressing child protection concerns
- comments on the effectiveness of child protection and domestic violence service and policy, and
- offers recommendations for responding to child protection and domestic violence.
GENERAL DISCUSSION

Anna describes how life with her husband became more difficult as time went on with increased violence and drunkenness. She tried to protect the children and she couldn’t tell anyone what was happening in the marriage for many years. She lived in a state of exhaustion and ignorance of the sexual abuse of her daughters, just surviving until the truth came out and she knew she had to get rid of him. The court case took years during which they had to have a bodyguard with them all the time. Ashley was the child of the family, which she describes as dysfunctional because her father was an ‘# # #!’ who made the house a hell. The family was well off materially but the father was sexually abusive with his daughters from a very early age.1

CO-EXISTENCE OF DOMESTIC VIOLENCE AND CHILD ABUSE AND NEGLECT

The interrelationship between domestic violence and child abuse and neglect and the likely concurrence of domestic violence and child abuse have also become increasingly highlighted in research over the past twenty years.2 The separation between domestic violence and child protection service responses is now regarded as historic.

There is however a continuing practice view that there are solid boundaries between these two forms of violence rather than a strong inter-relationship and overlap. This view can impede effective prevention and intervention for the protection of children when the matter is principally regarded as domestic violence or as child protection depending on the pathway for entry into the system and the service provider’s service mandate.

The link between domestic violence and child physical and sexual abuse and the likely concurrence of domestic violence and child abuse have also become increasingly substantiated in recent years.3 Consequently, the historical separation between domestic violence and child protection service responses is problematic and can impede effective prevention and intervention where there are protective concerns for both children and women.

This situation has resulted in inappropriate responses. There is anecdotal information which highlights the difficulties in current practice. For example, FAYS intervention to investigate abuse in the context of domestic violence, may result in advising a woman who is experiencing domestic violence that her child or children will be removed unless she leaves her violent partner.4 Effectively this approach punishes the victim of domestic violence and abrogates the responsibility of the perpetrator of violence.5 It can also operate to prevent women from seeking assistance in relation to domestic violence, particularly where they have a pre-existing distrust of Government services and authorities.

Australian studies support the anecdotal evidence received from women’s services that in cases of child abuse in the context of domestic violence, child protection services frequently focus on the non-abusive mother and fail to introduce supports and legal mechanisms to ensure the women’s and children’s safety.6 More specifically there is growing awareness that witnessing and living with domestic violence can itself constitute a form of child abuse, the effects of which include aggression, anxiety, depression, diminished self esteem, disobedience, destructive behaviour, emotional distress and somatic complaints.7

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1 Life Matters, 6 December 2002, 10:14 AM, Radio National (Adelaide), Summary: C00008997917, Compere: Geraldine Doogue, Interviewees: Anna and her girls, domestic violence survivors.


4 Submission 129 Office for the Status of Women.

5 Ibid.


The data on exposure of women to direct domestic violence which is witnessed by children is a serious concern as this is an indicator of severity of violence and likelihood of child abuse co-existing.\(^8\)

**CHILDREN AND YOUNG PEOPLE EXPOSED TO OR WITNESSING DOMESTIC VIOLENCE**

In 1998 and 1999, the Social Environment Risk Context Information System (SERCIS) surveys on violence and abuse showed that one third to almost one half (34.5% in the 1998 survey and 45.9% in the 1999 survey) of the respondents who had experienced domestic violence had children witnessing the incident.\(^9\) Table 29 demonstrates this finding.

**Table 29: Children witnessing domestic violence**

<table>
<thead>
<tr>
<th>Children witnessed incident</th>
<th>1998 SERCIS Survey</th>
<th>1999 SERCIS Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>186</td>
<td>34.5</td>
</tr>
<tr>
<td>No</td>
<td>305</td>
<td>56.6</td>
</tr>
<tr>
<td>No children (at the time)</td>
<td>39</td>
<td>7.2</td>
</tr>
<tr>
<td>Don’t know</td>
<td>7</td>
<td>1.3</td>
</tr>
<tr>
<td>Refused</td>
<td>2</td>
<td>0.4</td>
</tr>
<tr>
<td>Total</td>
<td>540</td>
<td>100.0</td>
</tr>
</tbody>
</table>


Domestic violence has been shown to occur during pregnancy, as evidenced in the Table 30 below, where just over one in four (27% in the 1998 survey and 30.3% in the 1999 survey) of the female respondents who had experienced domestic violence were pregnant at the time.\(^10\)

**Table 30: Female respondents experiencing domestic violence whilst pregnant**

<table>
<thead>
<tr>
<th>Variable</th>
<th>1998 SERCIS Survey</th>
<th>1999 SERCIS Survey</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Experienced while pregnant</td>
<td>Yes</td>
<td>97</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>239</td>
</tr>
<tr>
<td></td>
<td>Never pregnant</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Don’t know</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>358</td>
<td>100.0</td>
</tr>
</tbody>
</table>


There is increasing evidence to suggest that careful assessment of domestic violence during pregnancy is a critical concern. The Australian Bureau of Statistics Women’s Safety Survey found that 42% of women who experienced violence from a previous partner and had been pregnant at some time during the relationship, experienced violence during the pregnancy. Furthermore 20% experienced violence for the first time during pregnancy. Violence during pregnancy may have implications for the child’s physical and psychological development following birth. The identification of domestic violence in the antenatal stage is therefore critical for both the health and wellbeing of women and developing foetus and child once born.

The research indicates that exposure to domestic violence for children and young people may result in long term adverse outcomes such as higher likelihood of emotional problems, being involved in violent relationships as victim or perpetrator, levels of behavioural and emotional problems or disturbances of equal magnitude to those experienced by children who have been abused.

FAYS data on risk assessment undertaken during investigations to determine family characteristics and the separate needs and strengths assessments undertaken to determine the priority service and other needs of the family for providing a service response reflects that domestic violence is an issue in 47% and 37% of cases respectively.

### CURRENT SERVICE AND POLICY ARRANGEMENTS IN SOUTH AUSTRALIA

There are a number of services available and policy initiatives and guidelines designed to give a strong focus on the prevention of and improving responses to domestic violence across justice, welfare and human services areas. Many of these policy initiatives and services clearly acknowledge the relationship between domestic violence and child protection as a result of research evidence emerging over the last ten years. They highlight the need to identify child protection concerns where domestic violence may be the primary reason for contact with service providers and to develop linked responses.

At a national level, Partnerships Against Domestic Violence is a Commonwealth initiative, working with States/Territories and the community to prevent domestic violence, which has been in place since 1997 and is in its second phase. The Partnerships initiative has undertaken a range of projects across Australia to develop new activities and enhance existing work on the prevention of domestic violence. Projects funded under the Partnerships initiative focused on six key themes:

- helping children and young people who may have experienced or witnessed domestic violence to break the cycle of violence and develop healthy relationships
- helping adults to break the pattern of violence – working with victims and perpetrators to prevent and reduce domestic violence
- protecting people at risk – reforming legislation and responses by police and courts
- working with community and educating the community about domestic violence
- information and good practice identifying what works, and researching areas where new information is needed to support violence prevention and
- helping people in regional Australia by overcoming barriers to receiving assistance.
Domestic Violence and Child Protection 24.5

South Australia has undertaken a number of projects funded under this Federal initiative. Some of these include:

- Safe Living in Aboriginal Communities which is testing and refining the Family Well Being Counselling Training Course model
- Relationship Violence - No Way! was a prevention project which involved working with a team of young men as peer educators to work with other young men at risk of perpetrating violence within their relationships
- Training Modules Project that involved developing state accredited competency-based standards and short training courses for domestic violence workers
- Out of Sight – Not Out of Mind which aims to improve the mental health of people who are current consumers of mental health services affected by domestic violence
- Knowing Mothers – Safe Young Children Project that aims to develop a practice model of peer support enabling women to recognise and respond appropriately to their children who have witnessed domestic violence and
- Validation of a Clinical tool for the Routine Identification of Domestic Violence in Emergency Departments.

At the State level, there were a number of whole of Government initiatives in the area of domestic violence that included:

**The State Collaborative Approach to the Prevention of Domestic Violence**

This is a policy framework which aims to provide State-wide guidance on collaboration for both Government and non-Government services to prevent domestic violence. This document provides guidance on key principles and strategies for practice that should underpin all responses to domestic violence across all services. It emphasises collaboration between services with each to improve the focus on prevention and to reduce the incidence of domestic violence. There have been a few collaborative structures established at regional levels such as the Onkaparinga area and the western metropolitan area to promote collaboration and coordination between local services.  

**South Australian Domestic Violence Prevention Plan (draft)**

This draft was developed under the previous Government for sign off by the Ministerial Forum for the Prevention of Domestic Violence. This document does not have current status. The Government is yet to determine structures for providing an across Government focus on domestic violence. The draft *South Australian Domestic Violence Prevention Plan* provides a strategic focus on the safety and well being of children and young people and proposed a number of possible strategies. Some examples include:

- policy development by lead agencies reflecting an understanding of the impact of domestic violence and family violence on children and young people and promoting a collaborative approach to intervention
- refining intervention responses to enhance parental and service provider capacity to protect and support children and young people in domestic and family violence situations and
- review existing interagency mechanisms and enhance service coordination and links.

15 Submission 54 Western Domestic Violence Service outlined an interagency project that it initiated in conjunction with the City of Charles Sturt Family Links project. This project resulted in a major regional forum entitled Reverberations that aims to highlight needs, successful programs and seed collaborative initiatives in service development and training among the broad range of local service providers such as parenting, SAAP, Local Government and children’s services.

16 South Australian Domestic Violence Prevention Plan 2001-2006 (Draft for Consultation as at September 2001). The Ministerial Forum for the Prevention of Domestic Violence was established under the previous Government and involved Ministerial and community peak body representation to provide a collaborative and whole of community focus to the prevention of domestic violence. This body was supported by an across Government Domestic Violence Officers Working Group that also included peak body representation.
**Strategic Pathways for Stopping Violent Behaviour Programs in South Australia Implementation Plan, 2001 - 2006**

This Implementation Plan was a component of the draft *South Australian Domestic Violence Prevention Plan*. This Plan included a specific strategic focus on engaging men to recognise and respond positively to their responsibility in relationships, behave in ways that are safe and respectful, take account of the experience of women, children and young people, and exclude violent and abusive behaviour. The aim of the Implementation Plan was to promote a more coordinated approach and focus on the delivery of programs that targeted perpetrators of domestic violence across the State. This Plan recognised the following key operating principles, among others, to guide policy and program development:

- safety of victims is a first priority
- those who perpetrate domestic violence, including Indigenous family violence, must be held accountable and
- children and young people are also recognised as secondary victims.


The *Rekindling Family Relationships: Framework for Action* was developed by the Inter-sectoral Working Group on Indigenous Family Violence, to stand with the *State Collaborative Approach*. The Framework outlined the State Government’s commitment to work with Aboriginal and Torres Strait Islander families and communities through a community development approach. This framework was designed to be consistent with national directions from bodies such as the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (through its National Indigenous Family Violence Strategy) and paralleled initiatives in other jurisdictions to address Indigenous family violence.

The Partnering Agreement between the Government of South Australia and the Aboriginal and Torres Strait Islander Commission, (ATSIC) December 2001, committed ATSIC and the State Government to recognise and address the causes and impacts of family violence in Aboriginal communities through locally based strategies.

