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Changes Needed to the Child Protection Act

Submission to the Queensland Child Protection Commission of Inquiry

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Background

The current version of the Queensland *Child Protection Act* of 1999 begins at section 4 by telling us what it is for: "The purpose of this Act is to provide for the protection of children." So, unfortunately, the *Act* is a child protection act, not a child welfare act and not an act about parenting. Yet, it then outlines a number of principles with the excellent dominating one being that "the main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount". So far so good.

However, the *Act* then gives an example of this paramount principle in operation:
"If the chief executive is making a decision under this Act about a child where there is a conflict between the child's safety, wellbeing and best interests, and the interests of an adult caring for the child, the conflict must be resolved in favour of the child's safety, wellbeing and best interests." (section 5A)

Typically this example pits children against parents and this attitude permeates not only the entire *Act* but also the way in which the Department operates. This is why the *Act* needs changing. This dualism is an artificial and unnatural ideological perspective that sees children's best interests as being divergent from those their parents. It cannot see that children's best interests are inexorably tied to their connection with their parents. This filial connection is natural and normal: a biological and social fact which should be supported by the state especially in times of family crisis. At present, **the general thrust and operation of the *Act* is contrary to the best interests of children simply because of this dualism.**

Following the 2004 CMC *Inquiry into the Abuse of Children in Foster Care*, the old Families Department was dissolved. Its welfare functions were effectively downgraded and hived off into the Department of Communities. In place of the Families Department, a Department of Child Safety was set up with an almost exclusively policing and forensic role aimed at seeking out harmed or at risk children and protecting them from further harm or risk of harm. There was no welfare rôle for the new Department, no rôle for it to help or support struggling or distressed families and their children. It had a purely policing function. Thus, while many parents had naïve hopes that the Department would help them if they called upon the Department for help, they were quickly disillusioned to find that instead their children were removed from them! Following the CMC's report, a number of changes were made to the *Child Protection Act* which reinforced this child protection function and made it fit in with a policing/ forensic role of the new Department of Child Safety. The CMC *Report* said: "the department should have no direct service delivery obligations with respect to primary prevention programs. The major focus of the DCS should be tertiary prevention directed towards children on protective orders". (page 137)

Yet, the CMC *Inquiry* was <u>NOT</u> about abuse of children by their parents but abuse by foster carers. It was prompted by a scandal which erupted after the Brisbane *Courier*

Mail did some good investigative journalism which uncovered what the CMC Report later described as abuse which was "both widespread and systemic". Unfortunately, the restructuring of the Families Department as recommended by the CMC produced a Department which was primarily forensic and policing in its operation: The Child Safety Department. And, given the secrecy of the Department's operations, many parents and the wider community quickly came to fear that oppressive and Gestapo-like rôle. An unfortunate by-product of that rôle has also been the massive unsustainable number of children on protection orders.

This emphasis on "child protection" is very American and now dated in that it shies way from welfare and puts the onus and responsibility of parenting squarely on parents. It sees a very minimal rôle for the state to be involved in family life. Essentially, if a family is seen to be failing, the state simply removes a child. This is the opposite of what occurs in many mainland European countries where the emphasis is not on "child protection" but on "the welfare of the child in the family".

As if to reinforce this forensic approach to the protection of children, from 2008 the *Child Protection Act* was subjected to review and then considerably modified for the 29 November 2010 version, still the current version. While the previous version at least paid some lip-service to notions of the Department WORKING WITH parents to ensure removed children's safe return (e.g. section 5(2)(f)(i) in the old pre-2010 *Act*), this newer version has whittled these notions away and is now simply a prescription for policing action against troubled families and their children. With the emphasis on proscription, penalties and regulation, any hint of welfare is gone. But, to give the **CMC** its due, the **2004 *Report* did say: "A commitment to working with parents is in the interest of the individual children, supports the family unit, and has the potential to reduce the overall level of notification and the need for intervention in the future." (page 155) This aspect of the *Report* has been ignored in the current *Act*.**

