Department of Justice and Attorney-General

Department of Justice and Attorney-General

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Queensland Government

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BACKGROUND

1. The Department of Justice and Attorney-General (DJAG) is the government agency responsible for the administration of justice in Queensland.

2. Detailed information about the department's role in relation to child protection, associated expenditure and its budget for 2012–13 was provided to the Child Protection Commission of Inquiry (the Commission) in a separate statement to the Commission (dated 30 November 2012, in response to Summons No. 2028098). In summary, these services include:

   (a) delivering youth justice services to young people in contact with the youth justice system;

   (b) providing administrative and registry support to Queensland courts across the State, including the Childrens Court and the Queensland Civil and Administrative Tribunal (QCAT);

   (c) managing the delivery of child protection conferences ordered by the Childrens Court under section 68(1)(e) of the *Child Protection Act 1999* (the Child Protection Act);

   (d) providing legal services and representation through Crown Law to the Department of Communities, Child Safety and Disability Services ('Child Safety Services') in child protection matters;

   (e) providing policy and operational advice across DJAG's portfolio agencies on matters affecting children and young people through the work of DJAG's Child Safety Director;

   (f) providing financial assistance and information and referral services, for children injured by an act or violence or by witnessing an act of violence through Victim Assist Queensland; and

   (g) supporting the work of the Coroner's Court to investigate 'deaths in care' (which includes the death of a child who lived away from their parents as a result of action under the Child Protection Act).

PURPOSE OF THIS SUBMISSION

3. This submission has been prepared by DJAG to respond to specific issues and questions relevant to DJAG as raised in the Commission's discussion paper (published in February 2013), with a particular focus on Chapter 10 – Courts and tribunals.

4. The submission represents the views of DJAG only. It does not present a whole-of-government position or the views of the judiciary or QCAT tribunal members, who are independent of government.

CHAPTER 10: KEY PRINCIPLES GUIDING DJAG'S RESPONSE

5. This section of the submission responds to the questions and issues raised in Chapter 10 of the Commission's discussion paper.

6. DJAG's views on reforms to the current approach to child protection court and tribunal proceedings are based on the following guiding principles:

    1. Once coercive powers need to be used by the State to protect a child, parents have the right to a fair hearing and to have their matter adjudicated by a court to determine whether the grounds for the application have been made out;

    2. Court and tribunal processes should be child-centred and provide appropriate avenues for children to be heard and for their views to be considered;

    3. Court and tribunal processes should be actively managed to avoid unnecessary delays, recognising the significant and negative impacts delayed decision making can have on children and the stability of their care;

    4. Court and tribunal processes should encourage and promote:

        (a) the early identification and resolution of issues through the use of supported and structured alternative dispute resolution (ADR) and case management processes;

        (b) the right of parents to participate and to be heard and to contest the making of orders or the review of the departmental decision; and

        (c) a collaborative approach built on expert advice to ensure that the court and tribunal has access to best available information and advice to inform their decisions;

    5. To protect their legal rights and interests, and promote an early resolution of the issues, the child's parents, the child and the State should have access to appropriate legal advice and representation at all stages of the court process.

7. When assessed against these principles, there are a number of aspects of the child protection system and justice response that could be improved. DJAG's ideas for reform are listed under the specific questions posed by the Commission.

Question 37: Should a judge-led case management process be established for child protection proceedings? If so, what should be the key features of such a regime?

8. DJAG supports active case management from the time a child is assessed and in need of protection and an application is filed with the court, through all stages of the court process and orders being made.

Performance of the Childrens Court

9. DJAG has no evidence of significant and unnecessary delays in the Childrens Court jurisdiction.

10. A good measure of how efficiently courts are operating is a court's clearance rate.[1] As set out in Table 1, the Childrens Court (child protection) clearance rate is 99.6 per cent, with 79 per cent of matters across Queensland finalised in less than six months, and 94 per cent finalised in less than 12 months.

11. Table 1 also reports on the performance of different models of Childrens Courts operating in Queensland and how they compare in relation to clearance rates. The specialist Childrens Court Magistrate works alone at the Brisbane Childrens Court and only hears youth justice, adoption and child protection matters. Magistrates in single magistrate courthouses work alone but, in addition to matters within the Childrens Court jurisdiction, hear all matters within the jurisdiction of the Magistrates Court. Circuit courts travel to remote and regional locations that do not have a stand alone court house and magistrates across Queensland are assigned to a circuit on roster. Where there is more than one magistrate allocated to a court or different magistrates circuiting to regional courthouses, a child protection application may be heard by more than one magistrate. However there is often a senior co-ordinating magistrate in an administrative role overseeing the allocation of work and ensuring the effectiveness and efficiency of judicial workload.

Table 1: Childrens Court, child protection (civil) jurisdiction performance measures, 2012–13[1]

Performance Measure	All courts	Brisbane Childrens Court	Single magistrate courthouses	Courthouses with two or more magistrates	Circuit courts
Clearance rate	99.6%	96.9%	116.9%	104.9%	104.7%
Applications finalised in less than 6 months	79%	73%	85%	77%	77%
Applications finalised in less than 12 months	94%	92%	96%	92%	92%

Source: Unpublished data, DJAG.

Notes:

1. All data is from the 2012–13 financial year as at 31 January 2013.

12. Delays are sometimes necessary and may occur for a variety of reasons. Sometimes it takes time to make the right decision and this outweighs the benefits of resolving matters quickly. For example, a magistrate may adjourn a matter to ensure that Child Safety Services has sufficiently explored ways to safely reunite the family before deciding to make a long term order to remove

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[1] The clearance rate, expressed as a percentage, compares the number of cases finalised with the number of cases initiated in a given year and is an efficiency indicator that measures how well the court uses its resources to manage its caseload. The internationally accepted target applied by courts is 100 per cent (the number of cases cleared = the number of cases filed).

the child from their parents. In some cases, there may be a need to delay decisions to give parents the best chance to prove they can meet the protective needs of their child, where this in the child's best interests.

Benefits of case management and opportunities to improve current processes

13. Magistrates can play an important role in managing court processes to avoid the potential for unnecessary delays and to support the early resolution of issues.

14. Benefits of judicial-led case management approaches include ensuring that relevant material is prepared and filed as early as possible, that separate legal representatives are appointed in timely way, and that issues in dispute are referred for discussion at a court-ordered conference with the objective of reaching agreement without the need for a contested hearing.

15. Commitment to case management in the legal process could be enshrined in legislation as per section 69ZN of the *Family Law Act 1975*, including the following principles:

    Principle 1 - The court is to consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child in determining the conduct of the proceedings.

    Principle 2 – The court is to actively direct, control and manage the conduct of the proceedings.

16. DJAG also supports the consistent use of directions orders for each individual matter to ensure court processes for a matter are kept on track and any delays are judicially noticed. Currently, directions orders are made in a matter as, and when, a magistrate considers appropriate. DJAG is of the view that this practice should be standardised across Queensland. The progress of each case should be actively monitored by the court registrar to address and overcome delays (for example, delays in setting down a court ordered conference, delays in the delivery of a social assessment report or delays in setting a matter down for trial because of court diary clashes). Significant delays should result in the matter being brought back to the court for review. Additional legislative powers may be required to allow registrars to take on this active case management role.

17. DJAG has been leading a project to remake the Childrens Court Rules. The draft Rules are aimed at improving practices in the Childrens Court by supporting the speedier resolution of cases and greater consistency in court processes and decision making. New rules proposed include: rules to support court ordered conferences in relation to the giving of notice of a conference and prescribed particulars for a report; rules on service of documents required to be served under the rules (such as affidavits and subpoenas); rules to ensure flexibility in proceedings, including to expressly allow magistrates to increase or shorten time limits for complying with requirements under the rules and for oral applications to be made; and rules governing appeals.