It was proposed that the Framework would be implemented through community development processes working with communities to support them to identify issues and develop appropriate responses to indigenous family violence at the local level.

These initiatives were lead by the Attorney-General’s department through the Ministerial Council for the Prevention of Domestic Violence. As a result of the change in Government, the status of the initiatives and strategies mentioned above is now uncertain. It is understood that there is work currently underway to develop an appropriate process for ensuring across-Government coordination on domestic violence. This structure will aim to correspond to the Federal Ministerial Council on Women’s Safety which focuses on domestic violence, Indigenous family violence and rape and sexual assault.

### POLICY AND SERVICE DEVELOPMENT IN GOVERNMENT AGENCIES

The Department of Human Services had been undertaking the development of a policy on interpersonal violence to give greater focus on the connections between major forms of interpersonal violence, the need for integrated approaches across these areas where they are concurrent as well as acknowledging the differences and specificity of responses required for each specific form of interpersonal violence. Work on developing a departmental coordination model on interpersonal violence incorporating domestic violence and child abuse and neglect is currently underway and will supersede any previous initiatives.
A report on collaboration to address and prevent domestic violence entitled *Greater than the Sum of Parts* was work funded by the Department of Human Services and undertaken by the Domestic Violence Linkages and Protocols Reference Group. The report discusses ways by which domestic violence services (SAAP), child protection services and crime prevention could liaise and collaborate more effectively at service and locality levels.

The South Australian Housing Trust has implemented a strong policy to provide priority housing support to women and children experiencing domestic violence.

The Justice portfolio has also developed a Domestic Violence Policy Statement and Strategic Plan which makes explicit reference to children and young people and provides an integrated and strategic Portfolio Plan covering all agencies within the Department of Justice such as SAPOL and Corrections.

There is a range of services provided through Government and non-Government sectors responding to domestic violence. They include:

- SAPOL responses to domestic violence which may include police attendance, investigation and arrest
- SAAP services for children and women escaping domestic violence providing emergency and longer term accommodation and counselling and other support to women and children
- Domestic Violence Crisis Service
- Health services including mental health services
- Counselling and support services provided through Community Health and Women’s Health Services
- FAYS’ responses which include providing support and counselling advice referral to other services as well as child protection interventions. FAYS has developed a Manual of Practice which makes specific reference to the response required where child protection and domestic violence are both identified in a family.
- Services provided through a range of non-Government services for survivors and victims of domestic violence, as well as children as secondary victims. This service includes family support services and emergency financial assistance.
- Housing and accommodation support through the South Australian Housing Trust and
- Prosecution and other court processes, victim support, sentencing, monitoring and rehabilitation.

SAPOL’s Child and Family teams provide a constructive and effective way of dealing with the overlap between child protection and domestic violence. These teams have probably resulted in increased mandated notifications as a result of intervening in families where domestic violence has been reported. The Crime Prevention Unit of the Attorney-General’s Department also funded the NDV project which was a 12 month project which sought to enhance the way police responded to domestic violence call outs and follow through with the incident. Located in two police service areas in metropolitan Adelaide, it aimed to contribute to the prevention of domestic violence by reducing the incidence of repeat victimisation of domestic violence through a three-tiered program of interventions providing an equal focus on the victim and the perpetrator. The NDV Pilot Project has been completed but the framework of the project is still being maintained in the two metropolitan areas. Evaluation of this project is currently underway. One submitter indicated that this project has resulted in greater awareness by Police of child abuse cases and should be implemented on a state-wide basis.\(^\text{17}\)

One specific project that has been implemented in the north and central metropolitan areas of Adelaide and which aims to provide coordinated responses to families where domestic violence is being experienced, is the Violence Intervention Project, discussed hereunder.
The various policy frameworks and initiatives provide important recognition of the interrelationship between domestic violence and child abuse and neglect as well as strategies to combat the incidence of domestic violence, however, a number of issues remain which require concerted attention.

### ISSUES RAISED IN SUBMISSIONS

Submissions and consultations to Review have raised a number of issues in relation to child protection and domestic violence. These include:

- a need to increase financial outlays for emergency accommodation support required by women and children escaping domestic violence
- legislative changes explicitly recognising child protection concerns as a result of witnessing domestic violence
- further development of appropriate practices and service responses
- the lack of SAAP services for longer term accommodation support
- improved access to counselling and support services for children witnessing domestic violence
- that domestic violence services are adult focused and do not incorporate children's and young people's needs
- a need for effective and consistent FAYS’ responses to women and children experiencing domestic violence
- a need to improve collaborative practice where there are both child protection and domestic violence concerns
- the need for more collaborative services for children and their families, incorporating as many services as possible, with FAYS leading the case management process in child protection cases
- the need for children living with families experiencing domestic violence to receive appropriate support and access to appropriate services to address the effects of domestic violence, including emotional and verbal abuse from parental figures
- the need for children to be recognised in the domestic violence sector as individuals, who have more than likely been through the same experience as their victimised parent, and who may have experienced significant effects of abuse that would be detrimental to their development
- that children's experiences of domestic violence need to be acknowledged and addressed by the State in the most appropriate ways as forms of significant abuse
- the experience of parents of abusive children valued and supported by the State in more appropriate ways
- greater development in initiating and promoting resources and training around the effects of domestic violence on children.

In general terms, these issues appear to be well founded.
KEY AREAS FOR ATTENTION

COLLABORATIVE PRACTICE BETWEEN DOMESTIC VIOLENCE AND CHILD PROTECTION

One clear message evident from submissions is the need for improved collaborative practice between services where there are both child protection and domestic violence concerns. Workers working in domestic violence services have broadened the scope of their work and have acquired skills in identifying child protection concerns. Two initiatives have been implemented, namely the Violence Intervention Programs in the north and central metropolitan Adelaide to develop more coherent intensive whole of family case management response to domestic violence which includes a specific focus on the child’s protective and other needs. Access to this service is primarily through Police or the Magistrates Court although referrals can be made from other services.

It is apparent that many service providers have a good understanding of child protection issues in families where domestic violence is occurring and that they are committed to ensuring children’s interests are protected. However, boundary issues such as service mandates and finite staffing resources often inhibit the development of appropriate collaborative practice arrangements between agencies.

Further detailed assessment of how well the current arrangements are working for women and children is required. It would be of greater value to initially improve child protection, police and domestic violence service responses by developing improved guidelines for practice where both forms of abuse coincide at an interagency level and reviewing individual agency guidelines to ensure their appropriate integration with interagency guidelines. In addition, joint training is required across police, child protection, health and welfare, including domestic violence services to ensure that appropriate assessments, interventions and case monitoring can be undertaken.

The establishment of the State and Regional Child Protection Committees as recommended in this Review, will provide an improved focus for reviewing current policy and practice at State and regional levels. FAYS’ lead responsibility for child protection case management as recommended at Recommendation 40 will also provide an improved basis for developing more consistent responses to child protection concerns.

There is a need for improved coordination and collaboration between domestic violence services, child protection networks and other family support services. The Meta-evaluation of Partnerships Against Domestic Violence Phase 1 found that a substantial number and range of on the ground services and initiatives focused on similar target groups and/or the same activities. The meta-evaluation called for systemic interventions to deal with the range of inter-related social issues and underlying causes in an integrated approach.

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### RECOMMENDATION 191

**That further development of the Interagency Child Protection Guidelines be undertaken to provide an expanded focus on interagency responses where women and children are experiencing domestic violence.**

**Reason**

Further development of the guidelines will provide improved practice guidance across agencies.

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### RECOMMENDATION 192

**That current guidelines across FAYS, SAPOL, health and domestic violence services for responding to child protection when women and children are experiencing domestic violence be reviewed to ensure they provide:**

- clear and appropriate policy and practice guidance on identifying and responding to child protection concerns
- in particular, articulate that the risk of abuse to children through exposure to domestic violence warrants investigation, assessment of risk and coordinated services
- the development of inter-agency agreement on appropriate responses and agreement on responsibility for specific components of the response.

**Reason**

Child protection is well recognised as part of an appropriate response to domestic violence. However, there has been a lack of clarity about the requirement for a specific child protection response given the dilemmas that this currently involves for service providers because of their current service mandates.

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### RECOMMENDATION 193

**That a specialised joint training program be developed that provides SAPOL, health, FAYS and other welfare workers with training on responding to domestic violence where child protection concerns may also exist. This joint training should incorporate identifying child protection concerns in domestic violence situations and ensuring appropriate interagency and specific agency responses.**

**Reason**

Integrating domestic violence and child protection responses will require improved understanding of different issues underpinning domestic violence and child protection policy and practice and support the development of joint responses that ensure the integrity of each area whilst addressing issues using agreed approaches.
RECOMMENDATION 194

That the FAYS’ Manuals of Practice on Child Protection and Domestic Violence be redeveloped to ensure that child protection services more adequately reflect that witnessing and living with domestic violence constitutes a risk of harm to children and provide appropriate practice guidance. The update of the manuals should be undertaken with input from professionals with expertise in domestic violence.

Reason

FAYS has developed a Manual of Practice for responding to domestic violence. This manual requires updating to provide better guidance on how to respond to domestic violence and child protection concerns as interrelated issues and ensure appropriate practices.

RECOMMENDATION 195

FAYS Child Protection Workers undergo training in supporting women experiencing domestic violence that emphasises the protection of children and also support the rights, empowerment and wellbeing of non-abusive parents who have been subjected to domestic violence.

Reason

Specific training of FAYS’ workers will help to provide an effective and consistent approach to women who experience domestic violence which is witnessed by children.

ACCOMMODATION SERVICES FOR WOMEN AND CHILDREN ESCAPING DOMESTIC VIOLENCE

The Crisis Response and Child Abuse Service (CRACAS) which comprises of the Child Abuse Report Line and Crisis Care indicated to the Review that it is experiencing an increase in financial outlays for emergency accommodation support required by women and children escaping domestic violence. This funding is being provided from the FAYS Emergency Financial Assistance (EFA) fund. The reasons cited for the increased use of emergency accommodation is that SAAP services are often full and that CRACAS is the only after hours service that can provide access to emergency accommodation. Discussions are being held between CRACAS and the Housing Trust on this matter.

There are also concerns that many women and children are not able to access the kinds of accommodation and support they require when they are needed. Whilst women should have a choice about whether they want to enter a SAAP service or other emergency accommodation, pressures in the system find many women being placed in motel accommodation with limited space, facilities and support.
RECOMMENDATION 196

That a review of demand for emergency accommodation including the availability of SAAP accommodation services for women and children escaping domestic violence be undertaken and appropriate strategies devised to improve access to a range of emergency accommodation options for women and children.

Reason

Emergency accommodation provides women and children a first point of contact with service providers. Improving access to support at this stage is critical to the provision of immediate relief and protection for women and children. It is also important to give respite and allow a temporary buffer to assist women’s decision-making about continuing in violent relationships.

LEGISLATIVE ISSUES

It has been proposed in one submission that South Australia’s child protection legislation and service system should explicitly reflect the understanding that witnessing and living with domestic violence constitutes a risk of harm to children. Child protection legislation in other jurisdictions, such as NSW the ACT, has named exposure to domestic violence as abuse or harm warranting investigation. For example, the NSW Children and Young Persons (Care and Protection) Act 1998 provides that a child or young person is at risk of harm, if current concerns exist for their safety because:

…the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm.