The result is that we now have an unsustainable number of children on protection orders and "in care". For this situation to change and for numbers of children on orders to come down appreciably, the *Act* must be changed and reworked to reflect a paradigm shift in focus from forensic policing of child protection to a focus on working WITH parents to improve the welfare of the child in the family. After all, it is an inescapable fact that both biologically and socially children need parents and their own families. The *Act* should reflect this and be the guiding basis for the Department to relate to children and their parents. **Persecuting parents and families for their inadequacies and removing children into "care" is NOT in the best interests of children. Children need parents and families.**

The 1997 HREOC *Bringing Them Home* "Stolen Generations" Report found that 30% of girls placed in foster care were sexually abused by their male and female foster carers (page 162). Yes! That is nearly one third! One third of parents do not sexually abuse their children.

The Department of Child Safety's 2006 annual *Performance Report to Parliament* at

page 30, Tables 16 and 17 showed that 6.34% of all distinct children in foster care were substantiated as having been abused by the approved foster carer who caused "serious harm". At page 31, Table 19 shows that, of those cases of substantiated "serious harm" caused by foster carers, some 18% involved sexual abuse. These figures are more than likely an understatement because of the Department's history of support for foster carers when faced by allegations from aggrieved parents (see the CMC's 2004 *Report* at page 95.) Current annual reports no longer provide figures on abuse by foster carers.

It is no wonder then that Gwenn Murray in her December 2003 *Audit Report on Foster Carers Subject to Child Protection Notification* said: "Despite an underlying expectation that once children and young people are removed from their parents they are safe from further harm or risk of harm, children and young people entering the alternative care system are vulnerable to a number of risks. One of these risks relates to the risk of further harm to them by the people entrusted to care for them." (page 18)

Clearly, foster care is risky for children. Thus, the current NSW Minister for Communities Pru Goward has said: "I think you have to assume these children are at a higher risk of being abused than other children because of their vulnerability. They don't have parents to advocate for them." (*Daily Telegraph*, Sydney, 09 June 2009, page 5)

Examples that tell us of the dire need for change to the *Child Protection Act*.

1. A single parent mother had a 12-year-old daughter who sneaked out of the bedroom window one Saturday night and met some friends in town. The Police caught them and returned the girls to their homes. Two weeks later, the 12-year-old did it again. She and her friends were again caught but Police did not return the girls to their homes. They called up the Department to intervene. The 12-year-old was removed into foster care. Mum was branded as inadequate. Mum was beside herself and didn't know what to do. She usually suffered from bad PMT and this happened at the wrong time. She drove out into the bush with a hose pipe and a bottle of wine and killed herself with carbon-monoxide poisoning. I had to organise her funeral and cremation because I am her father. Sadly, after six years in foster care during which time she ran away and lived on the streets as a homeless kid, the girl (my granddaughter) went to her mother's grave, took a massive overdose of Panadol and lay down to die with her Mum. Fortunately, she was found in time and is still alive. **Why was that Department so crass and unthinking with their intervention? Why did they not work with the mother? To date they still do not accept the gravity of the results of their ill-considered over-zealous removal of a child. "Fools rush in where angels fear to tread"**.

2. A mother who lives in the expensive part of town and whose husband is a quite high-up state public servant filled up her car at a petrol station. Then, rather than leave her 3-month-old baby in the car, she took the child with her to the console to pay. On return to the car she accidentally dropped the child. She comforted the baby but later, at home, she was worried. So, she took her baby to the GP. He treated the child and sent Mum and baby home. The baby was still being breastfed. However, under mandatory reporting guidelines he reported the case to the Child Safety Department. Next

morning, she was stunned to find two Child Safety Officers at her door who then removed the baby and took her to hospital in Brisbane. This can't happen to me! It's only the poor, unemployed and drug addicts who have this happen. Fortunately, being very well-off, they hired the most expensive legal firm in town. The lawyer went straight to the petrol station and obtained CCTV security footage which showed clearly that the baby was accidentally dropped. Later, in the Children's Court, the Department was forced to return the baby. But, **why must this ability to challenge the Department only be available to the well-off in our society? It his highly unlikely that a Legal Aid solicitor would do the same. And, in any case, even if the baby had been assaulted, why remove her? Surely, it would have been better to work with the parent?** (The expensive law firm's solicitor told me about this case.)

