

May 2002

Child Protection Review

Discussion Paper



Government
of South Australia

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INVITATION TO COMMENT

This Discussion Paper for the Child Protection Review in South Australia has been prepared to assist persons or organisations who wish to contribute information to the review. It provides readers with an overview of the legislation, policies and practices, poses key questions that can be addressed through written submissions and provides an opportunity for all interested people to put relevant information to the Review. Written submissions will need to be forwarded to the Secretariat by **28 June 2002**.

The review to be undertaken is in respect of the protection of children and young persons from abuse or neglect and will include consideration of the broad issues of:

- legislation, policies, practices and procedures of government and its funded services and assessment of their effectiveness;
- early intervention and prevention strategies;
- services provided to those involved in child protection;
- adequacy of the criminal law and police procedures; and
- strategies, systems and legislation for improving protection;

and will also make recommendations to government for improvement.

The review is specifically focusing on the protection of children and young persons from abuse whether it is physical, emotional, sexual or neglect.

Abuse may occur in a number of circumstances including whilst within the care of parents or family, in alternative care, at school, in government or private institutions, undertaking activities run by private organisations, in employment, whilst they are in the public environment or living on the streets. Abuse can occur across all social, economic, ethnic and cultural groups.

Information about these matters is being sought from government and non-government agencies, interest groups, consumers of services including parents, children and young people, community groups, religious, recreational and sporting organisations and the public in general.

You are strongly encouraged to participate in the review and assist in the important task of improving child protection by helping to find solutions for any impediments or problems with the present system of protection. This discussion paper does not prevent you from raising other issues which may not be mentioned in the paper, so long as they are covered by the terms of reference. It would assist if you are providing information in response to particular questions to indicate the question number. If you are unable to make a written submission and would like to make comment in other ways, you may contact the Secretariat to determine how your information may best be provided.



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WRITTEN SUBMISSIONS

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1. INTRODUCTION

In March 2002 the State Government announced a review into child protection in South Australia. Recent events had highlighted the need for an urgent, wide-ranging review of child protection legislation, services and practices. These events included the handling of past sexual abuse allegations of children with intellectual disabilities; the perceived breakdown of mandatory reporting requirements; growing community concern for the welfare of children within Federal Government detention centres; and concerns about the increasing trend of child protection notifications.

In South Australia, child protection reports to Department of Human Services have increased by 61% over the past five years adding considerable pressure on that agency's capacity to respond. Many families are experiencing unacceptable levels of disadvantage and, as a result, children and young people are at risk. Strengthening and building family competence in order to reduce the numbers of children requiring child protection intervention is a long-term goal and requires a whole of government approach.

2. TERMS OF REFERENCE

The government has determined the terms of reference of the review and appointed an independent chair with a legal background to head the review process. The review is requested to undertake the following and report to government by **December, 2002**.

- (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 (*the Children's Protection Act, 1993* and the *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.

1. OVERALL AIM

Society is often measured by how well it provides for, and supports, its most vulnerable citizens. Infants, children and young people need families, communities and environments to nurture, protect and enhance their wellbeing. Protection of children requires governments, communities and organisations to work together.

Providing safe environments, building sustainable and functional communities, intervening early and preventing problems before they arise in order to reduce the numbers of children suffering abuse and neglect is a responsibility for all members of our society. How to achieve this overall goal is fundamental to the review process. It is with these broad considerations in mind that the first all embracing question is posed about what you perceive to be the most important outcome for this Review.

QUESTION 1 What would you like to see come out of this review?

2. CHANGING VIEWS OF CHILDREN

Throughout history children have been viewed according to the cultural, societal and economic conditions of the time and it is through that evolving process that the current concept of child protection has emerged.

Until the mid 20th Century the predominant belief existing in Western culture regarding children was that they were the property of their parents and as such parents had every right to treat them as they saw fit. This right included using severe physical punishment to maintain discipline.⁽¹⁾

Although broad notions of child welfare and the philanthropic rescuing of children from poverty, neglect and cruelty have been evident throughout the last three centuries, child abuse, particularly that occurring within the home, was only considered a public issue requiring an organised social response in the mid 20th Century. Until this time the prevailing view was that the number of abused children was small and the focus was on controlling delinquent and anti-social behaviour in children.⁽²⁾

During the period from the 1960s to the 1980s several critical developments took place that changed this view. In the 1960s research by the American paediatrician C. H. Kempe resulted in child abuse being first recognised as a problem. Known as the 'Battered Child Syndrome' Kempe defined abuse as a situation:

'in which a child suffering from serious physical injury inflicted upon him by other than accidental means; is suffering harm by reason of neglect, malnutrition or sexual abuse; is going without necessary and basic physical care; or growing up under conditions which threaten his emotional and physical survival'.⁽³⁾

In the early 1970s in the United Kingdom, a number of inquiries into non-accidental child deaths firmly placed child abuse in the public arena.⁽⁴⁾ By the 1980s, western countries experienced a dramatic rise in the number of reported cases of child sexual abuse and with it a greater recognition and response to child sexual abuse occurred.

By the 1990s there was near-universal recognition that a child regardless of sex, religion or social origin is entitled to human rights. This recognition was reflected by the adoption of the United Nations Convention on the Rights of the Child in 1989. The Convention has been ratified by 191 countries (two have not yet ratified - the United States of America and Somalia), and reflects a global commitment to the principle of children's rights. The Convention states that children are "neither the property of their parents nor are they helpless objects of charity. They are individuals and members of a family and community with rights and responsibilities appropriate to his or her age and stage of development."⁽⁵⁾ This Convention with its associated obligations, was ratified by Australia in November 1990 and underpins child protection legislation designed to protect children in the 2000s.

The emerging trends of today include a stronger focus on the quality of attachment and nurturing a child receives in the early years, and a greater recognition of the effects of witnessing domestic violence, trends that may well see another shift in the nature of the relationship between the State and families.