Specifically, an insertion into the Act which recognises that children exposed to domestic violence may be at risk of significant harm, would appear apoposite. However, there are a number of complications which could arise in practice if recognition is given to this link in legislation as distinct from being expressed in practice manuals. The complications arise for a number of reasons.

Firstly, whether it is a course of conduct of domestic violence, or one incident only, which is required. Secondly, whether it is assumed that children exposed to domestic violence are always at risk or whether evidence of physical or psychological harm is required. Thirdly, whether domestic violence is limited to physical violence or whether it also incorporates violence to domestic property. Fourthly, is domestic violence confined to a child witnessing violence or does it include seeing the aftermath of violence to a parent or property? Fifthly, the need to avoid additional victimisation of the woman subjected to domestic violence needs to be carefully articulated.

The combination of these complications is not easily expressed with sufficient subtlety in legislation and may better remain the subject of manuals and guidelines.

Further, the legislative changes proposed by the Review to the State Children’s Protection Act 1993 will further strengthen the FAYS’ mandate to respond where domestic violence is an issue (See Chapter 23). For these reasons no additional legislative amendment is recommended.

33 Submission 129 Office for the Status of Women.
34 Children and Young People Act 1999 (ACT) s 151 defines abuse as emotional abuse if the child “has been or is likely to be exposed to conduct that is a domestic violence offence within the meaning of the Domestic Violence Act 1996 and that has caused, is causing or is likely to cause significant harm to his or her well-being or development.”
35 Children and Young Persons Act 1998 (NSW) s 23.
36 Section 23 of the Children & Young Persons (Care and Protection) Act 1998 (NSW) refers to “incidents of domestic violence”.
37 The Domestic Violence Act 1986 (ACT) includes in section 4A “damage to the property of a relevant person”.
38
INTRODUCTION

This section discusses issues for communities comprising children, young people and families from culturally and linguistically diverse backgrounds. It explores:

- issues for such communities in relation to child protection and
- proposes a series of recommendations for advancing the child protection needs of children and young people and their rights and interests as well as meeting the needs of parents and families in these communities.

The topic of children in immigration detention centres is separately dealt with in Chapter 22.
GENERAL DISCUSSION

Children and young people from culturally and linguistically diverse backgrounds are generally considered to be under-represented in some service areas due to either their parents or caregivers not being aware of the availability of these services or not being able to access culturally appropriate services that take into consideration their cultural issues.

The under-representation of children and young people in child protection or ‘youth at risk’ services are issues that have been of long-standing concern.\(^1\)

There is one view that children from culturally and linguistically diverse backgrounds are under-represented because families from these backgrounds have often migrated to Australia in order to improve the life chances of their children and therefore have strong protective relationships, high attachments and expectations about their children’s outcomes.

An alternate view is that these children are “invisible” in child protection systems for some of the following reasons:

- they do not come into contact with services because of fears about services, especially Government services, particularly where parents and families may have fled oppressive regimes
- they have limited awareness of or access to these services
- service providers do not necessarily have the skills to pick up children's protective needs in these families
- services, particularly cultural services, coming into contact with these families, may be more reluctant to report child abuse concerns either because of fears about how these families may be treated by mainstream services or the impact this might have on the service’s relationship with the wider community.

Another view of this under-representation is that the protective issues for children from non-English speaking backgrounds are primarily derived from the parent’s social and economic situation.

In many of the countries from which people have migrated, child protection may be an underdeveloped concept. As one submission noted:

> …child protection is made according to the value base of the dominant culture. This causes considerable problems for culturally and linguistically diverse background (CLDB) children and their families and the communities of which they are a part. Particularly the new arrivals in Australia do not understand the values underpinning child protection ... In fact, the concepts around “child protection” are quite alien to a number of families and CLDB communities.\(^2\)

When considering under-representation it is relevant to note that there are significant differences in families with culturally and linguistically diverse backgrounds and within different cultural groups. Some of these differences include:

- level of English language proficiency
- socio-economic status
- educational status
- proficiency in primary community language
- geographic location, such as, whether the family is from a remote rural area in a developing country with limited facilities

\(^1\) Under-representation as reflected in statistics can be sensitive to particular situations. The number of notifications that have occurred over the past two years for children from culturally and linguistically diverse backgrounds has been higher as a consequence of the number of notifications made for children in immigration detention.

\(^2\) Submission 97 Adelaide Central Community Health Service.
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- the context of migration (e.g., war in country of origin, refugee status, marriage, length of time spent in refugee camps, length of time spent in immigration detention, experiences during migration and settlement), and
- the health of the family after migration.

These differences have an impact on settlement, including opportunities for accessing employment, appropriate housing, capacity to understand and negotiate new cultural contexts in country of settlement and capacity to settle in the wider community.

Further, there are other issues that are likely to affect individuals and communities in settling, such as experiences of racism, extent of family support available, the size of the community of origin that has settled and its capacity to provide support where there is limited or no family support.

Research indicates that families with limited English proficiency fare less well in settling by reason of socio-economic status, health and wellbeing. Parents in these families have lower rates of educational achievement, whilst education aspirations for children in these families are high, especially for boys.

The findings of the NSW report *Fatal Assault of Children and Young People* indicate that noting the cultural and linguistic backgrounds is important. It noted that:

> For assaults that occurred within the parenting relationship these patterns were pronounced; the majority of non-accidental injury victims were of Anglo-Australian background. In contrast, the majority of victims in the family breakdown and parental mental illness categories were children from diverse cultural and linguistic backgrounds.

> Teenage victims were from Anglo-Australian, diverse cultural and linguistic and Aboriginal backgrounds. Overall, for the 60 deaths, 53% of the victims were of Anglo-Australian background, 28% were from culturally and linguistically diverse backgrounds, and 8% were Aboriginal.

This Report highlighted the invisibility of many families in the human services system when either one or both parents were born in a country in which the main language is other than English. It also highlighted that family breakdown and mental illness played a key role in leading to the fatal assault of children and young people.

The invisibility of some families within the human services system may also be because some of these children are born into families where women from culturally and linguistically diverse backgrounds may face extreme isolation as a result of marriage to an Australian citizen. They have few family supports within Australia and may lack support both in the ethno-specific community as well as the wider community.

**POLICY AND SERVICE CONTEXT**

The *Charter of Public Service in a Culturally Diverse Society* is a whole-of-Government policy for both State and Commonwealth Government services (including non-Government and community based agencies’ grant funded services) on access and equity in public services for people from culturally and linguistically diverse backgrounds. It sets out the principles for ensuring culturally appropriate and accessible service delivery and for assessing effectiveness of this policy. All mainstream public sector services are expected to comply with this policy and report annually on this.

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4 Ibid.
There are also a number of multicultural-specific or cultural-specific services funded through the State and Commonwealth Governments that are especially designed to ensure improved access to services and support for people from culturally and linguistically diverse backgrounds. Most of these have a focus on new arrivals or refugees or communities that are either small or emerging communities with limited capacity to develop the level of community infrastructure and support that larger settled communities have been able to establish.

Examples of these services include:

- the Migrant Health Service (Adelaide Central Community Health Service) which provides health services to new arrivals, refugees and people in the small emerging communities
- the Migrant Resource Centre which is the peak community settlement services agency
- Survivors of Torture and Trauma Assistance and Rehabilitation Services Inc (STTARS) which provides a range of mental health services and support to people who have experienced torture and trauma and
- Australian Refugee Association (ARA) which provides refugee advocacy services and support.

Some services, such as community health services, have established specific services or programs for particular ethnic community groups. FAYS has established a specific team to support the care needs of unaccompanied refugee minors from non-English speaking backgrounds. The Police have a Multicultural Police Unit to provide support in liaising with ethnic communities. The DHS has also established an inter-agency coordination committee to monitor issues for new arrivals and refugees and a web site to provide improved access to translated information either through direct access or through service providers.

A number of community-based services are funded by the State Government to provide best policy advice, such as the Multicultural Communities Council of SA, or to facilitate access to culturally appropriate and mainstream services for people from particular cultural backgrounds, such as the Vietnamese Community in Australia/SA Chapter and the Cambodian Association. Many of these services are funded under the Department of Human Services Family and Community Development Program.

An audit conducted by the National Child Protection Clearinghouse found that the proportion of programs available specifically for families from non-English speaking backgrounds in South Australia was 5% of all programs. NSW was the State with the highest proportion of such programs.

**ENHANCING ACCESSIBILITY**

Efforts to enhance access of families from non-English speaking backgrounds usually involve the following activities:

- cultural sensitivity training for workers
- incorporation of cultural issues into program material
- training and employment of workers from NESB backgrounds to work with their communities
- development of specialised programs within mainstream services and
- the development of programs managed by ethno-specific community agencies or mainstream services targeting communities with greater likelihood of: poor proficiency in English; social isolation (as a result of recent settlement, lack of family support or poor access to transport); low education or communities that have experienced high levels of trauma associated with immigration and settlement.

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KEY CONCERNS FOR COMMUNITIES FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS IN CHILD PROTECTION

One of the major concerns raised in submissions was the need to improve understanding of new arrivals and emerging communities about children’s rights and child protection, including legal requirements, for example:

There is no dedicated focus on the delivery of information and education to new arrivals regarding child protection, nor is there any system for ensuring that these communities and the families understand what child protection is about.7

The Multicultural communities, even after some time in Australia often:

- Do not know about the Australian child focused norms and values
- Do not know the laws and how they apply to them. (Some fear authority)8

…there is a lack of understanding amongst migrant and refugee communities, particularly new and emerging communities, about what constitutes child abuse, parental rights and responsibilities under Australian law, and the rights of the child.9

Given the diversity of the communities in terms of language proficiency, socio-economic background and immigration and settlement experience, the provision of information needs to be part of a structured program that involves the communities concerned.

Some translated information resources about law in Australia and South Australia have been developed. For example, the Migrant Resource Centre has published two booklets dealing with Australian law and the family, one focusing on Family law and the other on young people and the law.

CULTURALLY SENSITIVE PRACTICE AND CHILDREN’S RIGHTS AND CHILD PROTECTION

One submission noted that whilst the principle of culturally sensitive approaches to children’s care and protection was supported, this principle should not override or compromise a child’s or young person’s safety by reason of:

…worker confusion over what constitutes acceptable cultural practices or because there is a lack of culturally sensitive support or intervention.10

It further advocated that balanced and practical approaches are required in advocating culturally sensitive practices:

Worker over-sensitivity to cultural issues and cultural stereotyping can be unhelpful. For example, a person of ‘Muslim background’ does not always mean that person is a practicing Muslim or has fundamentalist Muslim beliefs.11

Another submission noted that:

Determinations regarding what is the best interests of the child tend to be culturally based and beg the question: The best interests of the child according to whom?12

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7 Submission 97 Adelaide Central Community Health Service.
8 Ibid.
9 Submission 171 Migrant Resource Centre of SA.
10 Submission 143 Office of Youth.
11 Ibid.
12 Submission 171 Migrant Resource Centre of SA.
Children and young people from culturally diverse backgrounds have their own separate experiences in relation to migration and settlement. Children and young people also form their own separate sense of identity in the context of settlement and growing up in the South Australian community. Care needs to be taken in ensuring that professionals do not simply identify a child's or young person’s ethnicity based on any cultural heritage they have. Children and young people should be accorded the right to determine and assert their sense of cultural identity. These separate experiences and identity should not be regarded as subordinate to those of their parents but need to be carefully incorporated and separately addressed in early intervention programs.