3. During school holidays, a 7-year-old girl was in a suburban park with her 15-year-old sister. There were many other children there. The older sister came home but the 7-year-old was enticed into a toilet and raped by a 13-year-old boy while other children watched on voyeuristically. (It was a full rape.) After mother reported the matter to Police, the Child Safety Department removed the raped 7-year-old into foster care because her mother had not been adequately caring for her. The fundamental result was that the 7-year-old was punished for being raped. **Why did not the Department work with the mother to improve her parenting skills?** (My daughter is friends with the raped girl who is now 15. The case was also reported in the local press - *Toowoomba Chronicle,* 23 April 2005.)

4. A mother of six children smacked her youngest outside a child care centre. Child care workers reported the incident. It was school holidays. When mother arrived home the Police and Child Safety Officers were there. Mother was arrested and handcuffed in front of her six children and taken away in a Police car. CSOs took the six children into foster care. Dad arrived home from work in the afternoon and neighbours told him what had happened. Two days later the oldest (a 12-year-old girl) attempted suicide. It took 18 months for the Department to return the children, during which time the family lost their rental accommodation and Dad lost his job. The whole family was devastated. They could not afford a high-powered lawyer. **Why did the Department not work with the parents to improve parenting skills?** (My daughter has been friends with the second daughter and the case was reported in the local newspaper - *Toowoomba Chronicle*, 07 June 2007.)

5. A single parent man did something foolish but his 7-year-old daughter was neither a victim nor a witness. The Department took her into foster care purely because she was deemed to be "at risk". No harm had occurred to her and she had no idea of what had happened. She was in foster care for two years with five different foster carers, some of them physically and emotionally abusive. He had to sell his house, downsize to a smaller, cheaper one in order to pay for the top lawyers in town. Eventually, after around $60,000 in legal fees and having to continually combat both a very obstructive Department and then battle Crown Law barristers in Court she was returned to him but not after she had been seriously psychologically damaged by the experience. Upon her return, the father discovered the degree to which she had been psychologically damaged by the removal (both the initial very traumatic removal and the effects of foster care) had to put pressure on the Department to provide counselling to help with the reunification process which they eventually agreed to through LifeLine. **Why did the**

Department make this child into damaged goods purely because they deemed her to be "at risk"? Surely, if a child is "at risk" this should be a wake-up call for the Department to work with the parent in order to eliminate the risk?

6. A woman convicted of the manslaughter of her baby daughter did several years in jail. Shortly after her release, she became pregnant again. However, fearful of CSO's removing her baby at birth (under section 21A of the *Act*), she fled from Queensland before the birth. In another state, she was supported by the Department there during the later stages of the confinement, at the birth and afterwards with her new baby. This was in the best interests of the child which should always be paramount. A punitive attitude by the Queensland Department is not in children's best interests. **Why should a birth mother have to flee from Queensland? Why did she not have confidence of support with her new baby?** [This mother's predicament was widely reported in the Brisbane and Melbourne press.]

None of these six examples are specifically related to the need for "early intervention". They are pitfalls that any parent, rich or poor, old or young, educated or uneducated, can fall into. The best interests of children are best served with their nurturing care in their own family by their own parents or the adults they are bonded to. To rip children away from their roots is not in their best interests. We all know the dysfunctionality which usually follows when that connection is severed. The "Stolen Generations" debacle is proof of this. The *Child Protection Act* needs reflect the lessons of the past, not perpetuate the harm. It has to ensure that wherever possible children's best interests are served and that these are paramount. Removal is not a panacea for the child's best interests. Removal from their parents almost invariably proves disastrous for children. The filial connection must be maintained. This is a humane and just imperative and the *Act* must do it, even in the case of the sixth example above where a mother had actually killed her previous child.