QUESTION 2 In what circumstances do you think a child's relationship to his or her parents becomes a matter of State concern?

QUESTION 3 What must have happened to a child before the State should be authorised to intervene?

3. KEY AGENCIES

Government

Within South Australia there are a number of government agencies and organisations involved in the child protection system and a brief summary of the major agencies and 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 on-going 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. This often forms a major component of caseload counselling for some of the services.

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 and 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 severe neglect cases.

The Crown Solicitor's 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's 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 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 Justice portfolio, is an independent official who has comprehensive powers to investigate complaints on behalf of clients. The Ombudsman is able to direct a government agency to revise any decision made in relation to a client as he or she sees fit.

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 their 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, Training and Employment (DETE) provides educational services for children, students and young people and monitors, licenses and approves child care services for children. Services cater for children and young people from preschool to year 12, including post school training and pathways planning. DETE meets its obligations in monitoring and regulating children's services' and ensuring the statutory and legal obligations of the department are met. It is also responsible for training and development for employees to ensure that mandatory reporting responsibilities are fulfilled.

Special Investigations Unit This unit addresses more serious complaints against DETE employees which can come through notifications made by FAYS and/or the police. The unit liaises with police when they follow through with criminal investigations. The sectors covered by the unit include those employed in the Children's Services Act, Government School and Children's Services' Sector and TAFE.

Children's Services (Licensing and Standards) DETE 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 via notifications made by FAYS and/or police. This unit liaises with police when they follow through with criminal investigations.

Non-Government Education Bodies

Association of Independent Schools SA One of the roles of the Association 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 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.

1. EARLY INTERVENTION AND PREVENTION STRATEGIES

Early intervention strategies, often linked with universal services are one of the most effective ways of ameliorating the effects of child abuse and neglect.⁽⁶⁾

Family and Community Support

The importance of the need for broad community involvement in caring for children and young people is aptly encapsulated by an African proverb 'it takes a village to raise a child'. The importance of 'community' is being increasingly recognised by governments and child and welfare sectors as essential in preventing child abuse and neglect. In the past, efforts to prevent child abuse and neglect have often been perceived as being ineffectual due to the underlying structural forces and community factors that impact on families and children: ie increasing poverty, poor housing, overcrowding, unemployment, limited education.

However, the move to a family support model in child protection aimed at providing a more holistic approach to preventing abuse ⁽⁷⁾ with a focus on 'whole of community' approaches, including early intervention initiatives, is gaining momentum.

Moves towards creating 'social capital' have gained prominence with calls for more effective community support to assist families that are struggling in caring for children and young people. Research suggests that timely support services can both prevent the escalation of a crisis requiring a more intrusive response and can be effective in breaking cycles of need.⁽⁸⁾

Appropriate intervention services are those that support families when in need, build on family strengths, assist families to manage their own needs and are easy to access. Such interventions may include equipping families with information, skills and resources and are essential to providing a safe and secure home life for children and young people.

QUESTION 4 What forms of family and community support should be provided to effectively assist struggling families?

Community Education

Community education programs include media campaigns, information materials and training programs for parents, professionals and community groups. In the last decade, societal awareness of child abuse and neglect and a greater understanding of children's developmental needs has been at its highest.⁽⁹⁾ Audits conducted over a number of years nationwide have highlighted an increased community awareness about the damage suffered by children through abuse and neglect. Community awareness and recognition of the forms of abuse is expanding and an increased number of agencies/individuals are also becoming aware of the effects on children of witnessing domestic violence.

The development of child abuse prevention community education information such as Never Shake a Baby and Parenting Information Guides produced by Parenting SA have proved popular and successful. Many parenting education courses are provided by non-government organisations.

QUESTION 5 **Is there a need to increase or improve community education programs and if so, in what way?**

Personal safety or protective behaviours programs

Personal safety or protective behaviour programs are targeted towards school age children to help them protect themselves from child abuse. These programs are aimed at assisting children to identify dangerous situations and help them to talk about their feelings and have been a part of primary school curriculum since the 1980s. They are considered by many as one effective mechanism for preventing childhood sexual victimisation. The focus is on teaching children how to avoid a wide range of potentially unsafe situations, one of which is child sexual abuse.

QUESTION 6 **What early intervention and prevention strategies are required, if any to provide appropriate support to children and their families?**

2. INTERAGENCY COLLABORATION AND PARTNERSHIP

Coordination of child protection networks has been generally regarded as a desirable work practice.⁽¹⁰⁾ Inter-agency and inter-professional cooperation and coordination has been a common theme in child abuse research for many years⁽¹¹⁾ and recognition that child protection services are part of a wider child and family support system reinforces the need for effective collaboration between child protection services and other family support agencies.

Problems in inter-agency and inter-professional communication and coordination often exist and these may be further compounded as child protection services reduce their role as primary or coordinating agencies, leaving family support services with greater responsibility for case coordination.⁽¹²⁾

A general principle of child protection systems is that a coordinated response leads to more effective interventions, improved service delivery by avoiding duplication and overlap, minimisation of gaps for clients to fall through and greater clarification of agency or professional roles and responsibilities.

Interagency collaboration and coordination is not a natural state and does not merely result from good intentions. While there is overall agreement that cooperation is essential it has been commonly reported as being difficult to achieve.⁽¹³⁾

QUESTION 7 **Is the current system efficient and sufficient to achieve inter-agency collaboration and coordination?**

QUESTION 8 **What changes, if any, are required to enable effective interagency collaboration and coordination?**

3. CLIENT/CONSUMER FOCUS

One of the principles of providing effective services for families and children is ensuring the voice of the 'client' or 'consumer' and the community is considered when planning, managing and delivering services. Good customer service models have impacted on service provision in the private sector and similar approaches are of increasing importance in government and non-government human service provision. Knowledge of the client's needs and expectations, their perception of the benefits of the services and the way in which an organisation manages and evaluates its relationship with its clients (feedback, complaints, appeals process) are important aspects of good customer service.⁽¹⁴⁾

Legislation directs workers to give due consideration to the views and wishes of the child and for them to be involved in decisions that affect their lives. The key principle of the *Children's Protection Act, 1993* states that the powers must always be exercised in the best interests of the child. The child's view is crucial in decision-making, however, this must also be balanced with other knowledge that is available from the family and professionals.