Another issue is the circumstances of the migration of many families, that is:

_The parents have often suffered significant trauma (through war, loss of home and family members) sometimes torture and the children are particularly vulnerable. Those refugees who may have lived in refugee camps under poor conditions for years may lack basic parenting knowledge eg knowledge about nutrition, which places children at risk._

Programs need to acknowledge the different knowledge bases about parenting which may exist and work with individuals and communities to develop and provide appropriate programs improved understanding about these issues commensurate with that which exists in the wider community.

PROFESSIONAL KNOWLEDGE AND EXPERIENCE

A range of issues are associated with the provision of culturally appropriate services. One submission stressed the need for professionals acquiring knowledge and skills in working with people from culturally and linguistically diverse communities, that is:

_The personnel delivering services within children’s agencies including child protection, i.e. FAYS, Justice etc should have experience and expertise in working with CLDB communities. If they have no understanding of the culture, they will have no beginning point for successful communication._

There are some important initiatives aimed at improving professional knowledge and experience in working with culturally and linguistically diverse communities. For example, the University of South Australia has emphasised the importance of social work students undertaking placements in these service areas to develop higher order skills and knowledge about culturally appropriate service delivery. The State Program for the Prevention of Female Genital Mutilation works closely with FAYS child protection, health, SAPOL and other service providers to ensure appropriate child protection responses. However, whilst cultural awareness may be achieved across the majority of professionals, the extent to which all workers will be able to achieve expertise is questionable and other strategic approaches are required to ensure culturally appropriate child protection responses, particularly for communities living in rural areas.

13 Submission 143 Office of Youth.
14 Submission 97 Adelaide Central Community Health Service.
RECOMMENDATION 197

That all professionals working in child protection (including assessment, investigation or prosecution) or youth at risk service areas undertake specialised training on providing child protection and youth at risk services for children and young people and their families from culturally and linguistic backgrounds. Such training should incorporate an emphasis on appropriate practice in a cross-cultural context dealing and include appropriate use of bicultural workers.

Reason

Cultural awareness training programs provide an important basis for understanding the different values, norms and attitudes operating in different cultural contexts and ensuring that professionals are able to understand and incorporate these considerations into their practice. However, this type of training is broad and does not equip professionals with the knowledge and skill to effectively respond to child protection issues. A careful balance is required in child protection work with families and children and young people from culturally and linguistically diverse backgrounds to ensure both the child's right to safety and the rights of parents to information about what is acceptable and unacceptable parenting practices. The safety of a child should not be compromised because of concerns or acceptance that families from different cultural backgrounds have different values.

RECOMMENDATION 198

That FAYS establish a senior social work position to:

- provide consultancy advice and support to FAYS staff on culturally appropriate service delivery for child protection on specific cases
- work with multicultural community services and agencies on child protection issues
- promote appropriate collaborative practice
- ensure mandated notifier and other professional training is appropriate for and accessed by professionals and workers working with culturally and linguistically diverse communities.

Reason

Generally, access for FAYS staff to training on cultural awareness and on some particular elements of culturally appropriate practice such as responding to cases where there is a protective concern for a child regarding female genital mutilation is generally excellent. The unit at Woodville FAYS which provides support to unaccompanied minors also provides a good specialist service. It has been further recommended that specialised advanced training program be developed for professionals working in child protection to ensure appropriate responses for these families. However, FAYS and other professionals still require access to enable them to facilitate culturally appropriate child protection interventions. Most ethno-specific services are located in the metropolitan area of Adelaide with few services located in other areas of the State. Most professionals will not have a direct relationship with service providers in ethno-specific services or may not be able to negotiate the support they need.
INFORMATION AND EDUCATION PROGRAMS FOR FAMILIES FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS

One submission indicated that:

There are three elements for achieving effective intervention and prevention for multicultural communities in relation to child protection issues. These are:

- The establishment of culturally and linguistically discrete services for families, children and young people from migrant and refugee communities.
- The active representation and participation of the multicultural services sector on government boards and advisory committees addressing child protection and family welfare issues.
- Community education programs that include the development of culturally and linguistically appropriate information materials and coordinated approaches to the development of community outreach, education and service linkages programs that ensure that information and support to multicultural communities is maximised.  

Interagency collaboration and coordination is considered as a major issue for child protection for families from culturally and linguistically diverse backgrounds:

The importance of agencies working together cannot be underestimated. Especially in the case of CLD communities and especially those who are refugees coming from war torn countries, child protection issues or problems may the symptoms of much more distressing problems such as trauma suffered as a result of torture and societal breakdown. In these situations just removing the child, from the family will not achieve very much because the underlying problems still remain and in such situations it is instrumental that agencies work together to achieve the best outcome. For example in the case of family with psychological traumas suffered as a result of war, FAYS may work in conjunction with a service like STTARS.  

… to achieve this type of collaboration between agencies requires a rethink in the way we look at productivity. A threefold outcome objective may be required. The three outcome objectives would be:

1. was the best interest of the child served;
2. was the family given sufficient support and encouragement to resolve issues through a holistic approach; and
3. does the situation require the removal of the child/ren.

The reason why such an approach is suggested is that maybe by diverting some attention away from just focusing exclusively on the child and to look at the wider social network that the child lives in, a more holistic and interagency approach would be provided to find solutions that are beneficial and long lasting.
RECOMMENDATION 199

That a program of information and education be developed for specific ethnic community
groups to include all new migrants with a separate focus on refugees.

This program to include provision of information concerning available services, laws on child protection,
children's and young people's rights, child and youth health and well being and behavioural issues.

That the program be delivered in a manner which utilises:
▫ community discussion forums and ethnic media
▫ ethno-specific workers
▫ qualified interpreters when and where required.

That such a program be funded by the Department of Human Services and involve all key multicultural
service providers (with an appropriate level of funding to support their participation in the program) and
key mainstream services such as FAYS, Child and Youth Health, Child and Mental Health Services and
adult mental health services.

Reason

There is currently no such coordinated program of information and education for families, children and
young people from culturally and linguistically diverse backgrounds.

MANDATED NOTIFIER REPORTING

Mandated notifier reporting requirements were regarded as problematic because of issues around lack of
knowledge of the legislation in South Australia, combined with different cultural norms of the country from
which people have immigrated. For example, one submission indicated that:

*Mandated Reporting is problematic for the recently arrived migrants and refugees as they do not know about
Australian laws and norms. It is problematic for health and service personnel who have a mandate to report.*

*There needs to be a strong message upon arrival in Australia re hitting children, which is a form of discipline
within some cultures.*

The research points to the need for ensuring that workers and professionals in multicultural and ethno-
specific services receive such training. Many of the smaller community associations providing services to
their communities may not readily receive access to appropriate mandated notifier training that takes into
account their close relationships with their clients. This client dependency on workers arises from factors
such as client’s poor proficiency in English, the need for support to negotiate access to appropriate
mainstream services and social isolation. Given the difficult and many-layered cultural contexts within
which many of these workers work, they have a need for specialised mandated notifier training that takes
into account the cultural context of their work.
### RECOMMENDATION 200

That FAYS ensure mandated notifier training is available and provided to all workers in ethno-specific services and to bicultural / bilingual workers employed by health and welfare services. Such training should focus on making notifications in a cross-cultural context and the dilemmas that these workers face in making child protection notifications.

### Reason

Special training is required for workers in ethno-specific services on mandated notification because of the particular issues which face such workers.
Section A - Children as Carers

INTRODUCTION

This section:

- deals with children and young people as carers and
- makes recommendations to promote improved arrangements for supporting these children and young people within their families.
Children and young people may become carers for their parent/s or other family members due to that person:

- suffering an intellectual or physical disability and/or
- having mental health issues or other issues such as substance and other addictions.

In describing children and young people as carers Dunn and Hughes (2000) stated:

*Young Carers are children and teenagers who are fully or partly responsible for the care of a parent or sibling who has a chronic illness or disability. Many Young Carers live in single parent homes and perform most of the personal care as well as household tasks. Others assist parents in the provision of care to another family member. All Young Carers share responsibilities beyond that expected of their contemporaries of similar age in Australia.*

Children and young people assuming a caring role largely go unnoticed and undetected. The Australian Bureau of Statistics however, estimates that there are 181,000 Young Carers in Australia and 13,300 in South Australia under the age of eighteen years.

There has been considerable work undertaken in recent years to highlight the situation of children and young people as carers. Principally that undertaken by the Carers Association of SA Inc which produced an overview of the literature and projects on children and carers as well as providing a list of suitable definitions to describe Young Carers; the Carer Support and Respite Centre, South Metropolitan who produced a Young Carers Project Report (1999) and Child, Adolescent and Family Mental Health Association who produced a scoping project report, in regard to children affected by parents with mental illness.

These reports highlight the issues for children and young people in these circumstances.

Whilst considerable issues relate to the identification of Young Carers, there are ongoing concerns about children undertaking caring roles and the impact this responsibility has on their lives both in the short and long term and on their relationship with their parent.

Many children have a protective concern for their parents and their family whilst at the same time a concern about how their lives are being affected and particularly the loss of being a child and having a child’s social and family life like that of their peers. For parents, there are often fears and concerns about their children being taken away from their care which is reinforced by the often limited and generally interventionist response of the current services system. These fears often force them into a position of trying to protect and hide their children and themselves from any external scrutiny, including that of relatives. Never-the-less situations may reach a stage where there is a necessity to make a notification as the child’s care is comprised and an investigation into the child’s circumstance is warranted.

The situation for children and parents in circumstances where the primary caregiver has a mental health issue or intellectual or other form of disability that limits their parenting capacity is problematic especially where there is no other family member either in residence or available to provide ongoing parenting to the child. A child has a right to their family but also a right to appropriate nurturance and care and these may to be in conflict when living in such households.

Problems may also arise when a child’s role in beginning to parent the parent may lead to conflict within the family. Further difficulties may arise when the parent resumes their parenting role without giving due recognition to the personal growth and development the child has undergone as a result of their caring responsibilities.

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3 See the Australian Infant, Child, Adolescent and Family Mental Health Association (2001) Children of Parents Affected by a Mental Illness Scoping Project Report.
POLICY AND SERVICE CONTEXT

Three key policies within the Department of Human Services acknowledge the issue of children as carers:

- The Department of Human Services Disability Services Planning and Funding Framework 2000-2003 acknowledges that children may be carers of parents or relatives with disabilities but makes reference to key result areas for supporting carers in general.
- The Department of Human Services Children and Young People’s Policy which makes reference to the varying family circumstances of children and young people and need for appropriate supports. This policy provides very detailed directions on principles that should underpin service delivery.
- The FAYS Manual of Practice Child Protection Volume 2 provides detailed guidance on child protection responses that may be required where a parent has a mental health illness or where parental substance and alcohol misuse and is the single most important policy document for children as carers. For this reason, it is discussed further below.