With the massive increase in the number of children taken into "care" on protection orders, changes needed to the present *Child Protection Act* must ensure that children are protected from the excesses of a Department which is all too often convinced that it has a monopoly on what constitutes the child's best interests. As C.S. Lewis said in his *Screw tape Letters*: "**Of all the tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies.**"

Areas of Change to the *Act* which are Needed

The Best Interests of the Child

A child is an immature human being who needs nurturing. Therefore, Section 5A which enshrines "the best interests of the child" principle needs to be modified to link children's best interests to also being intrinsically connected to her/his own nurturing family. It would follow then, that should the family be found not be adequately nurturing, the *Act* must specifically compel the Department to work with parents and family in order to improve parenting. Thus, section 5(2)(f)(i) of the old pre-2008 *Act* should be resurrected and strengthened: "if a child is removed from the child's family, the aim of authorised officers' working with the child and the child's family is to safely

return the child to the family if possible". The word "parent" should be incorporated into this principle, too, bearing in mind the definition of a "parent" given elsewhere in the *Act* (at section 11of the new post-2008 version). The newer version of the *Act* talks only about "supporting" the family. Instead, the *Act* needs to ensure that the Department works pro-actively with parents and families.

Likewise, section 5(2)(b) and (c) of the old *Act* should also be resurrected and strengthened: "families have the primary responsibility for the upbringing, protection and development of their children" and "the preferred way of ensuring a child's wellbeing is through the support of the child's family". Again, the word "parent" should also be incorporated in this principle.

The Chief Executive's Functions

These are covered in Section 7 of the current *Act*. The functions in relation to children, their parents and families are spelled out as: (b) "providing, or helping provide, preventative and support services to strengthen and support families and to reduce the incidence of harm to children" and (c) "providing, or helping provide, services to families to protect their children if a risk of harm has been identified". Any parent who has had contact with the Department would usually know that these statements are laughable. The *Act* needs to retain these two statements but strengthen them in a way which compels the Department to carry out these duties without merely paying lip service to them.

Definition of 'Harm'.

Section 9 of the current *Act* sets out to define 'harm'. Fair enough, but who decides whether 'harm' has been committed or whether 'risk of harm' is there? This is left to the subjective views of CSOs and Team Leaders and sometimes the secret SCAN Team meetings. The 2004 CMC *Report into Foster Care Abuse* tried to define "substantiation of harm" as "in the professional opinion of the officers involved there is reasonable cause to consider that the child has been harmed" (page 153) a definition which quite arrogantly assumes the infallability, veracity, objectivity and wisdom of a child safety officer (also page 76). It also assumes the Department has a monopoly of wisdom about what children's best interests are.

The *Act* needs to address this problem. At present the only way a parent can challenge the Department's assessment of 'harm' or 'risk of harm' is in the Courts, a luxury not usually possible to a large majority of parents who come under the Department's radar.

The same issue exists with a definition of a child in need of protection. And, moreover, there are cases as outlined in so many Commissions of Inquiry in the past where children have actually needed protection from the activities of the Department especially in terms of actions of foster carers but also from the psychological harm and systems abuse caused by the Department's policies and procedures.

A Safe Place

Section 21 is about "moving a child to a safe place". In several sections of the *Act*,

reference is made to "removing a child to a safe place" (e.g. Section 21). It is CSOs who decide that the child is not 'safe' at home and, of course, we cannot challenge their 'expert opinion'! The *Act* ignores the fact that a child may be extremely traumatised by removal to a "safe place" and this trauma is usually compounded by an ICARE interview, a medical examination and then refusal by the Department to let the child have contact with her/his parent.