In the area of statutory child protection services the fundamental principle of partnership with families underpins intervention. It is understandable that many families may view investigation into allegations of child abuse and neglect as painful intrusions into their lives. Thus a partnership approach involving working with parents/caregivers and their networks is desirable so that the responsibility for promoting the welfare of children is shared by both the State and the parents.⁽¹⁵⁾ It is not about equal power, but about working towards a common goal. Intervention based on openness, joint decision-making and a willingness to listen are principles which should underpin intervention.

Ensuring effective client input, providing an appropriate complaints and feedback process, and listening to those to whom services are provided are matters of considerable complexity within a statutory welfare setting.

QUESTION 9 Is the current system efficient and sufficient in achieving an appropriate client/customer focus?

QUESTION 10 What changes, if any, are required to enable the development of an effective client/customer focus?

4. EDUCATION AND TRAINING

Education and training in recognising, responding to and addressing the effects of child abuse and neglect is essential for anyone working in the area of child protection.

Compulsory reporting of cases of suspected child abuse and neglect was first introduced in South Australia in 1969. In 1986 the report Sexual Abuse Task Force in South Australia stated that many professionals were reluctant to report. As a result it was recommended that a core education package be developed that covered essential areas to ensure professionals and those working with children were aware of, and fulfilled their mandatory reporting requirements.⁽¹⁶⁾

Mandatory notification training now occurs in the University of South Australia, Flinders University, University of Adelaide and TAFE. Teachers are required to undergo training in order to gain teacher registration in the state system and the Catholic school system as a prerequisite of employment. There is no current legislative requirement for professionals working with or in contact with children to undergo training in identifying and reporting suspected child abuse and neglect.

DHS Women's Statewide is the leading interim agency for providing training and workshops across South Australia for those working with adult survivors of child sexual abuse.

Inter-agency training on interviewing children and caregivers for SAPOL and Family & Youth Service staff has been occurring since 2000. The police, Child Protection Services and FAYS provide joint training to ensure the successful coordination between the various agencies working in this area.

QUESTION 11 Is the education and training in child protection effective and sufficient, for those required to work with children?

QUESTION 12 What changes, if any, are needed to education and training?

5. STATUTORY INTERVENTION - CHILD ABUSE AND NEGLECT

Throughout Australia and other western countries, statutory child protection agencies have during recent years struggled to respond to the rising numbers of reports and the inadequacies of an investigatory style approach for dealing with the complex needs of children and families. Most child protection agencies recognise the need to assess the child in the full context of their family and environment rather than concentrate on a purely investigatory role.⁽¹⁷⁾ Nevertheless, systems often remain 'incident' driven and 'process' orientated rather than focusing on broader outcomes for children and families.

In South Australia within FAYS a reform of child protection was undertaken in 1997 to target its resources to families where children were at highest level of risk of further abuse and neglect. Whilst this strategy appears to have improved protection for those assessed at high risk, concern has been expressed about the numbers of families who are unable to access services when children are not considered at high risk, but for whom there are significant concerns.

Some writers question the focus of responding to an incident of child abuse and neglect alone arguing for an approach which focuses on fully assessing the 'harm or risk of harm' to the child and the 'protective needs of the child', within the family and community context as likely to lead to a more holistic and child focused approach to children and families.⁽¹⁸⁾

The dual aims of investigating allegations of abuse and neglect whilst at the same time providing interventions to strengthen and support families, can create tensions and significant dilemmas for workers intervening in child protection cases. Nevertheless, it is widely recognised that effective support for families must address the underlying problems associated with abuse and neglect. It is also accepted that timely, responsive and culturally appropriate services can assist families and children at risk, preventing an escalation of more serious problems and reducing the likelihood of family breakdown. However, the capacity for many statutory welfare agencies to undertake this role appears to have decreased.

QUESTION 13 Is the current system of responding to allegations of child abuse and neglect effective and sufficient in the protection of children and young people in South Australia?

QUESTION 14 What changes, if any are needed to ensure that families receive appropriate intervention and support?

6. STATUTORY INTERVENTION - CHILD SEXUAL ABUSE

One important area of interest to the review are children who have been subjected to sexual abuse and whether the current criminal justice system provides adequate protection for this special group. The manner in which agencies intervene in child sexual abuse cases has been highlighted in recent media attention and draws particular attention to the importance of providing appropriate and effective responses. The area is complex and requires consideration of a number of system-wide issues and significant community debate. It is for this reason that the issue of child sexual abuse is dealt with as a separate topic for discussion.

When viewed within the context of misuse and aberration of power, intervening in child sexual abuse cases requires skilled and professional workers to deal with the power imbalance whilst at the same time not underestimating the psychological impact of sexual abuse on the child and the addictive nature of the offence for offenders.

In South Australia, DHS through Family and Youth Services has the statutory responsibility for receiving notifications and investigating and/or making inquiries into allegations of suspected child sexual abuse. Investigations may be conducted jointly with the Police with Child Protection Services providing assessments.

DHS (FAYS) has a major role in dealing with the child and the family in intra-familial cases of child sexual abuse whilst SAPOL has the major role in dealing with the alleged offender. SAPOL is responsible for dealing with child sexual assault matters when the offender is outside of the family and the parents are protective of the child. If it emerges there are ongoing protective concerns, DHS (FAYS) may become involved.