18. DJAG is considering the need to include additional rules providing for the court to make or issue directions in individual cases. Such rules could support and

promote a more active case management role for magistrates in future and any recommendations the Commission might make for improvements.

19. DJAG is also exploring the concept of a dedicated Childrens Court registrar to drive case management across the Childrens Court (for youth justice, adoption and child protection), assist in the general improvement of court practices and protocols, support the registrars across the State in case managing matters and deal with magistrate and other stakeholder issues and complaints. It is acknowledged that increased use and improvement in case management, including an active role by registrars would require additional resourcing.

Enabling the Chief Magistrate to make practice directions for the Childrens Court

20. The President of the Childrens Court of Queensland has power under section 8 of the *Childrens Court Act 1992* (Childrens Court Act) to issue practice directions with respect to the procedure of the Childrens Court to the extent that any matter is not provided for by the Childrens Court Rules. Section 10 of the Childrens Court Act provides that the President's functions are to ensure the orderly and expeditious exercise of the jurisdiction of the court when constituted by a Childrens Court judge.

21. The Chief Magistrate has responsibility for the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts (pursuant to section 12 of the *Magistrates Act 1991*), and has responsibility for issuing directions with respect to the practices and procedures of Magistrates Courts. Under current law, there is a gap as to who has responsibility for the orderly and expeditious exercise of the Childrens Court jurisdiction as constituted by magistrates.

22. To support the effective operation of any case management model, and to fill the legislative gap, it is recommended that the Childrens Court Act be amended to clarify that the Chief Magistrate has responsibility for the orderly and expeditious exercise of the Childrens Court as constituted by magistrates and for issuing practice directions with respect to the procedure of the Childrens Court, as constituted by magistrates, to the extent that any matter is not provided for by the Childrens Court Rules.

The docket system approach

23. The Commission's discussion paper canvasses the use of the docket system where one magistrate is formally allocated a matter and has responsibility for a matter from start to finish.

24. Child protection work is a small part of a magistrate's workload. To introduce a docket system for this jurisdiction alone would result in other parts of the magistrate's workload in civil, domestic violence and criminal jurisdictions to become unmanageable. The docket system would require the magistrate to lose the ability to work across several court rooms and court houses which is required to allow for the orderly and expeditious exercise of the court in all its jurisdictions. The magistrate would lose mobility as they would have to be available in a particular location to hear the assigned matter.

Adapting the United Kingdom (UK) Public Law Outline (PLO) for child protection proceedings in Queensland

25. As set out above DJAG favours a flexible and 'light touch' approach to case management, with the court having the discretion as to how to manage each individual case. DJAG notes that the Commission's discussion paper has identified the UK model as a possible model for Queensland. This model is prescriptive and, according to research detailed below, has not reduced delays in finalising matters for various reasons. DJAG cautions against applying this model in Queensland.

26. A 2012 study undertaken by Cafcass (Child and Family Court Advisory and Support Service) entitled *Three Weeks in November...three weeks on...Cafcass care application study 2012*, reported significant delays in court proceedings when using the PLO process. The report stated the major delay was in completing and filing children services assessment reports due to the local authority applicant being short staffed in the area of experienced social workers.

27. A National Society for the Prevention of Cruelty to Children (NSPCC) 2012 report also identified issues of delay as a serious issue in the UK care proceedings.[2] The report *NSPCC Roundtable: Speeding up decision-making in the Family Justice system* recognised that the length of proceedings has increased in recent years, with potentially negative consequences for children and families. The report highlights that care cases in the UK take an average of 55 weeks. This compares to Queensland where data for 2012 and January 2013 shows that the overwhelming majority of matters are dealt with in less than 26 weeks. Over this period, only 8.5 per cent of child protection applications pending were older than 12 months, with a further 30 per cent, pending for more than six months.

28. The NSPCC reported various reasons for delay in proceedings. In 90 per cent of cases, expert reports are commissioned with an average of four experts consulted per case. This is due to the reluctance of courts to rely solely on social care assessments, the quality and timeliness of which raise concern for the courts. This reliance on experts in care proceedings has been identified as a major cause of additional delay in the UK as the increase in case loads has led to a shortage of available experts.

29. Other factors contributing to delay in care proceedings in the UK include poor planning at the outset of proceedings, including: the infrequent joint planning between agencies and a lack of shared objectives between agencies; attempts to return the children home (this is important and highlights the fact that delay can be in a child's interest if it results in a child being returned home); a lack of parental compliance and chaotic lifestyles; and the joining of additional parties to proceeding which may not be identified until the proceedings have commenced.

[2] Accessible at: http://www.nspcc.org.uk/Inform/research/questions/family-justice-decisions-pdf_wdf88084.pdf?bcsi_scan_1074587e009e997d=0&bcsi_scan_filename=family-justice-decisions-pdf_wdf88084.pdf.

30. Further, caution should be exercised when considering incorporating part of the UK child protection system into Queensland as the UK system has some fundamental differences to the child protection system in Queensland, the lack of which would impact on the success of such a model in Queensland.

31. For example, in the UK, a guardian is appointed by the court upon the filing of care proceedings. The role of the guardian ad litem is to safeguard the interests of the child. The guardian then appoints a solicitor for the child. A further fundamental difference is that parties are automatically entitled to non-means and non-merits tested legal aid, once a local authority files care proceedings. Before proceedings are instituted, parties are entitled to legal aid but it is means and merits tested. Lawyers are also involved for the local authority at a very early stage in the process and prior to proceedings being instituted. These differences in the UK model impact on the effect of a case management system because all parties are usually represented by experienced and qualified childcare professionals and lawyers.

Disclosure in child protection matters

32. DJAG is aware that some legal stakeholders, including Legal Aid Queensland (LAQ) and the Queensland Law Society (QLS), have expressed support for the development of a disclosure regime for child protection matters that would direct Child Safety Services to disclose certain types of information and documents.

33. The disclosure process is central to ensuring a fair hearing, supports fact-finding and also can reduce the time and expense involved. Rule 211 of the *Uniform Civil Procedure Rules 1999* states that a party to a proceeding has a duty to disclose to each other party each document in its possession or under its control that is directly relevant to any allegation directly relevant to a matter in issue. This broad disclosure requirement in the UCPR does not apply to proceedings brought in the Childrens Court.

34. DJAG supports a broader disclosure model being adopted in the Childrens Court but considers that section 190 of the Child Protection Act operates as a barrier to disclosure by Child Safety Services other than in response to a subpoena.

35. To enable a more open disclosure process that is supported by appropriate rules, DJAG recommends that the Child Protection Act should be amended to provide a clear statutory power for Child Safety Services to provide information to other parties, subject to appropriate confidentiality requirements. This will put beyond doubt the power of Child Safety Services to disclose information and documents without the need for other parties to request this information by way of a subpoena. Appropriate rules can then be developed to support proper disclosure and provide further guidance concerning the types of documents and information that should be provided. DJAG notes that the *Childrens Act 1989* (UK) expressly provides for the development of rules that make provision "with respect to the documents and information to be furnished ....in connection with any relevant proceedings" (section 93), which could support a new disclosure regime.

Question 38: Should the number of dedicated specialist Childrens Court magistrates be increased? If so, where should they be located?

36. DJAG does not support the appointment of additional specialist Childrens Court magistrates.

37. In DJAG's view, this model would not achieve the best value for money or use of magistrate resources across Queensland. Retaining the current approach allows the Childrens Court jurisdiction to be exercised by all magistrates in all court locations, provides greater flexibility in terms of court scheduling, ensures the best use of available judicial officers' time, and promotes access to the courts.