The Manual of Practice provides comprehensive coverage about the nature of mental health illness and substance and alcohol misuse and their potential impact on parenting, parenting capacity, the child’s outcomes as well as issues that need to be addressed in safety and risk assessment. The Manual also points to the importance of interagency collaboration in responding to protective concerns but notes the following in relation to parents with mental illness and child protection:

Families who are caring for a mentally ill relative are often involved in a variety of agencies that often have differing perspectives on the rights of the individuals concerned. The lack of integration between adult mental health services and agencies like FAYS means the needs of the children and level of family functioning are often not assessed unless there are specific allegations of child abuse or neglect or a crisis precipitates placement of the child. Prevention and early intervention in these cases does not often occur. Role confusion, lack of understanding regarding mandates, problems with exchange of information and confidentiality and restrictive referral criteria often result in fragmented and poorly coordinated response.4

For child protection in the context of children with parents who misuse alcohol or other substances, the Manual states that:

Ensuring effective interagency cooperation between alcohol and drug services, child protection agencies and other services, is seen as one way forward in effectively preventing abuse and neglect of children in at risk substance misusing families and protecting children from further harm.

However, coordination between child protection services and drug and alcohol services is not without its challenges...the child welfare system’s necessary focus on safety and stability for children is driven by timelines and requirements which are often not compatible with those necessary for adequately addressing drug and alcohol dependence in parents.5

The Manual of Practice identifies the ideal of what should be happening but also (indirectly) implies that the ideal is not achievable within the context of the current operation of the child protection system in South Australia.

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There has, from time to time, been some focus on providing a range of services for parents with intellectual disabilities on a collaborative basis between agencies such as Intellectual Disability Services Council (IDSC) and Child and Adolescent Mental Health Services (CAMHS) where children have behavioural problems and parenting education programs have been jointly conducted by IDSC and Child and Youth Health Service (CYH). Family Preservation Programs are considered as providing good assistance but are limited by the length of service intervention time provided.

COMMUNITY CONCERNS

One extensive submission from the Noarlunga Health Services Community Care Team was received on this issue in relation to children who are carers in their families where a parent has a mental illness. This submission highlighted a number of issues that are also applicable to a parent with an intellectual or physical disability or who is misusing alcohol or other substances. Some of the key issues raised were:

- the current child protection legislation is framed on the basis of abuse and neglect under which the parent can be viewed as “potentially toxic” for the child with children regarded by welfare services as being at risk
- intervention for children should occur to ensure they (children) and the family have adequate support when the parent is either hospitalised due to serious illness or assessed as requiring hospitalisation if additional support is not available
- interagency collaboration and partnership is difficult to achieve under the current system because of the different legal, service and client mandates of agencies
- the need for greater clarity for statutory intervention particularly when seeking care and protection orders
- various forms of family and community support and professional guidance are required to assist these families – most of which is not available
- continuing stigmatisation of mental illness and discrimination in welfare and legal systems
- improving community, professional and other service provider education about mental illness and the nature of these illnesses together with information about the impact of mental illness on parenting and what kinds of support work best for parents with a mental illness
- the need for consistent approaches across statutory and other services that support the needs of children who are carers within their family context and
- adequate in-home support when a parent is discharged from hospital.

Another submission acknowledged the importance of diversity of care arrangements, that is:

*However, members [of the Children’s Interest Bureau Advisory Committee] have emphasised the importance of diversity in care arrangements (eg share care, respite care) for parents who have an intellectual disability or mental health issues. Attention to this aspect of service development should address some to the concerns for children who become carers for family members with disabilities. It is considered that there is a lack of appropriate services for these children and young people and that they are not adequately responded to through existing child protection arrangements. Here the issues are more about positive assistance to the family unit or carer, respite and responsiveness to the child and ongoing support to sustain the strengths in the existing family unit.*

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6 Submission 56 Intellectual Disability Services Council.
7 Ibid.
8 Submission 39 Noarlunga Health Services Community Care Team.
9 Submission 131 Children’s Interest Bureau Advisory Committee.
PROPOSALS FOR IMPROVING OUTCOMES FOR CHILDREN AND YOUNG PEOPLE AS CARERS AND THEIR FAMILIES

There are a number of agencies who may come into contact with children or young people who are ‘carers’, such as the DECS, CAMHS, Mental health services, SAPOL, etc. Ideally agencies working with families where there are serious mental health or physically disabilities of parents that impacts on children and places them in a significant carer role, should collaborate to ensure that the family system is provided with information and accessible services to enable them to remain a functioning family unit. Where the impact of the parent's mental health, physically disability or chronic health problem, places a child a serious risk, child protection intervention is required.

RECOMMENDATION 201

That a protocol for practice be developed for interagency coordination and collaboration between FAYS and other services such as the Intellectual Disability Services Council (IDSC), the Drug and Alcohol Services Council (DASC), Community Health, Hospitals and extension of the protocol with CAMHS to adult Mental Health Services to promote appropriate coordinated and collaborative practice between agencies. Such a protocol should provide a focus on addressing child, parent and family issues where a child or young person has taken on caring responsibilities.

Reason

Whilst it has been proposed that inter-agency case management process be established for children where there are protective concerns with FAYS as the lead agency, the development of protocols and further guidances will support linkages with adult systems that are providing services to parents of children with potential protective concerns. To date there is one protocol involving adult services, that is, the Protocol for Child Bearing Women who have Severe Mental Illness which ensures interagency collaboration where women who have either had severe mental illness in the past or where the birth of the child has resulted in severe postnatal depression resulting in implications for caring for and forming an attachment to their newborn baby. A similar interagency protocol with other adult services will establish clear parameters for providing a focus on the needs of children, parents and families, for ensuring access to preventative and early intervention services as well as improving continuity of responses thereby reducing family stress as a result of crisis driven responses.
RECOMMENDATION 202

That DHS examine options for identifying a package of services under family support program for children, parents and families where a parent has a mental or physical illness or physical or intellectual disability that incorporates the following components:

- practical home help and role modelling
- personal support to both children and parents
- education of children about the parent’s illness or
- education of children about their own needs
- additional education and recreational support for children
- facilitating ongoing peer support for children
- facilitating respite and support networks for children that may include relatives and school friends or other options such as camps, sporting clinics, etc
- parent education that enhances parenting confidence and skills
- parent support groups.

That such a package of services be developed across sectors of the Department of Human Services, that is, health services, disability services, FAYS and mental health services so that children and parents may access the same basic in-home support services such as domestic housework services, meal services, etc with the different sectors responsible for developing and implementing elements of the program eg education of child regarding the parent’s mental illness and provision of access to a peer support program would be the responsibility of mental health services.

Reason

Children who have parents with intellectual or physical disability, physical or mental illness or who misuse alcohol or other substances are at greater risk of not achieving educational and social outcomes equivalent to those of their peers. Children who are carers may also have interrupted school attendance because of their caring responsibilities. With a significant proportion of the population being vulnerable to experiencing a mental illness (one in five) at some time in their life and the greater likelihood of income insecurity for these families, these children represent an at risk population for social exclusion arising out of loss of opportunities as well as less opportunities.

Access to a range of family support services that focus on children’s and parent’s needs is critical for early intervention and prevention of less equitable health and other life outcomes. Such a program is not the sole responsibility of any one agency but requires input from all agencies in its design to ensure it can holistically meet the specific needs of children, parents as well as the circumstances of the whole family unit.

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RECOMMENDATION 203

That consideration be given to the development of an additional foster care model which enables provision of foster care in the child’s home so that children may stay in their family home and community and continue with their normal routines and other arrangements when parents are hospitalised.

Reason

Children who have a parent with an intellectual, physical disability or illness (including mental illness) are often placed in the care of a relative, family friend or foster care if there are no other options when the parent is hospitalised. These children have often been responsible for family care and do not understand why they are required to go into foster care given the responsibility they have borne whilst their parent is at home. These children and young people should be provided with affirmation about their capabilities and skills. Extending the models of foster care provision to include care in the child’s home provides affirmation of both the temporary nature of such care, recognition of the attachment that exists between children and parent and recognition of the child’s rights to continue their life as before. Such an approach also provides for a non-stigmatising, non-discriminatory approach.
INTRODUCTION

This section discusses:

- previous examination undertaken in the area of child employment
- issues relating the employment of children and young people
- current regulatory arrangements and
- recommendations for consideration.
GENERAL DISCUSSION

The employment of children and young people in the paid work force has been raised in a small number of submissions to the Review. The area has also been examined in the recent review of industrial relations in South Australian. In considering the issue of child employment the ‘Review of the South Australian Industrial Relations System’ - Report 1 referred to hereafter as the Stevens’ Report, suggests there is general community acceptance of children and young people working under the age of 16 years ‘as long as it does not interfere with education and development opportunities and does not expose children to physical or emotional damage’.2

The Report cites research which identifies changes over the last 20 years in participation of children in the labour market, from employment in areas such as family businesses, farms, odd jobs such as paper rounds and baby-sitting to more part-time and casual work, particularly in the service sector.3

The changing nature of childrens’ employment in society and the issues associated with this requires consideration from two main areas, childrens’ rights and child protection.

In relation to children’s’ rights, consideration of employment opportunities for children should not unacceptably restrict or jeopardise their right to seek employment and gain valuable experience in the workforce, but must be balanced with regard to their appropriate development and capacity.

In relation to child protection, regulation as to the types of work children can suitably take up as well as the length of time children and young people may reasonably undertake employment, without it being physically or psychologically damaging to their welling must be in place, to ensure abusive and exploitative work practices do not occur.

There should be sufficient guidelines or legislation to protect children below the age of 16 from exploitation. The International Labour Organisation referring to legislation around the world, stated:

The purpose of the legislation and other measures adopted by governments is a very practical one: to ensure that children do not work except under defined circumstances, that they are not abused when they work, and that they have the opportunity to grow up as children before they are thrust into the adult world of work.4

The types of legislation and regulation necessary have been discussed in South Australia for a number of years. As one submission points out:

Since the late 1970’s the issue of appropriate regulation for children working in South Australian arts and entertainment industries, in particular the film and television production industry, has been the subject of long debate.5

5 Submission 47 Media Entertainment and Arts Alliance, Alliance Central Australia, Stephen Spence.
WORK UNDERTAKEN TO DATE

Considerable work has been undertaken at various times throughout the past 20 years or so. In the mid to late 1980’s a working party consisting of representatives from the Department of Labour, the then Department of Community Welfare, the Children’s Interest Bureau, Actors’ Equity and the Public Service Association, The Education Department, The Children’s Services Office and Channel 9 produced the Final Report of the Children in Employment Working Party in December 1988.

This Report provided information on:

- where children work
- standards and regulations
- issues for children and the community
- options for consideration.

The major issues covered were working conditions of children, the working hours undertaken, the type of supervision available, the work pressures and work load, education and recreation needs and as well as a need to provide information to parents, employers and children about their rights and responsibilities.

The options proposed at that time included:

- Setting a minimum age based on international and interstate experience such that an age of, for instance, 15 years should be specified below which children shall not be employed, except by permit or licence.
- Licensing requirements based on individual children rather than a blanket general approval to an employer.
- A regulatory body to issue licences with the need to take into account the type of work, the hours of work, supervision etc.

In the absence of any overarching legislation or guidelines, the working group produced interim guidelines for employers in specific relation to the employment of children in the entertainment industry. The interim guidelines specified a number of general conditions for children 15 years and under, working in the entertainment industry including age appropriate hours of employment.

In 1998, the Minister for Government Enterprises sought advice from the Minister of Human Services on the door-to-door selling of lollies by children. Specifically the Minister asked if the Department of Human Services had considered the matter in any detail and whether it was suitable for the Children’s Protection Act 1993 (SA) to be an appropriate means for regulating this area. The advice given at that time was that the primary function of the Children’s Protection Act 1993 (SA) was in relation to the protection of children from abuse and neglect within their families and therefore it would not be a suitable Act for regulating employment practices.