QUESTION 15 Is the current system for dealing with allegations of sexual abuse, effective and sufficient in protecting of child sexual abuse victims?

QUESTION 16 What changes, if any, to the system are needed ensure that children receive appropriate intervention, assessment and treatment?

7. CHILDREN IN THE ADULT CRIMINAL COURT

There is widespread community concern that many child sexual abuse victims are not being adequately protected by the current criminal justice system and that different measures are required to deal with this special group.

Many academics and organisations⁽¹⁹⁾ are already on notice as recording their particular concerns that:

- an adult criminal court system which subjects children to prolonged cross-examination adds further trauma to victims;
- the court or jury may not have the capacity to consider child developmental aspects and instead treats children as 'adults';
- cross-examination can confuse and discredit child victims resulting in *nolle prosequis* because the child's distress prevents continuation;
- delays in proceedings add further trauma, may result in children confusing times, dates, events and also prevent families from healing and getting on with their lives; and
- child sex offenders are rarely convicted.

There is also increased community debate regarding the current adversarial system for dealing with matters of child sexual abuse and the need for a different approach has been discussed for many years. In 1995 National Association for the Prevention of Child Abuse and Neglect (NAPCAN) called for the reform of the current system advocating a revised inquisitorial system based on clearly identified values and aims, principally:

- the encouragement of offenders to accept responsibility for their offences and accept treatment;
- a court process that is 'child-friendly';
- a flexible system for ascertaining the truth that would be strict enough to safeguard the rights of the accused.⁽²¹⁾

QUESTION 17 Is the current system for dealing with allegations of sexual abuse fair, effective and sufficient in protecting of child sexual abuse victims?

QUESTION 18 What changes, if any, to the system are needed ensure that children receive appropriate assessment and treatment but with adequate safeguards for the accused?

8. SEXUAL ABUSE OF CHILDREN WITH DISABILITIES

Recent allegations in relation to children with intellectual disabilities being abused, have added impetus to ensuring appropriate mechanisms are in place to protect this most vulnerable group of citizens.

Unlike children without a disability, the risk of sexual abuse is often greater for children with disabilities because they are more reliant on carers and have greater number of people involved in their daily care. They may live in homes or institutions, have communication or intellectual difficulties and physical limitations that leave them more vulnerable to sexual abuse as well as limited access to information and limited understanding of sexuality and difficulties in benefiting from protective behaviours education.

Adolescence is often a particularly difficult period for families when increased interest in sexual activity occurs. This interest combined with a lack or limited understanding of sexuality, may result in them being more vulnerable to becoming involved in sexually exploitative relationships.⁽²²⁾

QUESTION 19 Is the current system effective and sufficient in its coverage and protection of children with disabilities from sexual abuse?

QUESTION 20 What changes, if any, are needed to ensure children with disabilities are protected?

9. SEX OFFENDERS

Whilst there is widespread concern regarding people who commit sexual offences against children, it is unknown just how many offenders there are in the community. Offenders come from all walks of life and professional backgrounds.

Literature shows that most male offenders are not mentally ill, come from all religious, social, educational and cultural groups, are most likely to be heterosexual men who also have sex with adults, have a tendency to deny or minimise the seriousness of their behaviour, and are likely to have long histories of abusing children often beginning in their own adolescence.⁽²³⁾

When children make allegations it is often very difficult for people to believe and accept them. Parents and adults surrounding the child are often thrown into crisis and experience severe emotional reactions. System responses are complex and there can be a significant delays between the first report and any subsequent court action.

Many allegations of child sexual abuse do not end up with the perpetrator being charged by the police and as a result no conviction or penalty results. Of the child sex offenders who do come before the courts, few are convicted of an offence. Of those that are imprisoned, many offenders once released return at some point to live with their families or establish new partnerships often with their sexual attraction to children still present. Currently in South Australia no treatment or therapy is available within the prison system for convicted sexual offenders although there is treatment and therapy available in the community.

QUESTION 21 Is the current system for dealing with sexual offenders effective and sufficient in protecting child sexual abuse victims?

QUESTION 22 What changes to the system are needed to ensure that offenders receive appropriate treatment whether in prison or in the community?

10. SCREENING AND MONITORING

Many government agencies have in place processes and procedures for dealing with screening and monitoring of persons who are employed in child-related employment. Such processes include police checks for new employees, compulsory mandatory reporting training, Internal Review Units, etc. However, there is no overriding mechanism that requires all government and non-government agencies to put such procedures in place.

Of interest to the Review is what mechanisms agencies currently have in place in regard to:

- 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 all employers to notify when any employee has been through a disciplinary proceedings in relation to sexual misconduct with a child.

QUESTION 23 Is the current system effective and sufficient in screening and monitoring persons working or volunteering in 'child related activities'?

QUESTION 24 What changes, if any, are required to ensure children are protected in all areas of their life?

11. ABORIGINAL AND TORRES STRAIT ISLANDERS

Ongoing cultural dispossession, in its various forms over the past 200 years, have impacted on Indigenous people socially, economically, physically, psychologically and emotionally.⁽²⁴⁾ When workers intervene with Aboriginal families and communities where there are concerns for children's safety and protection, they must be especially sensitive and culturally aware to ensure the past mistakes are not repeated.