Statistically, the rate at which foster carers abuse children they have care of is greater than the rate at which parents abuse heir children (see, for example, the 2006 Department's 2006 annual *Performance Report to Parliament*). So, even for children abused at home, being removed can be akin to jumping from the frying pan into the fire. The *Act* says nothing about this. There is in the *Act* an assumption that parents are bad, that CSOs are infallible and that foster care is benign. The *Act* needs to provide greater protection to children from the Department and its foster carers. Remember, the 2004 CMC *Inquiry* was not about parent abuse but foster care abuse. Likewise, the earlier 1999 Forde *Inquiry* was also about abuse of children in state care. **The Act needs to require of the Department that it respect the value of parents to their children and that this valuation take precedence over valuation of foster carers. Thus, foster care should always only be seen by the Department as a short term temporary arrangement and long term foster care as extremely rare.** The *Act* needs to reflect this. Likewise, the *Act* should require that Magistrates ensure this is put into practice.

Children's Court Magistrates

The Department needs to be respectful of children's family and parents as this is in the best interests of the child. It needs to work with parents and families. If it does not, Children's Court Magistrates need to be fearless in taking to task CSOs who do not work in the child's best interests. They must be discouraged from merely rubber stamping Departmental decisions. **The Act needs to enshrine the independence of Magistrates and encourage them to stand up for children's families as this is in the best interests of the child.**

Section 21A

This section of the *Act* which enables the Department to seize an infant the moment the umbilical cord is cut. It is reminiscent of something from the Third Reich. S**ection 21A should be expunged from the Act as it is an affront to natural justice and all that our supposedly humane society stands for.** It is also in conflict with spirit and purpose of principles outlined in the UN *Convention of the Rights of the Child*, especially at Articles 8 and 9. And, its implementation absolves the Department from working with the parent to ensure the child's safety and appropriate nurturing. "When in doubt, remove the child" is not a sound basis for ensuring a child's well-being.

Transparency

Sections 186 to 194 of the current *Act* are devoted to confidentiality. It is essential that confidentiality be maintained. The public often has a salacious hunger which must not be fed. However, **decisions made in Children's Courts in relation to child protection matters should be published and made available for the press to**

publish. The public has a right to know what is happening in child protection matters and a right to be critical of what is happening in general. This transparency need not identify children or their parents and families. By using pseudonyms and disguising place names the Family Court of Australia successfully publishes information on decisions of the Court without compromising the identities of those involved. This published information is also useful legally in establishing precedents through previous case histories and thus guiding Court decisions.

Not to have this transparency leaves the whole child protection process open to criticism of being a secretive and authoritarian Gestapo-like process with no checks on excesses.

SCAN Teams

Section 159 of the current *Act* deals with the Suspected Child Abuse and Neglect or 'SCAN' system. At present SCAN Team meetings operate like a secret Kangaroo Court and without the accuser's presence or knowledge. SCAN Teams are not accountable to anyone. This fundamental flaw is especially deleterious for children because decisions made at these meetings can have life-long effects, good or bad, on children's lives and yet there is no one present to defend or advocate for the children, a role that committed parents tend to take on naturally even if they have been remiss or have harmed a child. And, likewise, there is no one present to defend the parents.

The Department uses secret SCAN Team meetings to obtain endorsement for its intentions, such as whether or not to remove a child. The notion of so-called experts sitting secretly making decisions about children's lives without advocacy or any defence from parents and without any accountability is anathema to modern democracy. SCAN Team meetings are like a secret court where the accused are not present and cannot defend them and are not even told of the outcome of deliberations. The first a child or a parent knows about the outcome is a knock on the door from CSO's who have arrived to remove a child. This smacks of the secret deliberations of the Spanish Inquisition. They are inimical to the best interests of the child.

Children need to have advocacy and need parents to battle for them and for parents to defend themselves openly. The proper place for this is in the judicial system, namely the Children's Court. SCAN Team meetings only serve the interests of the Department, not those of the child and not those parents. **The Child Protection Act needs to remove SCAN Teams altogether and replace them with proper Court hearings**.

These are just some of the salient points in the *Child Protection Act* which need to change in order to implement a shift away from forensic "child protection" to "the welfare of the child in the family". This is the only realistic and humane way of reducing the disastrous number of children on protection orders as well as achieving a better outcome for children and the families they need.