Concerns were also raised by the Employee Ombudsman in relation to child employment, in particular in relation to door-to-door lolly sellers.

In 1999, as part of the Industrial and Employee Relations Amendment Bill 1999, attempts were made to introduce provisions prohibiting the employment of children under the age of 14 in proscribed occupations or activities. The legislation lacked general support in the Legislative Council and has subsequently lapsed. 
LEGISLATION AND REGULATION

Currently there is minimal state legislature that restricts or prohibits child employment.

The main types of control include:

- exemption of school age children from school under certain circumstances
- prohibition of employment of children in certain areas and
- regulations that licence employment in some situations.11

The Education Act 1972 (SA) section 78 for instance states:

“That no person, including a parent, shall employ a child of compulsory school age or cause or permit such a child to be employed ……during the hours at which a child is required to attend school or during any part of the day or night in any labour or occupation that is such as to render the child unfit to attend as required or to obtain the proper benefits from the instructions provided.”

The Mines and Works Inspection Act 1972 restricts the employment of children in the mining industry.

The Dangerous Substances Act Regulations, Regulation 18 (1) requires that no person shall dispense liquefied petroleum gas unless at least 18 years of age.

Various awards and agreements specify conditions, wages and practices but in general do not address the special needs of children who may be employed.

There are no specific provisions in the Industrial and Employee Relations Act 1994 in relation to child employment.12

Most other states in Australia have legislation dealing specifically with child employment.13

ISSUES RAISED IN SUBMISSIONS TO THE CHILD PROTECTION REVIEW

The Youth Affairs Council of South Australia (YACSA) identified young people engaged in voluntary door-to-door activities such as fundraising as being ‘at risk’ and not covered by the Children’s Protection Act 1993.14

They stated that while Schedule 6 of the Retail Industry (South Australia) Award makes provision for the protection of children and young people aged 14 years and over who are employed in door-to-door sales, children and young people engaged in similar activities voluntarily remain statutorily vulnerable. They recommend the Child Protection Review consider the ‘issue of implementing legislative protection for children and young people who are engaged in voluntary door-to-door activities’.15

The Media Entertainment & Arts Alliance raised concerns about the treatment of children in that industry. They provide anecdotal information about inadequate working conditions and treatment of children, such as children working excessive hours or being left unsupervised. They further state that while the industry is well regulated by industrial awards and agreements, these generally relate to conditions of employment for adults. The Alliance was successful in having a “Juvenile Code of Practice” inserted in the Performers Certified Agreement which covers children working in live theatre at specific venues in South Australia.16

13 Ibid p 160; Part 10 of the Children and Young People Act 1999 (ACT); Children and Young Persons (Care and Protection) Act 1998 (NSW); Community Welfare Act 1996 (NT); Child Welfare Act 1947 (WA); Children, Youth Persons and their Families Act 1997 (Tas).
14 Submission 133 The Youth Affairs Council of South Australia.
15 Ibid.
16 Submission 47 Media Entertainment and Arts Alliance, Alliance Central Australia, Stephen Spence.
ISSUES RAISED IN THE STEVENS’ REPORT

The Stevens Report states that Workplace Services has received a number of complaints concerning the employment of children under 16 and the impact in relation to their schooling. The report points out that due to an absence of specific child employment provisions within the *Industrial and Employee Relations Act 1994*, the investigation of such complaints is usually referred to the Department of Education and Children’s Services. There is, however, limited scope for that department to investigate such matters as they do not possess the powers equivalent to inspectors under the *Industrial and Employee Relations Act 1994*. 17

The Stevens Report concludes that the current arrangements in South Australia “do not appear adequate to ensure that children are not exposed to inappropriate levels of risk, both of an emotional and physical nature”. Subsequently, they are also at risk of financial exploitation. 18

The Child Protection Review concurs with this view and endorses the recommendations as outline in page 160 to the “Review of the South Australian Industrial Relations System”. It offers further for consideration the following recommendations.

RECOMMENDATION 204

That the Commissioner for Children and Young Persons, as outlined in Recommendation 1, as part of his or her duties, call an examination into the general area of child employment and child exploitation in South Australia. Further, that such an examination would take into consideration the following:

- the recommendations outlined in the “Review of the South Australian Industrial Relations System”
- the need for specific legislation within the *Children’s Protection Act 1993* in relation to child employment
- the need for expansion of existing provisions within other state legislature
- developing necessary guidelines and information as required
- ensuring the voice of children and young people are represented through participation and consultation.

Reason

The issue of child employment, in particular relation to children under the age of 16, requires further examination and consideration over a range of issues. In relation to children’s’ rights, consideration of employment opportunities for children should not unacceptably restrict or jeopardising their right to seek employment and gain valuable experience in the workforce but must be balanced with regard to their appropriate development and capacity. Further, legislation and regulation must clarify the position in general, and in the specific and enable the appropriate investigation and prosecution of those that do not comply. It requires consideration of changes to legislation covering a variety of Acts including education, industrial relations and child protection.

Such legislation and regulation should consider the types of work children can suitably take up as well as the length of time children and young people may reasonably undertake employment, without it being physically or psychologically damaging to their welling with the aim of ensuring abusive and exploitative work practices do not occur.

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18 Ibid.
INTRODUCTION

This section deals with:

- the potential for children and young people to be harmed through exposure to inappropriate material in children's literature and other media such as videos or films and
- makes recommendations on improving child protection in this area.
GENERAL DISCUSSION

The Review received submissions concerning:

- Literature being available to children in school libraries and bookshops which contained themes and explicit language that may be beyond the level of maturity of a child, and has the potential for causing harm. In addition, that the book would not have been one the child would have chosen to read or the parent would have permitted the child to read, had they been provided with content guidance on themes and language.
- A range of literature may inadvertently result in harm to children and young people through accessing inappropriate material from school libraries with few controls on borrowing.
- Whether the education sector is meeting its ‘duty of care’ by ensuring that children and young people are not being exposed to potentially harmful material or taking care to ensure that literature which may potentially cause harm in some students, is appropriately vetted in some way.
- Information from parents on the adverse effects of an educational video dealing with religious education, on children.

In South Australia, a group of concerned parents and professionals have formed the ‘Protective Parents Committee’ to consider the issue of how to appropriately deal with children’s literature and child protection. The Review received both written and verbal submissions from the Committee. They pointed out that this issue was not about censorship of material that children are generally legally allowed to read but about improving public guidance, in order that children and young people and their parents are in a position to easily determine whether a publication is age appropriate and suitable, taking into account a child’s developmental age and maturity.

There is clearly some literature marketed to children and young people which deals with themes involving sex and explicit descriptions of sexual acts, explicit language, violence and drug usage. This literature is available in various bookshops, school and public libraries. This literature may either aim to reflect the diversity of children’s and young people’s social experiences or may be written with specific age groups and levels of maturity in mind. There is, however, little capacity for consumers to determine whether the literature would have been selected if information about the content and themes, and ‘level’ of the themes for instance, ‘contains low level violence’, had been readily available.

CLASSIFICATION OF FILM, VIDEOS AND LITERATURE FOR CHILDREN

Publications are in the first instance classified by the Commonwealth Office of Film and Literature Classification (OFLC) based in Sydney. States and Territories may have their own classification bodies, and for South Australia, this is the South Australian Classification Board. Classification at a State level limits that classification to the State whereas classification by the OFLC is nation-wide.

Consumer complaints can be made to the OFLC but require complainants to provide specific details of offending passages together with reasons outlined why the complainant considers the passages to be offensive before the publication will be reviewed. Alternatively, a complainant may submit the book for classification but at a cost to the person doing so.
Guidelines for the Classification of Films and Videotapes state that:

Films and videotapes, whether they are locally or come from overseas, have to be classified before they can be sold, hired or shown publicly in Australia.

Classification is done by the Classification Board (the Board) which is located at the Sydney-based Office of Film and Literature Classification.

When making its classification decisions, the Board is required to reflect contemporary community standards and must apply criteria that are set out in the National Classification Code (the Code).

The Code states:

Classification decisions are to give effect, as far as possible, to the following principles:
(a) Adults should be able to read, hear and see what they want;
(b) Minors should be protected from material likely to harm or disturb them;
(c) Everyone should be protected from exposure to unsolicited material they find offensive;
(d) The need to take into account community concerns about:
   (i) depictions that condone or incite violence, particularly sexual violence; and
   (ii) the portrayal of persons in a demeaning manner.

All films, videos and computer games, and some publications, need to be submitted for classification by the Office of Film and Literature Classification (OFLC). All films, videos and computer games therefore receive a classification providing guidance on content and classification that must be visible on the jacket or promotional material.

However, some material is excluded from the definition of “film” and “computer game” in the Commonwealth Classification (Publications Films and Computer Games) Act 1995 and does not require classification. For example, the definition of film excludes a recording for business, accounting, professional, scientific or educational purposes unless it contains a visual image that would be likely to cause the recording to be classified MA (15+) or higher. The definition of “computer game” excludes business, accounting, professional, scientific or educational computer software unless the software contains a computer game that would be likely to be classified MA (15+) or higher.

The classification scheme for publications is only partially compulsory so not all publications are classified. Only material considered likely to warrant restriction to adults must be submitted to the Classification Board for classification.

Children’s literature is therefore not likely to receive a classification with content guidance nor is it required to provide guidance on the book jacket and generally leaves the potential reader to ascertain suitability on the basis of the story line abstract that may be provided on the back cover.

The Classification Board (Cth), however, decides what consumer advice will be indicated on movies and computer games. The consumer advice lists the principal classifiable elements that contributed to the movie or computer game’s classification. It also indicates the intensity and/or frequency of those elements.

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1 The following material is drawn from the Classification (Publications, Films and Computer Games) Act, Amendment No. 7 1995 Office of Film and Literature Classification: Guidelines for the Classification of Computer Games, 15 April 1999; Guidelines for the Classification of Films and Videotapes “National Classification Code”
Classifiable elements include violence, sex, themes (eg suicide, racism, corruption), coarse language, drug use and nudity.

Some examples of consumer advice are:

- Low Level Violence
- Medium Level Course Language
- Sexual References
- Adult Themes
- Medium Level Animated Violence
- Horror Themes

This consumer advice helps consumers decide what they and their family should view, read or play, by indicating what sort of content material contains.

The codes therefore tend to have more specific guidance in film and computer games but no comparative guidance in literature. The code for computer games goes further and extends to include age appropriateness separating suitability of computer games for children aged 8 years or younger and those for children and young people aged fifteen years or younger.

The rationale for the more extensive guidance provided on computer games, is that this media is more interactive and is therefore more likely to cause harm. The supposition that literature may not affect children and young people in the same manner as interactive computer games needs to be investigated more fully particularly since community expectations about children’s literature have changed with the scope of this literature expanding to explore wider issues in society in very mature ways.

No such guidelines apply for books or magazines that may be used in schools as texts within the curriculum or school or through school or public libraries.

In summary, publishers do not have to submit publications for classification before they are distributed for sale nor do they have to print consumer warnings for classification on book covers before they are published or provide content guidance on themes or levels of material that may offend some readers.

**PUBLICATION AND CHILDREN’S LITERATURE**

It has been put to the Review that the children’s literature market has become a lucrative concern for publishers and that there has consequently been not only an overwhelming expansion in the number of books published, but also wider breadth in themes covered in this category and greater marketing of certain types of books. Such an expansion gives rise to concerns about the capacity to provide guidance on quality and the appropriateness of this literature for children and young people depending on age and maturity.