Aboriginal and Torres Strait Islander children are significantly over-represented in the protection and care system of all States and Territories.⁽²⁵⁾ Whilst they comprise only 2.7% of children in Australia, they constitute 20% of those placed in alternative care.⁽²⁶⁾

The removal of Aboriginal children by white welfare authorities has caused significant pain and suffering and strained relationships between the Indigenous and non-Indigenous peoples.⁽²⁷⁾ All service providers whether statutory or in supportive role must work with Elders and leaders to build relationships and develop approaches that best meet the needs within each community.⁽²⁸⁾

Some authors argue for a complete revision of protective services in relation to Indigenous peoples. Findings of the National Inquiry into the Separation of Aboriginal & Torres Strait Islander Children found that not one submission from an Indigenous organisation believed current interventions from child welfare departments to be an effective response to child protection needs. The inquiry recommended new legislation to be enacted based on self-determination. The right to self-determination is the right to take responsibility.⁽²⁹⁾ Mechanisms that enable Indigenous people to identify and control the best ways of dealing with children's safety and protection are essential.

QUESTION 25 Is the current system efficient and sufficient in providing protective services for Aboriginal children and families?

QUESTION 26 What changes, if any, are required to enable the effective provision of protective services?

12. MULTICULTURAL COMMUNITIES

Research from around the world indicates that child abuse and neglect occurs within all cultural and socio-economic groups. No cultural group approves of child abuse; however, whether specific behaviour constitutes appropriate discipline or punishment or whether it constitutes child abuse and neglect may vary in each society.⁽³⁰⁾ There are also differences between countries according to their level of adoption and implementation of emerging international standards.

Decisions in child protection are often made according to the value base of the dominant culture without the acknowledgment of the cultural diversity that exists in the community. Children from culturally and linguistically diverse backgrounds have particular needs in relation to child protection and for intervention to be successful, responses must be culturally sensitive.

Children living in households where the level of proficiency in English is limited may have difficulty accessing a range of services and networks that can offer protection. Many recent arrivals have fled war and famine, and may have been located in refugee camps for a number of years. These children may require specific and targeted services to deal with climatisation issues and emotional trauma. Identifying and intervening when there are child protective concerns within this context offers significant challenges.

Many families, particularly recent arrivals, lack family and access to wider social supports, may be suffering significant loss and grief, are not familiar with Australian norms, customs and laws and may be very fearful of government departments if they come from repressive regimes. Workers may have difficulty in finding the appropriate balance between providing services for the family and providing support and protection to the child.

QUESTION 27 Is the current system, efficient and sufficient in providing protective services for children and families from multicultural communities?

QUESTION 28 What changes, if any, are required to enable the effective provision of protective services to multicultural communities?

13. CHILDREN IN DETENTION

Another group of children which have been identified as requiring special consideration include those living in the Woomera Detention Centre. There were 148 children primarily from Iraq and Afghanistan living in detention as at 21 June 2001. Of those, 36 were unaccompanied minors. As at 30 April 2002, 18 female children, 30 male children plus one unaccompanied minor were still in detention.⁽³¹⁾

State and Territory authorities have the jurisdiction in relation to investigating child protection concerns, but the State's powers to make and enforce specific recommendations under the *Child Protection Act, 1993* are curtailed by the operation of the *Commonwealth Migration Act, 1958*. In most cases the basis for intervention results from a report or notification of concern about the child. In the period April 2001 to March 2002 there have been approximately 110 reports to child protection authorities from the Woomera area.⁽³²⁾ The Centre is under the jurisdiction of the Commonwealth and as such State authorities have presented their findings and recommendations to the Commonwealth Department for Immigration and Multicultural and Indigenous Affairs, for them to determine what action, if any should followed. Currently a report from the Department of Human Services is before the Commonwealth Department of Immigration in relation to children in immigration detention.

QUESTION 29 Is the current system, efficient and sufficient in providing protective services for children living in detention?

QUESTION 30 What changes, if any, are required to enable the effective provision of protective services to children in detention?

14. CHILDREN BEFORE THE FAMILY COURT

Increasingly the Family Court of Australia and the Department of Human Services (Family and Youth Services) are dealing with the same families. It may be that both agencies are involved at the same time or that one agency is actively involved while the other has had previous involvement.⁽³³⁾ The Family Court of Australia has jurisdiction under the *Family Law Act, 1975* to make orders in relation to parental responsibility for children. The Family Court is obligated under the Act to have regard to the best interests of the child and the paramount consideration in determining issues and the need to protect the child from abuse.

The *Family Law Act, 1975* makes a number of provisions in relation to child abuse, including providing a definition of child abuse, ensuring that when a party to the proceedings alleges that a child has been abused or is at risk of being abused notification to State welfare authorities must occur. Notification to State welfare authorities must also occur when Family Court personnel have reasonable grounds for suspecting that a child has been abused or is at risk of being abused.

A Protocol between the Family Court of Australia, Adelaide Registry and the Department of Human Services (Family and Youth Services) was signed by the Chief Justice of the Family Court and the Chief Executive of DHS in October 1998. This protocol sets out those situations where communication is required and establishes the means for that communication. It covers aspects such as information exchange, referrals of cases of suspected abuse and neglect, options for interacting with the Family Court and the role of child representatives in representing the interests of the child with child welfare departments.⁽³⁴⁾

A pilot program in Victoria, the Magellan Project, has developed strategies designed to reduce the stress to children going through the Family Court system after suffering abuse. Critical initiatives in the program include:

- developing better working relationships with the Department of Human Services (Victoria) and families;
- providing continuity with the judge, the counsellor and the legal counsel throughout the process.

No financial caps were imposed for Legal Aid and responses from families after participating in the program have been very positive. The time taken to go through the courts was apparently halved under the program with the number of times families having to return to the courts reduced, with many cases resolved earlier in the process and the orders made more durable.⁽³⁵⁾

QUESTION 31 Is the current system efficient and sufficient in providing protection for children who are reported to or involved with State welfare authorities whilst they are at the same time before Family Court proceedings?

QUESTION 32 What changes, if any, are required to enable the effective provision of protective services to children in these circumstances?

15. RELIGIOUS, SPORTING AND RECREATION GROUPS

Churches and religious associations and sporting and recreation groups are not 'public authorities' and their leaders and members are not public officials. Therefore, they do not fall directly within the mandate of government. Nevertheless, community concerns and views regarding the protection of children when they are in the care of other community organisations or individuals are of considerable public interest and of interest in this review.