38. As a proportion of all lodgements, child protection matters constitute only around 1.2 to 1.6 per cent of matters dealt with in the Magistrates Court.[3] In 2011–12, 461 originating child protection applications were lodged in the Brisbane Childrens Court, representing 12 per cent of child protection lodgements across the State.[4] The next busiest courts for child protection lodgements were: Beenleigh (406 lodgements), Cairns (313 lodgements), Ipswich (301 lodgements) and Southport (295 lodgements).

39. Whether the appointment of specialist magistrates even at these centres can be justified in terms of the total workload involved is arguable, particularly when considerations such as backfilling arrangements for magistrates who are on leave are taken into account.

40. To ensure that magistrates are carrying a sufficient caseload, it may be necessary to broaden the catchment area for child protection cases. As a consequence, families may be inconvenienced by being required to travel to these court locations where a specialist magistrate is sitting.

41. Many of the same benefits of a more specialised magistracy could be achieved through other means, including a stronger focus on professional development. At an individual case level, magistrates can be better supported in their decision making by improving the quality of advice available to magistrates through the use of high quality expert reports (as the Commission has proposed), ensuring departmental officers submit detailed and accurate affidavits outlining the protective needs of the child and why they are in need of protection, and the development of high quality and detailed case plans. These measures will ensure that decisions are informed by the best available information and evidence in all cases.

[3] The proportion of lodgements that are child protection lodgements has been calculated based on data reported in the Productivity Commission's *Report on Government Services 2012*, Tables 7A.1 and 7A.2.

[4] See Magistrates Court of Queensland, *Annual Report 2011–12*, Appendix 4 – Child protection applications.

Question 39: What sort of expert advice should the Childrens Court have access to, and in what kinds of decisions should the court be seeking advice?

42. DJAG agrees that expert advice provided by an independent body that conducts assessments and provides reports on children and their families at the request of the court could be beneficial to inform decision making in the Childrens Court.

43. The Childrens Court already has the power under section 68(1)(a) of the Child Protection Act to order that a social assessment report be prepared and filed in the court on the adjournment of proceedings for a child protection order. Responsibility for commissioning these reports currently rests with Child Safety Services or with the separate representative. The preparation of these reports is funded by Child Safety Services or, if commissioned by the separate representative, by LAQ.

44. Section 107 of the Child Protection Act also already allows the Childrens Court to appoint a person having 'a special knowledge or skill' to assist the Childrens Court either on the application of a party or by the Childrens Court acting on its own initiative.

45. Efficiencies could be gained from establishing a Queensland clinic similar to the Childrens Court clinic models outlined in the Commission's discussion paper to prepare independent reports to the court. Potential advantages of a Childrens Court clinic model include that it might reduce the time required for reports to be commissioned and prepared, and would allow magistrates to make child care and protection orders based on independent expert assessments of children and their families, funded from a dedicated central pool of funds.

46. The establishment of a Childrens Court clinic could be quite costly and would require a significant investment. To minimise the costs of this model, DJAG suggests the current funding provided to LAQ and Child Safety Services for expert reports be transferred to the Childrens Court clinic as a partial cost offset. Further, there should be legislative provision to limit the number of reports to be commissioned. This will safeguard against the UK experience where up to four expert reports are commissioned per application resulting in delays and conflict of expert opinion.

47. Due to the size of Queensland, DJAG supports a decentralised model to ensure that Queensland children in regional and remote areas have access to this service.

48. DJAG notes that the conduct of clinical assessments and the provision of clinical services falls outside the current functions and responsibilities of the Childrens Court and DJAG. In this regard, DJAG notes the recommendations of the Protecting Victoria's Vulnerable Children Inquiry and the approach taken by NSW to transfer responsibility for the clinics to their respective health departments. DJAG suggests that should the establishment of a Childrens Court clinic be recommended for Queensland, similar governance arrangements as recommended in Victoria and adopted in NSW should be considered.

Question 40: Should certain applications for child protection orders (such as those seeking guardianship or, at the very least, long-term guardianship until a child is 18) be elevated for consideration by a Childrens Court judge or Justice of the Supreme Court of Queensland?

49. In DJAG's view, long-term guardianship order applications should continue to be dealt by magistrates. The rationale for District Court judges or Supreme Court justices hearing such applications is due to "the seriousness and significance of long-term guardianship orders for children and their families" (QLS submission, cited at page 261 of the discussion paper). The Commission, in presenting this proposal, has pointed to the approach taken in the UK that allows child protection matters to be heard at three different court levels, as well as that in Australia for children's proceedings that allow matters to be transferred between the Federal Magistrates Court and the Family Court.

50. The Commission's discussion paper infers that UK child protection matters are not dealt with at the Magistrates Court level in the UK system. That is not correct. The reference to 'District Court judge' (on page 261 of the discussion paper) is also inaccurate.[5] In the UK, child protection matters are dealt with by District judges in the County Court. District judges in the County Court are the British equivalent of Queensland magistrates.

51. There is no basis on which to conclude that magistrates are not capable of making these orders in appropriate cases or, for that matter, that judges would be any better equipped to make these decisions. Long term guardianship orders are currently recorded in the Queensland Courts database, Queensland Wide Inter-linked Courts (QWIC), as a condition of a child protection order. In the 2010–11 and 2011-12 financial years alone, over 1600 of these orders were made by magistrates.

52. While the number of orders made each year does not provide any guide to the complexity of issues involved, they support the finding that magistrates are willing to make these orders and are highly experienced in dealing with these applications. Given the Commission's focus on strengthening case management for child protection matters, it is also desirable that orders made in relation to a particular child or children can be dealt with by the same court.

53. DJAG notes that magistrates sitting as the Childrens Court are also empowered to make adoption orders under the *Adoption Act 2009*. As is the case with long-term guardianship orders, adoption orders carry with them significant and long-term consequences, altering the legal relationship of a child to his or her birth parents, although these orders can generally only be made with the parents' consent.

54. Further, DJAG is of the view that it is important to retain and build on the current judicial expertise in family and children's matters. In addition to child protection applications, magistrates hear the vast majority of matters under the *Youth Justice Act 1992* and *Domestic and Family Violence Protection Act 2012,* and also make orders in relation to family law proceedings. These

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[5] Judicial officers who are now called 'District judges' were formerly referred to either as 'County Court Registrars' or as 'Stipendiary Magistrates'. The Senior District Judge is also known as the Chief Magistrate. These changes were brought about by the *Courts and Legal Services Act 1990* (UK) c 41 and *Access to Justice Act 1999* (UK) c 22.

proceedings also involve magistrates making orders that apply to parents and children. Therefore magistrates are well qualified to make serious decisions that impact on a child's parents and their legal powers in relation to them.

Question 41: What, if any, changes should be made to the family group meeting process to ensure that it is an effective mechanism for encouraging children, young people and families to participate in decision-making?

55. DJAG agrees with the need to ensure that the family group meeting (FGM) process operates in a way that makes it an effective mechanism for encouraging children, young people and families to participate in decision-making and in the development of and revisions to a child's case plan.

56. Under section 59 of the Child Protection Act, Child Safety Services is required to file a copy of the child's case plan and (where relevant) report about the last revision to the child's case plan in the court before the court can make a child protection order. Before making a child protection order, the court must be satisfied that there is a case plan for the child that is appropriate for meeting the child's assessed protection and care needs (Child Protection Act, section 59(b)).

57. Both the Australian Capital Territory (ACT) and New South Wales (NSW) require a child's case plan, or care plan, to be filed and for the Court to consider it before making particular types of orders (*Children and Young People Act 2008* (ACT) section 164(1)(b); *Children and Young Persons (Care and Protection) Act 1998* (NSW), sections 78 and 80).