Publishers of children’s literature may provide more information about the themes and age suitability of a book or educational materials but this information is not accessible except through publisher’s notes which may be available online or through information provided to bulk purchasers such as bookshops for marketing purposes.
This information is, therefore, general in nature and may not provide explicit reference to whether the book contains sexual references, explicit language or deals with themes involving issues such as suicide, suicidal ideation, death, sex and so on.

SCHOOL AND GENERAL LIBRARIES

Literature used in English literature classes may pose problems for some students and their families who consider the material offensive or inappropriate.

Schools and public libraries are generally not in a position to screen all books and provide guidance on age appropriateness or suitability of themes addressed in the literature.

Schools may have some targeting of age in their library service structure based on publisher’s advice about the target audience. Schools with small libraries and limited access to a teacher librarian will have less opportunities to ensure children are accessing age appropriate material. Schools which have a library serving both primary and secondary students may also experience issues in ensuring age appropriate material is accessed by children and young people. Some schools may limit access to certain books either by having divided libraries and/or specified borrowing rights.

RELIGIOUS FILMS AND VIDEOS

One of the submissions highlighted problems with the screening of a religious video as part of religious education that caused severe and adverse psychological reactions in some of the children. 6

Religious films and videos do not always have a classification rating under the national classification scheme.

Religious education materials, such as films and videos, are usually approved by the school coordinators of religious education for their relevance and suitability. 7 This practice may not be consistently applied across schools and some schools may provide some discretion to individual staff to select materials. 8 Clearly, the relevance and appropriateness of materials usually produced for adults needs to be appropriately assessed for children by curriculum advisers. The inclusion of these films and videos would ensure a broader mechanism of accountability for determining such appropriateness.

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6 Submission 43 Name Not For Publication.
7 Ibid.
8 Ibid.
RECOMMENDATION 205

That the Department of Justice seek, through the Standing Committee of Attorneys-General (SCAG), an expansion of the National Classification Code under the Classification (Publications, Films and Computer Games) Act 1995 to include:

- a requirement for consumer guidance and warnings similar to those that exist for film, video, computer games and commercial television be applied to children's literature and
- any literature, film or videos that may be used for educational purposes for children and young people be subject to classification.

Reason

The changing and expanding nature of themes and issues now being explored in children's literature and the expansion in the children's literature market means that children and young people and their parents may be inadvertently exposed to material that may result in children and young people being harmed. Expanding the national classification system to cover children's literature and other material that may be used in their education, is an important mechanism for providing consumer information and choice, as well as enabling parents, other organisations such as schools and libraries to be aware of the suitability of literature, film or video for children and young people. Such an approach is consistent with precedents already established in other areas.
INTRODUCTION

This section deals with:

- the risk and nature of exposure to child maltreatment via the Internet
- the extent to which these issues are being addressed both overseas and in Australia
- recommendations for preventing child maltreatment and for promoting child protection through the Internet and related technologies.
DISCUSSION

The last twenty years has seen the explosion in the volume and ease of transmission of information and communications which may result in child maltreatment via the Internet. The methods for transmission of pornographic material now available, as a result of Internet based information technologies, increases the vulnerability of children to child maltreatment through exposure to pornographic, violent and other inappropriate material or unknowingly making contact with paedophiles. The Internet provides an additional medium through which increased exposure may occur to common forms of child maltreatment as well as new areas of abuse for instance:

- sexual exploitation of children
- the use of children in making of pornographic material to be distributed through the Internet
- the use of the Internet to promote child sexual tourism and child slavery
- the exposure of children to material which is not appropriate for their age or understanding
- the use of the Internet through “chat rooms” to make contact with children and groom them for the purpose of making eventual face-to-face contact.

This increased vulnerability takes place in a context where children are increasingly exposed to sexual and violent images and information through television and print media. These issues have increased importance where children may have a higher vulnerability and risk of exposure due to child abuse and family violence.

Many children now have access to the Internet and may use it extensively on a daily basis. A survey conducted in 2001 indicated that 47% of children aged between five and fourteen years currently use the Internet.1

The search facilities may inadvertently result in contact with websites that contain harmful material.

Whilst there is software technology in place to screen out certain types of information, the extent to which this is successfully achieved depends on the way websites are constructed. Such technologies also have limited application. For example, they do not necessarily screen chat rooms.

Children's capacity to discern the nature of material will vary upon the basis of age and developmental understanding. Their inadvertent exposure together with exposure to information that is considered to have the same “equal status” as other information on the Internet, makes it especially difficult to prevent exposure.

SPECIFIC NATURE OF EXPOSURE TO CHILD MALTREATMENT

Children and young people face a number of issues and threats in their use of the Internet. These threats arise from different aspects of the Internet technology and include:

- inappropriate web content that may include a range of material from pornography involving either adults or children, inappropriate language, racist and other forms of discriminatory material, religious vilification, hate and other forms of propaganda
- E-mail and associated facilities of chat, voice and web cams
- Newsgroups or Usenet that are Internet message boards whose content can range from harmless to extremely harmful and
- File transfer of images, text, video, whole web pages.2

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2. Submission 36 Mr D Teisseire.
Internet Paedophilia

The Justice Advisory Group (JAG) submission noted that the Internet is causing significant issues for child protection in two areas, namely:

☐ use of the Internet by child sex offenders to gain information about children and to “groom” potential victims and
☐ use of the Internet and the new telephone technology to distribute child pornography.4

The submission goes on to note that children, as high users of Internet and telephone technologies do not necessarily understand the technicalities of the technology and the “footprints” they leave when they move around websites and chat rooms.5 Parents may also not be aware of these technicalities. In view of the potential for exposure, parents and other adults and professionals supervising children’s access to the Internet as well as children require a clear understanding of the capacity for child maltreatment through the Internet.

Children may unwittingly place themselves at risk as a consequence of establishing websites that give direct contact. The JAG submission highlighted this risk in a British newspaper report of young girls inviting strangers to send them presents through their websites and offering intimate pictures of themselves in return.6

Forde and Patterson noted that the:

…Internet provides paedophiles with the opportunity to organise informal networks and peer-to-peer contacts on a global scale…For the relatively small cost of reorganising their activities around personal computer technology, paedophiles are able to operate internationally.7

They further noted that paedophiles deliberately set out to use the Internet to:

☐ conduct their activities (for example create communication structures, distribute child pornography and to archive their collections)
☐ congregate at virtual locations that change according to circumstance
☐ establish pages that display symbols of association, provide email addresses to encourage private communication and provide links for other resources that subsequently enable linking with children and young people
☐ establish libraries that have mirrored sites so that these libraries can be preserved if detected at one location
☐ use sophisticated alternative Internet based technologies to provide access and enable mass postings, that is, through the use of newsgroups
☐ conceal personal and information identity to preserve anonymity and privacy, secure their libraries and preserve Internet communication arrangements
☐ establish Internet communications that enable promotion and recruitment and reinforcement through tiered structures and other processes, for example, re-mailer operators.8

The organised nature and scale of these operations are a major issue for Governments and community as well as the Internet industry.

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3 Submission 196 Justice Advisory Group.
4 Ibid.
5 Ibid.
6 Rowan, D ‘Police probe paedophile links to teen ‘camgirl’ sites’ The Observer 7 July 2002 p 1 provided by Justice Advisory Group Submission No 196.
8 Ibid p 2-5.
International and national responses to child pornography and Internet paedophilia

There has been international community recognition and profound concern about the quick uptake and use of these new technologies by paedophiles and the organised nature of paedophile rings in promoting the use of these technologies to advance their offending.

There is now international policing of this area involving significant collaboration with national and state policing organisations to improve the identification, investigation and capture of paedophile rings and with major industry groups and to establish improved practices to protect children on line. There has also been an expansion in the forms of information and resources available on line to support parents, education authorities and other services such as librarians to support safe Internet practices for children and young people.

The UK Internet Watch Foundation has been established as a self-regulatory body to promote appropriate development of Internet technology and identification of potential paedophile and child pornography sites.9

There has also been a Task Force established by the UK Home Office on Child Protection on the Internet resulting in the establishment of a number of initiatives including:

- development of draft Guidance on Anti-Grooming Civil Orders and
- good practice models and guidance for the Internet industry on chat services, instant messaging and web-bases services.10

Other structures in the UK have also been either established or have expanded responsibilities to support child protection in online services, for instance:

- the National Crime Squad, Metropolitan Police has a brief to investigate Internet crime and in particular child abuse and child pornography
- the National Crime Intelligence Service that has a responsibility for gathering and disseminating information on internet crime in particular child abuse and child pornography and
- British Experts Group in Combating Child Abuse on the Internet.

Internationally, new laws have emerged to effectively police child pornography and paedophile rings. The zero tolerance laws in the US provide one example where, under this law, the possession of one piece of child pornography is considered to be a felony. It has been suggested that such an approach may increase pressure on Internet providers, consumers and others involved in the Internet industry to establish improved self-regulatory mechanisms for the identification and screening out of access to child pornography.11

In Australia the Federal and State Police authorities have dual responsibilities in these areas although different laws may apply at national and State/Territory levels and may involve jurisdictional issues. Australian and State Police have been involved in the detection of a number of child pornography and Internet paedophilia rings highlighting the extent to which such crimes require conjoint international effort to achieve successful detection and prosecution.12 Commonwealth legislation13 provides the legislative basis for dealing with child pornography and Internet crime and a number of individuals have been prosecuted under this legislation.

9 Submission 196 Justice Advisory Group, Attachment 38 - Internet Worker Foundation Annual Review.
10 Submission 196 Justice Advisory Group, Attachment 3.
11 Submission 134 NAPCAN.
13 Consisting of a group of legislative provisions which includes sections in the Crimes Act 1914 (Cth), the Telecommunications Act 1997 (Cth), the Broadcasting Services Act 1992 (Cth) and other legislation.
Child pornography poses particular challenges for policing and for the protection of children. The NAPCAN submission noted that:

One issue that was not canvassed in the Review’s Discussion Paper was the issue of child pornography and the current legislation to prosecute those who possess child pornography...There is evidence of a strong relationship between child sexual abuse offenders’ profiles and those who possess and promote child pornography.14

Though this issue was raised by only a very few submissions, it merits notice given the wide ranging concern that now exists about the increasing wider transmission and greater ease of accessibility through the internet and the collaborative policing efforts now in place internationally to deal with child pornography.

In South Australia, child pornography is currently prosecuted under section 33 of the Summary Offences Act 1953 or under other national legislation dealing with information technology and transmission of information through the media that provides for prosecution of the possession or transmission of child pornography.