In recent times, there have been substantial allegations of sexual abuse involving clergy, members of religious orders, ministers of religion, and others involved on a paid or unpaid basis in and around churches or institutions with or conducted by churches or religious bodies, including schools, residential homes, youth and fellowship groups in Australia.⁽³⁶⁾

In many cases investigations or prosecutions of these allegations have been minimal and concerns exist as to whether there has been suppression of these allegations which in turn resulted in failure to protect children and young people. Guidelines and accepted protocols or established lines of communication between authorities (police and child protection agencies), concerning the way that allegations of this kind should be managed may not exist or are ill-defined.

A number of allegations of abuse from persons involved with sporting and recreation groups has also emerged highlighting the need to extend protection to children within all sectors of the community.

QUESTION 33 Is the current system efficient and sufficient in ensuring that children who are in the care of others are protected?

QUESTION 34 What changes, if any, are required to protect children in these circumstances?

16. SERVICES

A holistic child protection system would offer programs that cover the full range of children's needs. Following a comprehensive assessment of needs, services should be available to address a wide range of children's needs from education, physical health and recreation to specialist services, counselling and therapeutic treatment.⁽³⁷⁾ Whilst addressing the impact of child abuse and neglect or a dysfunctional family environment, services that aim to develop a child's health and wellbeing and promote resilience are seen as important.

Services offered to children and their families who have been involved with protective services should range from crisis response and short-term programs to long-term programs, according to assessed need. Family preservation and family reunification services are required as are a range of placement options and services for children who cannot remain at home or are at risk of placement outside of the home.

QUESTION 35 Is the current system efficient and sufficient in providing protective services for children and families?

QUESTION 36 What changes, if any, are required to enable the effective provision of protective services?

Introduction

One of the major tasks of the review is to scrutinise the legislation in relation to the protection of children. There are two principal Acts that outline the objects and responsibilities for government in responding to the needs of vulnerable and at risk children and young people, and families and communities.

The *Children's Protection Act, 1993* in South Australia specifically covers the protection of children and young people from abuse and neglect.

The *Family and Community Services Act, 1972* provides the legislative mandate that drives welfare provision and reflects a role for government across a breadth of services to enhance and assist South Australian children, families and communities and meet their needs.

Other Acts that have particular relevance include the *Evidence Act, 1929*, the *Criminal Law Consolidation Act, 1935*, the *South Australian Health Commission Act, 1976*, the *Commonwealth Migration Act, 1958* and the *Commonwealth Family Law Act, 1975*.

A summary of the main areas of the *Children's Protection Act, 1993*, the *Family and Community Services Act, 1972* and the *Evidence Act, 1929* is provided for consideration. Full copies of all the relevant Acts are available from SA Government Information Centre Bookshop, 77 Grenfell Street, Adelaide, phone 13 23 24 or can be found on SA Central Website: <http://www.parliament.sa.gov.au:8080/acts-list.htm>

THE CHILDREN'S PROTECTION ACT, 1993

In South Australia, the Department of Human Services through its service provider FAYS has statutory responsibility, under the *Children's Protection Act 1993*, for receiving notifications and investigating allegations of child abuse and neglect.

The following sections provide information about the most significant aspects of the current children's protection legislation.

Objects under the Act - Section 3

This section sets out the objects to be considered when applying the Act:

- 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.
- 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.

QUESTION 37 Are the overall objects sufficient in covering State responsibility towards protecting children and young people?

QUESTION 38 What changes, if any, should be made to improve the objects?

Principles to be observed in dealing with children - Section 4

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; and
- preserving and enhancing the child's sense of racial, ethnic, religious or cultural identity and making decisions consistent with these.

Two other principles require special mention:

- 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.
- All proceedings must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

QUESTION 39 Do the two primary principles provide sufficient guidance to those with responsibility for administering the Act?

QUESTION 40 Do the other principles provide sufficient guidance to those administering the Act. In particular, is there sufficient direction when considering decisions in relation to a child's racial, ethnic, religious or cultural identity?

QUESTION 41 What changes, if any, should be made to improve this section?

Definition of child abuse and neglect - Section 6 (1)

The definition of abuse or neglect in relation to a child 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.

QUESTION 42 Does the definition provide sufficient guidance to those with responsibility for administering the Act, to determine when children and young people require protective action by the State?

QUESTION 43 What changes, if any, should be made to improve the definition?

Definition of "at risk" - Section 6 (2)

In order to make a determination regarding whether a child is 'at risk' the following must be taken into account:

- the child has been, or is being, abused or neglected; or
- 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
 - 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;

or

- the guardians of the child:
 - are unable to maintain the child, or are unable to exercise adequate supervision or control over the child; or
 - 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
 - the 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.

QUESTION 44 Does the definition provide sufficient guidance to those with the responsibility of administering the Act, to determine situations of risk?

QUESTION 45 What changes, if any, should be made to improve the definition of 'at risk'?

General functions of the Minister - Section 8

Under the *Children's Protection Act* 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 child 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 wellbeing 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 service 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.

QUESTION 46 Are the current functions of the Minister sufficient in coverage?

QUESTION 47 Do they adequately assist and support the Minister in order to ensure the care and protection of vulnerable and abused children and young people?

QUESTION 48 What changes, if any, should be made to improve this section?

Notification of abuse or neglect - Section 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 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 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

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 officer, 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 services or holds a management position that includes direct responsibility for, or direct supervision of, the provision of services to children.

QUESTION 49 Does the Act provide sufficient clarity to those 'mandated to notify' when they must do so?

QUESTION 50 Do the occupations listed, to which this section applies, need amendment?