58. DJAG is strongly supportive of the current requirement for the filing of the child's case plan (or revised case plan) being retained as a statutory requirement in Queensland and for the court retaining its role in reviewing the case plan to assess its appropriateness in meeting a child's needs. This approach provides an important level of accountability and transparency about the services Child Safety Services is to deliver to a child prior to an order being made without the need for parties to have recourse to a review body such as QCAT. DJAG would be concerned if this requirement was removed or the court's role minimised.

Question 42: What, if any, changes should be made to court ordered conferences to ensure that this is an effective mechanism for discussing possible settlement in child protection litigation?

59. The Child Protection Conferencing Unit within Queensland Court Services is currently responsible for scheduling and managing court ordered conferences (COCs). A conference, which is ordered by a magistrate after a child protection application is made, consists of the convenor, parents whose children have been removed into care, legal representatives, and Child Safety Services. The convenor's role is to assist parties to decide the matters in dispute or to assist parties trying to resolve the matter. There are no current guidelines concerning the stage at which a conference should be ordered.

60. There a number of significant challenges with the current conferencing arrangements. Travel restrictions in place across Government present challenges for servicing all of Queensland. There is also a lack of policy and procedure, difficulties with scheduling conferences and a lack of best practice intake information and procedures. There is also a concern that the conferencing approach may not reflect contemporary best practice in child protection conferencing.

61. The current practice has been under review by DJAG, which has identified conferencing practices in a number of jurisdictions and explored alternatives for delivering child protection conferences in Queensland.

62. As a result of this work, from 1 July 2013, all court ordered child protection conferencing will be transitioned to the Dispute Resolution Branch (DRB) within DJAG. DRB will provide a suitably qualified panel across the State and will develop conferencing guidelines in consultation with the Magistrates Courts Service and the Chief Magistrate to ensure the consistent application of best practices, as well as those considerations outlined in the Commission's discussion paper at page 269.

63. DJAG suggests the Commission should also explore the benefits of integrating the FGM and COC processes once an application has been initiated. This would streamline the process and allow issues to be discussed in the one forum, thereby reducing the time and expense for all those involved and promote collaboration and information sharing.

10.3 Issues raised about the jurisdiction and role of the Queensland Civil and Administrative Tribunal

64. DJAG supports the need to ensure that review applications are heard as expeditiously as possible. The QCAT registry regularly monitors finalisation timeframes for all matters before the tribunal. The average child protection matter is finalised in 23 weeks from receipt. Any application that has not been finalised within 13 weeks of receipt is identified and action taken to ensure the matters is promptly progressed.

65. Any urgent application (e.g. application to stay a decision) is considered by a tribunal member within two working days of receipt and appropriate proceedings are listed immediately.

66. Overall the level of complaint to QCAT is low with the number of complaints in the last two financial years representing only 0.7 per cent of applications.

Impact of transfer from Childrens Services Tribunal (CST) to QCAT

67. The transfer of the review function for child protection decisions from the CST to QCAT has seen a number of changes.

68. The CST was a registry of five staff members dealing with a very small number of applications. QCAT is a much larger organisation dealing with almost 30,000 matters per year. In the early months of QCAT, feedback from child protection stakeholders and parties indicated that accessing the registry was difficult. This is one possible reason for a 15 per cent drop in applications made to QCAT

compared to the last year of the CST, noting however that there are a range of factors influencing the number of applications to the tribunal. In response to this feedback, QCAT has increased communication with the sector. Applications have remained steady since that time.

Table 2: Number of review applications, Childrens Services Tribunal and QCAT, 2003–04 to 2012–13

Tribunal	Year	Number of applications
Childrens Services Tribunal	2003–04	109
	2004–05	142
	2005–06	149
	2006–07	172
	2007–08	231
	2008–09	224
Childrens Services Tribunal & QCAT[1]	2009–10	187
QCAT	2010–11	170
	2011–12	188
	2012–13[2]	115

Notes:

1. Combination of Children Services Tribunal for period 1 July 2009 to 30 November 2009 and QCAT for period 1 December 2009 to 30 June 2010.
2. Figures up to and including 26 February 2013.

69. There is a range of issues that may impact on the numbers of review applications to QCAT. They include but are not limited to:
    - the numbers of people who have a right of review receiving decision letters from Child Safety Services (with some evidence this is not occurring in all cases);
    - the current approach taken by CCYPCG to resolve issues raised by children and young people through community visitors, rather than bringing applications to QCAT;
    - the capacity for potential applicants to be assisted in making an application with support, particularly in rural and remote areas;
    - the knowledge of QCAT's role, particularly by children and young people in care;
    - the proactive work Foster Care Queensland is now doing in reality testing the efficacy of foster carers making a review application and focussing on supporting the carers to resolve the dispute with Child Safety Services beforehand;
    - Child Safety Services actively seeking to resolve decision disputes with potential applicants before a review application is lodged.

70. While the child protection review jurisdiction remains a very small part of QCAT (representing 0.6 per cent of all applications) there is still a strong focus on this jurisdiction given that it is a protective jurisdiction. All of the CST registry staff transitioned into the QCAT registry and many of the CST members transitioned to QCAT. Consequently there has been no diminishment in the expertise available to the tribunal in its membership or within the registry. For many years in CST there was no case management system to manage the applications with case managers needing to keep manual spreadsheets to track and record

applications. The transition of this jurisdiction to a larger tribunal has remedied this deficiency. QCAT is currently developing a childrens list specific fact sheet which will provide further information in relation to child protection review matters.

Limited number of reviewable decisions under the *Child Protection Act 1999*

71. In DJAG's view, the current range of reviewable decisions reflects those decisions that have the most effect on children and young people in care and on their families. The majority of review applications to the tribunal involve contact decisions of Child Safety Services, followed by placement decisions and removal of children from foster or kinship carers.

Question 43: What, if any, changes should be made to the compulsory conference process to ensure that it is an effective dispute resolution process in the Queensland Civil and Administrative Tribunal proceedings?

72. QCAT is satisfied that the current compulsory conference process is effective to assist in the resolution of child protection review matters. The aims of the compulsory conference are to:
    - identify and clarify the issues that the parties do not agree on;
    - find a solution to the review without proceeding to a formal hearing;
    - identify the questions to be decided at the hearing;
    - make orders and give directions to resolve the review; and
    - if the review is not settled, to make orders and give directions about how the case will proceed so it can be resolved.

73. QCAT is mindful of the power imbalance that exists between the parties in child protection reviews. It is partly because of this reason that a panel of two members sit at compulsory conferences and a panel of three members at full hearings. QCAT members conducting the compulsory conference take a very proactive role in ensuring the applicants are not disadvantaged by the process and the proceedings are run at the pace of the applicants. The compulsory conference process results in greater input from all parties, leading to improvement in the quality of agreements when they are reached. The process also results in an increased sense of ownership and understanding by the parties which results in increased compliance with agreements.

74. Compulsory conferences can go for two to three hours, with private sessions offering applicants the ability to express themselves without Child Safety Services representatives being present.

75. QCAT does not agree that with the statement at page 275 of the Commission's discussion paper that Child Safety Services attends tribunal hearings (such as the compulsory conference) with a range of departmental officers, including past and present child safety officers and team leaders, which intimidates the self represented applicant who is attending alone.

76. Generally, the current practice is that only the Child Safety Service Centre (CSSC) manager or a team leader attends the compulsory conference. The officers holding those positions have the power to make decisions and negotiate any agreement at the conference, such as funds used for transport or changing the decision in dispute. What has evolved through the compulsory conference process is a shift in the role of the court services unit representative. More and more, the court services unit representative attends to assist the tribunal as a model litigant and to guide the manager and give advice.