It has been suggested that zero tolerance provisions should be established for offences involving child pornography and that this legislation should be reviewed and brought into line with developments in the United States for the prosecution of child pornography.15

There is currently a Bill before Parliament, namely the Classifications (Publications Films and Computer Games) (Online Services) Amendment Bill 2002, which would make it an offence to make available or to supply by means of online services material that is contrary to the classifications. The maximum penalty suggested is $10,000 and there is no penalty of imprisonment.16

With regard to this Bill it has been suggested by the Justice Advisory Group that the current legislative arrangements for dealing with child pornography over the Internet may be inadequate.17 The detection and prosecution of offences of production and possession of child pornography over the Internet, that is, offences against section 33 of the Summary Offences Act 1953 could be enhanced by the use of covert methods of detection.18 The classification of child pornography as a summary offence means, however, that covert methods may not be used because legislation permitting covert operations and telephone interceptions, links permission to the type and penalty of the offence involved. 19

It further suggested that raising the maximum first offence penalty from two to five years for trade would bring South Australia into line with most other Australian jurisdictions in which the penalties range from 5 to 10 years.20

JAG has also drawn attention to the issue of systemic delays in the prosecution of child pornography offences under section 33 of the Summary Offences Act 1953 but also noted that certain steps had been taken to address these such as delegation to the Director of Public Prosecutions of the Attorney-General’s responsibility for consent to prosecution. Other options suggested include changing the definition of the offence and/or amendment to section 33 so that it allows notice to admit procedures in respect of the classification of child pornography, change police protocols concerning referrals in respect of section 33 (7) and train specialist police pornography investigators in classification issues.21

Given the complexity of these matters concerning the effectiveness of section 33 of the Summary Offences Act 1953 the level of uncertainty surrounding the success or otherwise of impact of increased penalties for child pornography; whether using covert means of detection results in an increased rate of prosecution and conviction require special commissioning as part of a wider review of the adequacy of legislation.

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14 Submission 134 NAPCAN.
15 Ibid.
16 Submission 196 Justice Advisory Group.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
21 Ibid.
PREVENTION STRATEGIES

Stanley and Tomison\textsuperscript{22} suggest that current prevention strategies are not protecting many children in Australia from maltreatment through the Internet. Current prevention strategies include:

- self-regulation of the Internet industry and compliance monitoring with industry codes
- requirements for community and professional education and
- coordination of child exploitation law enforcement.

Stanley and Tomison recommend a series of specific initiatives, that is:

- Education about the Internet. This includes a public awareness campaign and education of children and parents at schools about safer management of the Internet.
- The involvement of children and young people in the development of positive use of the Internet and in the production of Internet content.
- A national approach to law enforcement to facilitate apprehension of offenders and improve liaison with other countries.
- The need for greater responsibility for child protection to be undertaken by the Internet industry... a change in the Internet industry legislation including a system of licensing Internet Service Providers in association with content management requirements.
- Prevention initiatives for those children most likely to be adversely impacted by offensive material, that is children who have been previously victimised and who may not receive adequate levels of adult Internet supervision.
- Knowledge development on how Internet usage is impacting on children, particularly in relation to the increased exposure to offensive material. Research is also needed on paedophile Internet practice and their ability to remain anonymous on the Internet.\textsuperscript{23}

This Review endorses the need for such initiatives. In considering such initiatives a number of particular issues need to be addressed.

TECHNICAL PREVENTION STRATEGIES

There are a range of technical issues\textsuperscript{24} associated with the Internet that require specific solutions such as:

- provision of appropriate child specific web browsers providing appropriate filtering software
- development of ‘web of trust’ concept used in a particular software package (for example, PGP) that is available on a number of computer platforms using structured relationships between particular trust relationship groups eg schools and use of digital signatures that allows a party to ‘sign’ a document or e-mail. Digital signatures allow verification of the identity of the individual who claims to have sent the message and non-repudiation of sending the message
- use of biometric sensors for improved security in identifying individuals
- moderators for protected chat rooms combined with the use of bots to pick up communications prior to delivery
- improved management of newsgroup services, public news services and mass posters by Internet Service Providers.

Some technical solutions are being explored within schools. For example, some schools that are developing websites are considering the use of digital signatures for both the school and for students to protect students.


\textsuperscript{23} Ibid.

\textsuperscript{24} Considerable information about technical issues was provided through Submission 36 Mr D Teisseire
Technical solutions, however, require sophisticated monitoring of any new technologies to keep one step ahead. Many of these technical solutions have limitations for protecting children in home usage of the Internet. The critical area is in industry regulation and ensuring that there are quality processes that ensure changes in content management can keep pace with technological changes including the development of multimedia and linkages between media.

**INDUSTRY REGULATION**

The co-regulatory scheme established under Schedule 5 of the *Broadcasting Services Act 1992* applies to Internet Service Providers and Internet Content Hosts. The *Telecommunications Act 1997* applies to content regulation and compliance. The Australian Broadcasting Authority (ABA) is responsible for ensuring industry compliance under these Acts. In performing its role, the ABA is guided by principles laid down in the legislation, of minimising the financial and administrative burdens on industry and encouraging the supply of Internet carriage services at performance standards that meet community needs.

The *Broadcasting Services Act 1992* promotes the development of codes of practice by the Internet industry. The current codes were developed by the Internet Industry Association and registered with the ABA in May 2002. The ABA registered the codes after consideration of a number of factors including whether consultation had been undertaken with the community, industry and the community advisory body, NetAlert, and whether the codes contained appropriate community safeguards.

The ABA monitors compliance with the codes and can direct an Internet Service Provider or Internet Content Hosts to comply with the code if it is not already doing so. Offences may apply if there is failure to comply with such direction and the ABA has a range of enforcement powers for securing compliance with the codes.

The Code dealing with self-regulation in areas of Internet content aims to:

- Ensure the Internet provides a means to enable control of access to content in certain circumstances while acknowledging the limitations of present filtering technologies and the impracticality of filtering all Internet content.
- Endorse end user empowerment including education, provision of information and filtering methods as the most practical means by which adults can facilitate appropriate controls, particularly in the case of children.25

Schedule 1 under the Code lists scheduled filters, that is, software that restricts or denies access to a Web Page or other Internet content lists the filter software with industry compliance, is required.26

There are provisions that enable restricted access systems which are adult verification devices that allow only people who are 18 years or older to access adult material on the Internet. Restricted access systems have been established to protect children from exposure to material that may be unsuitable for them. This process does not necessarily restrict an adult with access to restricted content from providing access to a child or young person.

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26 Ibid.
There is also continuing concern about the effectiveness of self-regulatory regimes and the extent of application, that is, passive minimum requirement approaches versus the adoption of active measures of promotion for example in the area of community education and the extent to which compliance will be secured with some researchers proposing that the current self-regulatory scheme be replaced with a system of licensing Internet Service Providers in association with content management requirements.27

The effectiveness of the application of industry codes will depend on two levels of monitoring, that is, the extent of community complaints and other bodies and other industry compliance issues overseen by the ABA and investigation and prosecution of Internet use together with the use of other related technology for the dissemination of child pornography and establishment of paedophile rings. Monitoring of these two aspects appears to fall within the role and function of the Department of Justice but requires consultation with other relevant Government agencies and the proposed Commissioner for Children and Young Person.

PROFESSIONAL EDUCATION

Professional education on the issues related to child maltreatment and the Internet has increased as a result of information provided through seminars, conferences, journal papers, media stories highlighting the growth in policing efforts in this area including international policing, emerging research on the impact of child maltreatment through the Internet and development of common world-wide strategies given the global nature of the Internet.

NAPCAN conducted, as part of its regular annual national community education campaign Child Protection Week 2001, seminars by retired FBI Special Agent Roger Young across Australia who reported on the adoption of zero tolerance laws for child pornography by the United States Congress. Such initiatives are important for ensuring professionals, particularly those involved in child protection, are aware of laws related to Internet safety and the impact of access to child pornography and other child maltreatment that children may be exposed to via the Internet is appropriately considered in investigations, assessments and treatment and particularly for children who are more likely to be adversely affected by such exposure.

Professional education needs to extend to the prevention of exposure for vulnerable children and young people and treatment of children who have been exposed to maltreatment through the Internet and how this may relate to other exposure to child maltreatment including victimisation.

COMMUNITY EDUCATION

Community education needs to be a critical strategy for child protection in relation to the Internet. Parents and other adults working with children such as teachers and students need to be provided with education about Internet related issues, for instance:

South Australian Commission for Catholic Schools (SACCS) also supports the provision of programs educating parents, school staff and students about the dangers of paedophiles taking advantage of children and young people through chat rooms on the Internet and World Wide Web.28

Parents need to be aware of these risks and be able to prevent their children’s exposure. Improving access to information for parents about appropriate web browsers, chat and file exchange software that may provide paedophile access to children, needs to be considered.

28 Submission 139 South Australian Commission for Catholic Schools on behalf of Catholic Schools.
A number of websites provide information to parents as well as to professionals involved with child protection such as Netalert, kIDsap.org (which is part of UNESCO The World’s Citizens’ Movement to protect Innocence in Danger Asia Pacific) and the ABA website. Whether parents are aware of the issues around Internet use for children and young people, the need for parental supervision and the information resources that can be readily accessed appear to be the best protection for children given that the information is so readily inadvertently accessible. Some sites also offer access to translated information improving their accessibility for parents from non-English speaking backgrounds. Again, the more significant issue is whether parents are aware of these resources and access them. Improved effort is required to advise parents and professionals about these online information services rather than duplicating effort in this area.

In the UK, the Education Department has established an Education Safety Strategy Group to ensure Internet safety is taught through schools and to disseminate this information to parents. It has established minimum standards for schools to follow when creating websites. This program provides one of the important sources of parent education in relation to the Internet and Internet safety.29

South Australia is the home base of the national organisation of Young Media Australia which provides, with limited funding, a watchdog role in relation to all media and children as well as guidance for parents regarding the Internet and children. Young Media Australia (YMA) exists to promote a quality media environment for Australian children and to raise community awareness of the needs of children and young people in relation to print, electronic and screen based media. YMA is the only national advocacy organisation representing the interests of children and young people in relation to print, electronic and screen-based media. YMA collects and disseminates information, conducts research, and provides advice, education and training on the impact of print, electronic and screen based media on children and young people. As a small organisation, its educational information resources play a role in raising funds to support the organisation's activities. The accessibility of educational information can be restricted for this reason although there is information support by the accessibility of the YMA information telephone line.30

RESEARCH, MONITORING AND EVALUATION

As a new area of study, the scope and extent of research on child protection and the Internet and other related information technology appears to be advancing. The key area of research, monitoring and evaluation for child protection are:

- monitoring Internet safety and standards for child protection
- monitoring awareness and compliance of parents and key professional about identifying those children and young people who may be extremely vulnerable to child maltreatment and ensuring appropriate assessment and access to Internet safety
- assessing the impact of exposure to child maltreatment on children and young people.
- the effectiveness of current self-regulatory systems for preventing access to inappropriate content
- the effectiveness of current systems of policing for identifying and preventing paedophile use of the Internet and other information technology.

30 Young Media Australia can be found at http://www.youngmedia.org.au.
RECOMMENDATION 206

That a Committee be set up by the State Government to consider all aspects of the Internet and information technology in relation to the protection of children from abuse. Such a committee to include the Department of Justice, SAPOL, Commissioner for Children and Young Persons, other relevant government agencies such as Young Media Australia. The mandate of the Committee to include consideration of:

- review the effectiveness of State legislation in the context of national legislation and strategies, including the effectiveness of penalties
- technical solutions
- means of monitoring the effectiveness of industry codes
- a strategy for professional education
- a strategy for community education and in particular of parents and caregivers.

Reason

The ever-increasing risk of exposure of children to abuse through the dynamic expansion of the Internet and information technology requires an overall strategy. It is a worldwide, national and State concern and calls for a strategic approach. The complexity of the issues involved, suggests a multi-agency and multi-disciplinary committee is necessary to encompass all aspects.