QUESTION 51 Failure to notify can result in a penalty (Max \$2,500). Is the penalty sufficient to ensure those mandated comply with the Act?

QUESTION 52 What changes, if any, should be made to improve this section?

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 for this reason 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 the disclosure

- is made in the course of official duties to another person acting in the course of official duties; or
- is made with the consent of the notifier; or
- is made by way of evidence in court.

QUESTION 53 Does this section sufficiently protect the identity of the notifier?

QUESTION 54 What changes, if any, should be made to improve this section?

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, police are already dealing with matter, a protective parent or relative has provided safety for the child, 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.

QUESTION 50 Does this section provide sufficient guidance in determining what constitutes reasonable grounds for the suspicion of child abuse/neglect?

QUESTION 51 Does this section allow sufficient clarity to the Minister or Chief Executive to determine in what circumstances 'proper arrangements exist'?

QUESTION 52 What changes, if any, should be made to improve this section?

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.

QUESTION 58 Does this section provide officers with the guidance required to determine 'serious danger'?

QUESTION 59 How is this applied in practice?

QUESTION 60 What changes, if any, should be made to improve this section?

Power to remove children from guardians - Section 17

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.

QUESTION 61 Is this section effective and sufficient in its coverage and protection?

QUESTION 62 The term 'imminent danger' applies to circumstances where there is a belief that the child is immediate physical danger. Does the act provide sufficient coverage for the emergency removal of children who are not at that moment in immediate physical danger, but would be so if they returned home?

QUESTION 63 What changes, if any, should be made to improve this section?

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.

QUESTION 64 Is this section effective and sufficient in its coverage and protection?

QUESTION 65 Is it clear when an investigation should be carried out?

QUESTION 66 What changes, if any, should be made to improve this section?

Application for order - Section 20

When a departmental officer believes that a child is at risk and it is not possible to proceed with an investigation, or a child cannot otherwise be protected during the course of an investigation, an application to the Youth Court can be made.

If the Chief Executive Officer (or delegate) is of the opinion:

- that there is some information or evidence leading to reasonable suspicion that a child is at risk; and
- further investigation is warranted or a family care meeting should be held and
 - the investigation cannot properly proceed unless an order is made; or
 - it is desirable that the child be protected while the matter is investigated or a family care meeting held;
 - the Chief Executive Officer (or delegate) may apply to the Youth Court for an order.

QUESTION 67 Is this section effective and sufficient in its coverage and protection?

QUESTION 68 Is there sufficient guidance as to when an investigation and assessment order should be sought?

QUESTION 69 What changes, if any, should be made to improve this section?

Orders Court may make - Section 21

Once an application to the Youth Court has been made for an Investigation and Assessment Order, 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.

The types of orders the court may order 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.

QUESTION 70 Are these orders effective and sufficient in coverage and protection?

QUESTION 71 What changes, if any, should be made to improve this section?

Examination and assessment of children - Section 26

While a child is in the custody of the Minister or an investigation and assessment order authorising examination and assessment is in force, an employee may take a child to persons or a place (including admitting to hospital), for the purpose of having the child professionally examined, tested or assessed.

QUESTION 72 Is this section effective and sufficient in its coverage and protection?

QUESTION 73 What changes, if any, should be made to improve this section?

Family Care Meetings to be convened by the Minister - Section 27

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.

QUESTION 74 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 75 What changes, if any, should be made to improve this section?

Purpose of family care meetings - Section 28

The purpose of a family care meeting is to provide proper opportunity 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.

QUESTION 76 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 77 What changes, if any, should be made to improve this section?

Procedures - Section 32

The Care and Protection Coordinator 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 the meeting; 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.

QUESTION 78 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 79 What changes, if any, should be made to improve this section?

Application for care and protection orders - Section 37

If the Minister 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;
- the Minister may apply to the Youth Court for an order.

If the Minister is of the opinion:

- that proper arrangements exist for the care and protection of a child;
- that the child would be likely to suffer significant psychological injury if the arrangements were to be disturbed; and
- that it would be in the best interest of the child for the arrangements to be subject to an order;

the Minister may apply to the Youth Court for an order.

QUESTION 80 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 81 Does the application of 'at risk' enable effective and sufficient coverage and protection of children having regard to the fact that the Minister must be of the opinion that a child is 'at risk' before proceeding to court?

QUESTION 82 In particular does this section provide children and young people with significant disabilities who require State care, effective and sufficient coverage and protection?

QUESTION 83 What changes, if any, should be made to improve this section?

Court's power to make orders - Section 38

If the court finds that the grounds of application are accepted and an order should be made in respect of the child, the court may exercise a number of powers including:

- requiring any guardian or the child to enter into a written undertaking;
- granting custody to a guardian of the child, some other family member, the Minister, or any other person that the court thinks fit;
- granting guardianship to the Minister or such other persons the court thinks appropriate.

QUESTION 84 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 85 What accountability and compliance mechanisms are in place for all parties under the Act?

QUESTION 86 What changes, if any, should be made to improve this section?

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.

QUESTION 87 Are the powers of the Minister effective and sufficient to provide quality care for children under the Guardianship of the Minister?

QUESTION 88 Do the terms 'custody' or 'guardianship' require greater definition in relation to the powers of the Minister?

QUESTION 89 What changes, if any, should be made to improve this section?

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. A 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 relating to the operation or administration of the Act; and
- to make such recommendations 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.

QUESTION 90 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 91 What changes, if any, should be made to improve this section?

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 abuse, 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.

The 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.

QUESTION 92 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 93 What changes, if any, should be made to improve this section?

THE FAMILY AND COMMUNITY SERVICES ACT, 1972

Introduction

The *Family and Community Services Act, 1972* preceded the focus on child protection that emerged in the 1980s, and the new orientation toward juvenile justice that formed the basis of the *Young Offenders Act, 1993*. This Act enables the Minister 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.