77. If the matter proceeds to a full hearing, then child safety officers who have left the relevant CSSC may be summonsed to appear to give evidence, if relevant to the review of the departmental decision in question.

78. The Commission's discussion paper flags Queensland Public Interest Law Clearing House (QPILCH) concern that failing to go to a full hearing means the value of a formal decision, which can have a normative effect on decision makers, is lost.

79. DJAG does not agree. The issues that are comprehensively explored at the compulsory conference relate specifically to that individual case and that specific CSSC. The benefit of having a member with child protection expertise on the panel is that there is knowledge of the system and its process in the tribunal. It is anticipated by QCAT that Child Safety Services' decision making, that is rigorously tested at the compulsory conference, will have an impact on the processes within that particular CSSC. As a number of review matters go to a second compulsory conference, Child Safety Services and the applicant agree to a range of actions that need to be undertaken by the next conference. This focus is critical to the parties working together as well as with their own individual actions to improve the decision making and their direct involvement in it.

80. In the QCAT compulsory conference process the following is evident:

    - Increased exchange of information among parties, often it is the first time the manager, as decision maker meets with the applicants and this leads more often than not to an agreement that the manager will directly continue communication with these applicants as ongoing case management of issues;
    - Greater input from all parties, leading to improvement in the quality of the agreements when they are reached;
    - Reinforcement of the roles of parents (or family members) by providing them with the opportunity to contribute to the solutions of the issues in dispute;
    - Increased sense of ownership and understanding by parents of the agreement if achieved;
    - Increased compliance with the agreement; and/or
    - Reduced conflict between the parents and Child Safety Services and increased ability to work together as a team.

81. Compulsory conference success rates reflect that individual matters may contain a number of issues in dispute, some of which may be resolved at the compulsory conference even if the dispute continues to a hearing. For the 2011-12 financial year QCAT conducted 106 compulsory conferences for child protection review matters. Thirty-seven matters were settled at this stage and the matter did not proceed. A further 36 matters were partially resolved and 33 matters were not resolved at this stage of proceedings.

82. QCAT surveys its clients and stakeholders periodically. The most recent survey was undertaken in the first half of 2012. While the survey results cannot be broken down to specific jurisdictions across QCAT overall client satisfaction with the QCAT process was high with 71 per cent of client respondents being satisfied with their overall experience with QCAT. Seventy-one per cent of respondents also stated that they were satisfied with the ease of access to QCAT and also the prompt response from QCAT.

Question 44: Should the Childrens Court be empowered to deal with review applications about placement and contact instead of the Queensland Civil and Administrative Tribunal, and without reference to the tribunal where there are ongoing proceedings in the Childrens Court to which the review decision relates?

83. DJAG is of the view giving the Childrens Court a discretionary power to deal with review applications about placement and contact, where there is a Childrens Court matter on foot, would improve efficiency and accessibility for participants by allowing matters to be deal with in the one forum.

84. Magistrates are well placed to decide contact and placement matters when a matter is before the Childrens Court and they have all material before them to make the decision. Magistrates also have jurisdiction to hear some family law matters, and so are familiar with making these types of decisions.

Section 10.4 – Issues still being considered by the Commission

- Is there adequate funding for and appropriately competent legal representation for all parties involved in child protection matters, including parents, children and departmental officers?

85. DJAG is concerned that many children, parents and Child Safety Services are unrepresented at some, or all stages of proceedings for child protection orders. There is a strong case for ensuring the child, their parents and departmental officers have access to legal advice and representation at all stages of the process including to: attend FGMs after an application has been filed in court; participate in COCs; and appear at mentions and hearings. The earlier involvement of legal representatives has potential to resolve issues at an early stage, avoiding the need for a contested hearing. It is acknowledged that the adoption of a new legal representation model would have funding implications that will need to be fully considered by the Commission in the context of other funding priorities.

Legal representation for children

86. Under Queensland law, children are recognised as a party in child protection proceedings. Children's participation in child protection proceedings and pre-court proceedings in Queensland is promoted principally through the appointment of separate representative under the Child Protection Act. In a much smaller number of cases, a child directly engages a lawyer to represent them. An order directing the appointment of separate representatives is currently at the discretion of the court and is not made in all cases.

87. Section 110 of the Child Protection Act only requires the court to consider making orders about the child's separate legal representation in circumstances where the application for the order is contested by the child's parents or the child opposes the application. As a consequence, orders directing the appointment of a separate representative can occur quite late in the process once it becomes clear that the matter must proceed to a contested hearing.

88. DJAG notes that a number of jurisdictions provide for all children to be legally represented, or represented if certain criteria are met. For example:

    - In NSW, the court may appoint a legal representative to act for the child if it appears that the child needs to be represented.[6] While the court's power is discretionary, in practice Legal Aid NSW appoints independent children's lawyers to act for children in all care and protection matters. This representation is funded by Legal Aid NSW and is not means or merits tested.[7]
    - In Victoria, a child who, in the opinion of the court, is considered mature enough to give instructions must be separately legally represented in child protection proceedings.[8] Under current Victoria Legal Aid (VLA) funding guidelines, a child aged 10 years or older is generally considered mature enough to give instructions and is eligible for a grant of aid funded by VLA, although children younger than 10 may also be provided financial assistance in certain circumstances.[9] The Victorian Government recently introduced legislation into Parliament to restrict the requirement for a child able to give instructions to be legally represented to children 10 years or older.[10] A separate representative acting in the best interests of the child may also be appointed in exceptional circumstances where the

[6] *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 99.

[7] Legal Aid NSW, 'Family Law Matters Policy 5.16.8 Care proceedings - legal aid for children and young people' <http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/5.-family-law-matters-when-legal-aid-is-available/5.16.-care-and-protection-matters#5.16.8 Care proceedings - legal aid for children and young people> accessed 13 March 2013.

[8] *Children, Youth and Families Act 2005* (Vic) ss 524(2) and 525(1).

[9] Victoria Legal Aid, 'Guideline 1 – Child involved in a case in the Family Division of the Children's Court', *Handbook for Lawyers*, <http://www.legalaid.vic.gov.au/handbook> accessed 13 March 2013. Assistance may be provided to a child under 10 where a judicial officer consider the child is mature enough to provide instructions and refers the matter to VLA, and VLA considers it appropriate to provide assistance for the child. This is not means tested.

[10] Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013 (Vic), pt 3, introduced in the Legislative Assembly on 5 February 2013 and the Legislative Council on 21 February 2013.

child is not mature enough to give instructions if it is in the child's best interests.[11]

- In England and Wales, a court is required to appoint a guardian *ad litem* (a social worker) unless satisfied it is not necessary to do so to protect the child's best interests.[12] The guardian must then appoint a lawyer for the child if the court has not already done so.[13] The court may appoint a separate solicitor to act on the direct instructions of the child as well as, or instead of, a guardian *ad litem* in some circumstances.
- In New Zealand, the court or court registrar must appoint a lawyer to act for the child in the proceedings and for any other purposes considered desirable if they are not already legally represented.[14] There is a separate legal representation fund to pay the costs of this representation.[15] Where there is a conflict between the child's views and information relevant to the welfare and best interests of the child and the conflict cannot be resolved, the lawyer can invite the court to also appoint a separate lawyer to act in respect of the welfare and best interests issues.[16]

89. Ideally, Queensland should adopt an approach that would provide for all children to be separately legally represented (either by direct instructions lawyers, or separate legal representatives) in the best interests of the child at an early stage of the proceedings. This is appropriate given that decisions made as a result of these proceedings have a direct impact on children's lives, and children may have views that differ from those of their parents, family and the State.

90. It is acknowledged that this may not be feasible given current LAQ funding levels and other funding priorities for criminal and other civil matters. Further, there may be other ways to build on existing approaches to ensure that the child's views and best interests are taken into account at key stages of the process; for example, by improving pre-proceeding ADR processes, such as FGMs and COCs.

Legal representation for parents

91. The interests of parents in child protection proceedings reflect the family's interest to live free from external interference. In a tertiary child protection context, parents' interests are often in conflict with the state's interest in taking actions it considers necessary to protect children.

92. The removal of children from their families represents one of the most serious intrusions into the rights of the family by the State. It is therefore important that there is a high level of external and independent scrutiny of actions proposed to be taken and that decisions made are based on proper evidence.

11 *Children, Youth and Families Act 2005* (Vic) s 524(4).
12 *Children Act 1989* (UK) c 41 s 41.
13 *Practice Direction 16A – Representation of Children* (updated April 2011). There are some exceptions to this.
14 *Children, Young Persons and Their Families Act 1989* (NZ) s 159(1).
15 See *Children, Young Persons and Their Families Act 1989* (NZ) s 162.
16 *Practice Note: Lawyer for the Child Code of Conduct* (Issued by the Principal Family Court Judge, Judge P F Boshier on 24 March 2011) [5.5].

93. One of the most significant barriers to ensuring parents' rights are protected is that many parents are unrepresented at some, or all stages of the child protection process. The lack of advice and available representation is a serious impediment to ensuring that vulnerable and typically disadvantaged parties are supported to contribute to decisions made about their children and, where appropriate, to enter into agreements with Child Safety Services about their care. Legal representation of parties is likely to be particularly important where other issues such as cognitive impairment, mental illness, drug and alcohol issues, domestic and family violence and housing instability are present.

94. A lack of representation can result in issues being identified too late to allow for effective early intervention and lead to protracted and costly legal proceedings.

95. While the child protection system should be focused on reaching an agreed outcome in the child's best interests, parents must also retain the right to contest an application for a child protection order and to a fair hearing before a court. Prospects of success aside, as one UK report has acknowledged, contesting a case can serve not only an instrumental, but also a therapeutic purpose "that parents might be helped by the feeling that they had been heard, and also for children to know later on in their lives that their parents had fought for them."[17]

96. Under current funding guidelines for grants of legal aid in Queensland, a merits test is applied to the funding available to parents for legal assistance for applications for custody or short or long term guardianship orders in circumstances where the application is contested. This means LAQ only funds a parent to contest such an application if LAQ assesses the parent as having sufficient prospects to successfully contest the Child Safety Services application for an order (including by obtaining a less intrusive order) if legally represented.[18] This approach should be reviewed to allow a greater number of parents to be eligible for legal aid so they have an opportunity to be heard in court, even though their prospects of success may be low.

97. It is acknowledged that if this approach was implemented, LAQ's current funding priorities for legal representation would need to be adjusted and such a proposal could negatively impact on levels of LAQ funding provided for criminal and other civil matters.

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[17] Julia Pearce, Judith Masson and Kay Bader (2011), *Just Following Instructions? The Representation of Children in Care Proceedings*, Report of a Research Study funded by the ESRC, (School of Law, University of Bristol), p. 50.

[18] The LAQ Child Protection Eligibility Tests and Guidelines provide that applications in this category are subject to the following eligibility test: (1) The Department is seeking either a custody or short or long-term guardianship order; and (2) it is more likely than not that the applicant will obtain a less intrusive order (or no order will be made) should the applicant be legally represented at the hearing; and (3) There is a substantial difference between the order being sought by the Department and the less intrusive order the parent is likely to obtain: Reproduced in Legal Aid Queensland, Submission to the Queensland Child Protection Commission of Inquiry, 26 October 2012, p. 7.

Legal representation for Child Safety Services

98. Currently, Child Safety Services has a court services unit and employs court coordinators located in each CSSC. Child Safety Services reports that one in four of the court coordinators currently are legally qualified. The responsibilities of these officers include representing the Director-General (as the chief executive) in Childrens Court proceedings and coordinating departmental representation, as well as undertaking and assisting departmental officers to, conduct interviews and assessments, and prepare submissions and supporting material, such as the drafting of affidavits. However, many of the tasks that a lawyer would ordinarily perform, such as the drafting of affidavits, are left to individual child safety officers.

99. Crown Law represents the State at final hearings on a fee for service arrangment but, due to Child Safety Service's resource constraints, Crown Law is not instructed to represent Child Safety Services at FGMs or COCs. This means that Child Safety staff are often unrepresented at FGMs and COCs.

100. During the 2011–12 financial year, Crown Law received instructions from Child Safety Services in approximately 246 child protection related matters including representation in interim custody hearings, contested hearings and appeals as well as intervening in the federal jurisdiction. Thirteen of these matters were appeals. Over this same period, Crown Law received instructions in one child death coronial inquest.

101. The fact that Child Safety Services is not legally represented at all stages once an application has been initiated, including at FGMs and COCs, compromises its ability to act as a model litigant. Cabinet issued Model Litigant Principles direct that the State must ensure its representatives participate fully and effectively in alternative dispute resolution and have authority to settle a matter, so as to facilitate the appropriate and timely resolution of a dispute. The State's ability to resolve child protection matters, such as by securing parents' consent to the making of a child protection order, is supported by having access to appropriate legal support and representation.

102. DJAG supports a legal representation model that would allow Child Safety Services to be represented at all stages of the process once it becomes clear that an application for a child protection order is required. The approach taken should also support, as the Commission has suggested, a better separation between the role of Child Safety Services in helping families and in applying for coercive orders. It should also include a focus on measures to ensure that relevant material and reports are prepared and filed at an early stage of the proceedings and to improve the quality of evidentiary material presented to the court, which will allow matters to be finalised more quickly in the best interests of the child.

103. DJAG notes that the model being considered by the Commission is for an independent entity to take on this role. The establishment of a new body staffed principally by lawyers could be quite costly and would require a significant investment.

- Is reform needed to improve the involvement of recognised entities in providing cultural advice to the Childrens Court and QCAT?

The role of recognised entities in the Childrens Court and how the advisory role can be improved

104. DJAG does not have specific evidence of the extent of the involvement of recognised entities (REs) in the Childrens Court and the value they provide to the court in relation to providing cultural advice. Anecdotally, REs are active in some courts, less active in others; and do not provide any advice in a few courts. REs provide information to the courts in several ways: in person, by letter or on a template form or through an affidavit of Child Safety Services. It would be of benefit if the Commission could further investigate this issue with the Childrens Court magistates and determine how and when the REs are providing a cultural role to the court and if it is assisting the court in a meaningful way.

105. DJAG is of the view the advisory role of the REs would be improved if their role was clarified and training provided on their role in court (for example, on general court processes and how to present information to the court to best assist the court).

106. DJAG believes that the Community Justice Group (CJG) model, as administered by DJAG, could be useful for the Commission to consider when reviewing potential improvements that might be made to the current court advisory role undertaken by the REs.

107. Courts Innovation Programs (CIP), a business group in DJAG, administers and funds 56 CJGs throughout the State. The majority of CJGs (75%) are located in the north or far north of Queensland. Members of CJGs are volunteers and generally are Elders and respected persons in communities who also engage with a range of other community activities and organisations.

108. CJGs are made up of both statutory and non-statutory groups located from Brisbane to the Torres Strait. Statutory groups relate to 19 CJGs in discrete Indigenous communities whose powers and functions are prescribed for in the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, while the *Liquor Act 1992* prescribes the role of 37 statutory CJGs in relation to alcohol restrictions. Non-statutory CJGs are appointed directly from the community usually through an auspice body with their operations managed through local governance arrangements.

109. CJGs also have powers under the *Penalties and Sentences Act 1992*, *Bail Act 1980* and the *Youth Justices Act 1992*. Generally the legislation enables CJGs to provide submissions to the court around sentencing and bail conditions.