This 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 range of functions. The range of responsibilities covered is now more likely to be shared and undertaken by a variety of government and non-government agencies. Some of these functions include the:

- establishment of advisory panels to provide advice;
- appointment of community aides to act as volunteers;
- approval of foster parents;
- consultation with community members on matters relevant to the provision of services;
- provision of services to members of the public within the localities in which they live; and
- provision of appropriate complaints mechanisms for clients receiving services.

In relation to alternative care a separate review process has already been undertaken by the Department of Human Services and will not be covered in this paper. Consideration of screening and monitoring processes of those employed or volunteering in child related areas (including alternative care) is dealt with in the Major Issues section of this paper, Sub-section 10.

Objectives of the Minister and the Department - Section 10

- 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.

QUESTION 94 Are the objectives of the Minister and the Department effective and sufficient in coverage and promotion of welfare in the community?

QUESTION 95 What changes, if any, should be made to improve this section?

Special welfare funds - Section 23

The Minister may apply any portion of the Family and Community Development Program fund towards the costs incurred, or to be incurred, by any person or group of persons, in establishing, operating, maintaining, supporting, promoting or extending any service project or facility that will advance the welfare of children, youth or any other section of the community.

The Minister can establish a fund for:

- the Family and Community Development Program; and
- the Early Intervention and Substitute Care Program.

QUESTION 96 Is this section effective and sufficient in its coverage, protection and application?

QUESTION 97 What changes, if any, should be made to improve this section?

The Minister may enter into agreements for services - Section 24

The Minister may 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.

The Minister should avoid, so far as is practicable, entering into agreements providing for long-term care of persons in need of such care unless satisfied that the other parties to the agreement do not enter into those agreements with the object of making a profit.

QUESTION 98 Is this section effective and sufficient in its coverage and application?

QUESTION 99 What changes, if any, should be made to improve this section?

THE EVIDENCE ACT 1929

Introduction

South Australia parliament amended the *Evidence Act, 1929* in 1993 enabling the use of closed circuit television and screens in an effort to protect children in recognition of the intimidating effects of a court room environment and the potential to further traumatise of witnesses having to give evidence in front of the accused.

Since its promulgation closed circuit television and screen usage has slowly increased in application. Nevertheless, access to it is still at the discretion of the judge from whom permission has to be sought and obtained.

Unsworn evidence - Section 9

This section is particularly pertinent to children and young people giving evidence. If the judge determines that a person does not have sufficient understanding of the obligation to be truthful when giving sworn evidence, the judge may permit the person to give unsworn evidence, once the judge:

- is satisfied that the person understands the difference between the truth and a lie; and
- tells the person that it is important to tell the truth; and
- the person indicates that he or she will tell the truth after being told of its importance by the judge.

After unsworn evidence is given in trial to a jury the judge:

- must explain to the jury the reason the evidence is unsworn; and
- if a party requests, must warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.

QUESTION 100 Is this section effective and sufficient in its coverage and protection of young children called as witnesses?

QUESTION 101 What changes, if any, should be made to improve this section?

Evidence of Young Children - Section 12

South Australia amended the legislation to enable young children and other 'vulnerable witnesses' who are called to give evidence receive certain supports to assist them in the process of giving evidence. In law, a vulnerable witness is defined as 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 at some special disadvantage because of the circumstances of the case, or circumstance of the witness.

Once the court determines a person is a 'vulnerable witness' they are entitled to have present in the court a person of choice to provide emotional support (but they must not interfere in the proceedings).

Unless the court otherwise allows, a witness or prospective witness in the proceedings cannot be chosen to provide emotional support.

QUESTION 102 Is this section effective and sufficient in its coverage and protection of young children called as witnesses?

QUESTION 103 What changes, if any, should be made to improve this section?

Warning relating to uncorroborated evidence - Section 12A

There is no rule of law or practice obliging a judge in a criminal trial to warn the jury that it is unsafe to convict on the uncorroborated evidence of a child if the child gave sworn evidence.

QUESTION 104 Is this section effective and sufficient in its coverage and protection of young children called as a witness?

QUESTION 105 What changes, if any, should be made to improve this section?

Protection of witnesses - Section 13

The Court can make special arrangements for taking evidence from a witness to protect them from embarrassment or distress, or being intimidated by the atmosphere of the courtroom. In doing so the Court may make the following orders:

- that the evidence be given outside the courtroom and transmitted to the courtroom by means of closed circuit television;
- that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates or some other person;
- that the witness be accompanied by a relative or friend for the purpose of providing emotional support.

However, an order must not be made if it would prejudice any party to the proceedings and in effect:

- relieve the witness from the obligation to give sworn evidence or; submit to cross-examination;
- prevent the judge or the jury from seeing and hearing the witness giving evidence.

If the effect of an order would prevent the defendant from seeing and hearing a witness the order may only be made if there is no other practicable way to protect the witness. Also if the court makes special arrangements for taking evidence in a jury trial, the judge must warn the jury not to draw any inference adverse to the defendant and not allow the special arrangements to influence the weight given to the evidence.

QUESTION 106 Is this section effective and sufficient in its coverage and protection of young children called as a witness?

QUESTION 107 What changes, if any, should be made to improve this section?

OTHER LEGISLATION

Other legislation which may require consideration includes:

South Australia

The Adoption Act 1988
The Disability Services Act 1993
The Education Act 1972
The Ombudsman Act 1972
The Children's Services Act 1985
The Freedom of Information Act 1991
The Consent to Medical Treatment and Palliative Care Act 1995
The Criminal Law Consolidation Act 1935
The Youth Court Act 1993
The Bail Act 1985
The South Australian Health Commission Act 1976
The South Australian Housing Trust Act 1995

Commonwealth

The Family Law Act 1975
The Migration Act 1958
The Disability Discrimination Act 1992

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