110. DJAG funds CJGs to support to victims and offenders through all stages of the criminal justice system; and the preparation of court submissions (bail and sentence). .In addition to these core services, a CJG can nominate optional services that they will deliver, for example facilitating programs for victims or offenders; supervise community service orders; or visits to correctional centres.

111. A number of CJGs are involved in the child protection system (in particular, groups operating in Coen, Wujal Wujal and Pormpuraaw) and provide

assistance. Individual members of the CJGs also have involvement with the child protection system in other capacities, such as acting as foster parents and kinship carers, assisting with the operation of safe houses and other related activities.

112. The CJG program is estimated to support over 5,000 Indigenous offenders and 3,000 victims of crime each year in Magistrates Courts throughout the State. In 2011–12, CJGs made 3,525 submissions to the Magistrates Courts on bail and sentencing matters. CJGs also attended court on 1,334 days during this period. Current figures for 2012-13 indicate an upward trend for both victim and offender support.

113. The Commission has identified as one of the barriers to addressing over-representation as being "the fragmented nature of Aboriginal and Torres Strait Islander child protection services and the limited role of these services (such as REs) in decision-making".[19] It has also highlighted a number of key concerns relating to the role of REs, including that: they have been limited to participation and consultation roles in decision making; lack independence from Child Safety Services; are not always invited to give advice before decisions are made, or not given enough notice to attend relevant meetings; and have insufficient skills and training to cope with the complexity of their role, which has been compounded by a lack of clear and consistent processes and procedures for interacting with, and providing advice to Child Safety Services and the courts.[20]

114. From DJAG's perspective, the current CJGs program highlights how with limited funding, real change can be achieved in outcomes for Aboriginal and Torres Strait Islander people and their interactions with the justice system. There are common aspects of the CJGs role to that of the REs, including in their work to provide advice to courts and supporting Aboriginal and Torres Strait Islander people (in the case of the CJGs, victims and offenders) to link into relevant services. DJAG has done significant work with the CJGs to support them in their role.

115. There is an opportunity to build on the success of the CJG model as part of the broader refocus of the role of REs, as well as strategies to better link families in with support services. For example, in some locations, CJGs might perform a court advisory role in consultation with the REs or relevant service providers. This would need to be explored in consultation with Child Safety Services and existing services, and resourcing implications fully considered.

The role of recognised entities in QCAT and how the advisory role can be improved

116. Few REs are involved in QCAT's processes. Where Child Safety Services seeks the approval of the RE for a decision Child Safety Services has made about an Aboriginal or Torres Strait Islander child, evidence of that approval is then submitted by Child Safety Services to QCAT.

117. QCAT has advised that is not aware of a RE giving formal evidence in a full hearing; however there have been cases where the view of the Recognised Entity has been part of discussions in the compulsory conference. Significant

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19 Ibid, section 7.2.2.
20 Ibid, pp. 176–77.

weight is given to the view of the Recognised Entity while balancing the primary focus which is the safety, welfare and best interests of the subject children.

118. QCAT does not use REs as advisers to QCAT. QCAT has Indigenous members who sit on Indigenous-related matters and who bring the cultural focus to tribunal proceedings. It has been the experience of some tribunal members that the limited number of REs currently in the system struggle to provide their primary role to Child Safety Services given the significant numbers of Aboriginal and Torres Strait Islander children entering care.

119. QCAT proposes a new role for REs. If an Indigenous QCAT member is not available to sit on the Tribunal, such as in a regional area, an RE could give evidence at the hearing stage as a witness, rather than act as an advisor to the court. This role means the RE does not require specific knowledge on tribunal proceedings and can focus on informing the tribunal on cultural considerations. As there are only a relatively small number of REs across the State, it is suggested that the tribunal could also call Elders and respected persons to provide evidence on cultural considerations, in addition to REs.

CHAPTER 3: REDUCING DEMAND ON THE TERTIARY SYSTEM

Introduction

120. Chapter 3 of the Commission's paper examines increasing demands on the tertiary child protection system and ways to reduce those demands, including by improving access to, and the availability of, secondary prevention services and reviewing the referral and intake processes.

121. DJAG, as the government agency responsible for youth justice, is of the view that secondary services need to be improved to better respond to the needs of youth at risk of entering either or both the child protection system and the youth justice system.

122. As at 30 June 2012, just under three in four children and young people in the youth justice system (72.2%) were 'known' to the child protection system,[21] up from 63 per cent in 2010[22] and 69 per cent in 2011.[23]

123. While these young people in the youth justice system are not necessarily subject to or have previously been subject to child protection orders, their offending behaviour is often symptomatic of their background and the complex range of risk factors. These young people are generally over the age of 10 and appear to be considered by child protection practitioners to have comparatively better strategies than younger children to manage their own protection. Consequently, the child protection system often does not prioritise adolescent children.

[21] DJAG, unpublished data. For the purpose of this measure a child is 'known' to the child protection system if they have been subject to a protective advice (prior to 2005-06), child concern report, notification or substantiation at any time. 'In' the youth justice system refers to young people subject to supervised youth justice orders.

[22] Department of Communities (Child Safety Services), *2009–10 Child Protection Partnerships Report*, p. 42.

[23] Department of Communities, Child Safety and Disability Services, *Child Protection Partnerships Report 2010–11*, p. 17.

124. There is a discernable gap in child protection responses to this particular cohort of young people who frequently fall outside the scope of the frameworks and screening tools used by child safety officers. These young people are generally not being provided with primary or secondary support services and this increases their risk of coming into contact with the youth justice system.

125. Greater flexibility in the delivery of services targeting adolescent risk factors and improved cross-sector coordination as opposed to the intervention targeting a single element of the young person's life is required to respond to youth at risk. Recognition that youth at risk represent a continuum of needs and interaction with Child Safety, health systems, education systems and Youth Justice Services lends support to the notion a collective response is required to assist a young person develop a pathway to productive adulthood.

126. A promising approach which requires further exploration is that of collective impact initiatives. Collective impact initiatives have five conditions required to produce true realignment: a common agenda, shared measurement systems, mutually reinforcing activities, continuous communication and support organisations. The common agenda would be to provide integrated support for young people and prevent their entry into the child protection and youth justice system. Stakeholders, which may range from youth justice services, child safety officers, police, education and health officials as well as members of the community and private sector at the local level then engage in the action which is more likely to achieve that common agenda. The coordination of the differentiated activities achieves the collective action required. In addition, the creation of a mechanism to create and manage the collective impact through ongoing facilitation, technology and communications support, data collection and reporting is an essential feature of this model.[24]

127. This approach is being applied in the United States with some success.[25]

128. Social Impact Bonds trials in the United Kingdom which focus on placed based responses and payment for outcomes are also demonstrating early but promising results.[26]

Question 4: What mechanisms or tools should be used to assist professionals in deciding when to report concerns about children? Should there be uniform criteria and key concepts?

129. DJAG is of the view there must be increased consideration of the child or young person's criminal history or interaction with police (where cautions have been issued for example but not recorded in the criminal history) to capture children who are at risk generally.

24 See John Kania and Mark Kamer (2011), 'Collective Impact', *Stanford Social Innovation Review*, pp. 36–41.

25 Ibid; and FSG Social Impact Consultants (2012), 'Collective Impact: Session for Colorado 2019' (Paper presented at Colorado 2019 Summit, Glendale, 19 October 2012) accessible at <http://www.cclponline.org/postfiles/Kramer_presentation_on_Collective_Impact_.pdf?bcsi_scan_a1c99feec31f2dec=0&bcsi_scan_filename=Kramer_presentation_on_Collective_Impact_.pdf>.

26 See Emma Disley et al (2011), *Lessons Learned from the Planning and Early Implementation of the Social Impact Bond at HMP Peterborough*.

130. DJAG further recommends that consideration be given to ensuring that any tools used for screening processes by professionals, and by Child Safety Services sufficiently take into account issues of youth homelessness and relating to adolescents at risk. The Youth Protocol outlines an agreement between Centrelink and Child Safety Services in relation to the responsibilities for unsupported young people (15 years and older) who are homeless or at risk. These young people are able to receive financial assistance through Centrelink to live either independently or in supported accommodation. There is however, a substantial cohort of homeless or at risk young people aged 14 years and younger who are not able to access the same financial assistance, are not able to access supported accommodation and who are frequently not found to meet the threshold for Child Safety Services intervention. These young people are at significant risk of entering the youth justice system.

CHAPTER 4: INVESTIGATING AND ASSESSING CHILD PROTECTION REPORTS

Question 5: What role should SCAN play in a reformed child protection system?

131. DJAG (Youth Justice Services) currently has very limited involvement in the SCAN process. Youth Justice Services is not a core member of SCAN, and is invited to attend SCAN meetings only in the rare circumstance that a young person who is referred to SCAN is subject to dual interventions. Youth Justice Services' role is to provide information in relation to the case plan and interventions youth justice are providing to the young person and their parent/s or carer.

132. Youth Justice Services bring a depth of experience in assessing criminogenic risk factors and delivering targeted adolescent focussed interventions. These services could contribute to interagency forums, particularly where responses to adolescents with complex behavioural issues are being considered.

CHAPTER 5: WORKING WITH CHILDREN IN CARE

Areas for reform

133. Improving responses to children in care has significant potential to achieve better outcomes for children and young people and to reduce their potential contact with the youth justice and adult criminal justice system. DJAG suggests the following reforms:

    (a) providing training for staff managing children in out of home care, on criminogenic risk factors and delivery of existing successful programs such as Aggression Replacement Therapy (ART) and Changing Habits and Reaching Targets (CHART) and for service providers in behaviour management strategies;

    (b) reducing the potential for the behaviour of children in care to be criminalised by assigning police liaison officers to child safety residential

services and after hours psychologists on-call to assist in resolving placement based conflict;

(c) improving the response to adolescents by training child safety officers in working with adolescents and exploring the potential development of a child safety specialist adolescent response team;

(d) improving the management of children and young people on dual orders by enhancing current practice and exploring the creation of dedicated case worker positions to manage children on dual orders;

(e) increasing the focus on therapeutic interventions by exploring the option of locating child safety senior practitioners within both youth detention centres and CSSC and ensuring that children on dual orders exiting detention are provided with child safety therapeutic interventions.

(a) providing training for staff managing children in out of home care

134. DJAG supports the emphasis in the Commission's discussion paper on the provision of therapeutic responses for children in care and the development of a therapeutic framework to better support children in out of home care. In this context, there may be opportunities to prevent offending behaviour through staff training on the criminogenic risk factors for children in care as well as in the delivery of targeted, well established and successful programs such as ART and CHART which provide a young person with the skills to solve problems, manage their thoughts and feelings and avoid re-offending.

(b) reducing the potential for the behaviour of children in care to be criminalised

135. DJAG is concerned about the criminalisation of children in care. For example, DJAG is aware that a number of young people in residential care are charged with offences that are placement related (damage to property, assaulting staff), with the consequence that these young people enter the youth justice system and potentially receive a supervised order or are remanded in custody until a suitable placement is sourced. While there may be circumstances where this course of action is required, there continue to be cases where the only criminal offences of a young person relate to their care environment. The existence of these scenarios suggests alternative courses of action may be appropriate in some circumstances. To avoid this outcome, DJAG recommends that consideration be given to residential care service providers being professionally trained in behaviour management strategies and the de-escalation of violent behaviours to avoid the need to call police and young people being charged with criminal offices. ART training may also be of benefit to service providers.

136. Other measures which may assist in de-escalating conflict situations in residential care facilities, include the allocation of a liaison police officer for each residential service and the provision of after hours on-call psychologists who can be deployed to respond to crisis situations. Liaison police officers would be regular visitors to the residential facility who are able to establish positive relationships with the young people. When crisis situations develop, these officers, as opposed to general duties officers, could be deployed in the first instance to de-escalate the situation and limit the potential for conflict resulting in an offence.

(c) improving the response to adolescents

137. Feedback from DJAG Youth Justice Service Centres suggests that due to the high priority placed on meeting the protective needs of younger children, Child Safety practitioners at times have limited expertise with regard to the management of adolescents. As a result, Youth Justice workers assume responsibility for assisting young people on dual orders with tasks that would generally be undertaken by Child Safety Services as the young person's guardian.

138. DJAG suggests that the training of child safety officers in working with adolescents and the development of a Child Safety specialist adolescent response team would be beneficial. Child safety officers could also be trained in ART and assist in the co-delivery of CHART modules with young people on dual orders.

(d) improving the management of children and young people on dual orders

139. In 2011-12, 194 children subject to a finalised child protection order for more than 12 months, were admitted to a supervised youth justice order at some time during the year. This represents 5 per cent of all children aged 10-17 years subject to a child protection order of more than 12 months. The management of children on these dual orders varies across the State. A youth justice service may be liaising with multiple CSSC within their catchment area and effective collaboration is often dependent on the existence of positive local relationships and protocols.

140. Youth justice service centres that effectively manage young people on dual orders have positive working relationships with the CSSC. This occurs through individual communication plans with workers, joint understanding of what is in the best interests of the child, breaking down of barriers and clear delineation of roles/tasks in intervention planning.

141. The level of involvement and contact by child safety officers in youth justice meetings for a young person subject to dual interventions and progress reviews varies. There can also be delays in obtaining information from Child Safety Services, which can hinder the capacity of DJAG Youth Justice Services to complete a holistic assessment and coordinated intervention plan, and also delay the preparation of pre-sentence reports.

142. A dedicated youth justice or child safety worker who was tasked with the management of all children and young people on dual orders may be an option that could assist in maximising the young person's opportunity to break the cycle of offending. Currently, only one CSSC has such a caseworker who manages all children subject to dual orders in that region.

(e) increasing the focus on therapeutic interventions

143. Therapeutic and behavioural support services such as the Evolve Therapeutic Service (provided by Queensland Health and Disability Services) are provided to children on dual orders. Because these interventions rely on community care connections, they are generally suspended when the young person enters detention. Therapeutic services should be extended to children in detention and children who are not subject to child protection orders. This will help

maintain a connection to the community because these children are generally at risk when they transition from detention back into the community.

144. Currently a multidisciplinary casework team approach operates in youth detention centres. In the interests of rehabilitation and successful transition of young people out of detention, and particularly for those children who are also subject to child protection orders, it would also be valuable to enhance the casework teams' partnerships with Child Safety Services and with the secondary service providers from the young person's local community. One way to improve this would be to develop consistent casework practices around therapeutic intervention and standard referrals after the child exits detention.

CHAPTER 6: YOUNG PEOPLE LEAVING CARE

Question 18: To what extent should young people continue to be provided with support on leaving the care system?

145. One of the support needs for young people leaving the care system is support in relation to their legal rights. In many cases, this support will be required beyond the age of 18 years.

146. For example, one area where young people could be better assisted when leaving care is to make a financial assistance application under the *Victims of Crime Assistance Act 2009* (VOCAA). This scheme is administered by Victim Assist Queensland (VAQ) within DJAG.

147. Under VOCAA, children injured due to an act of violence can apply for assistance up the age of 21. An act of violence could include any familial violence committed against the child. VOCAA also enables a young person who has been granted assistance to apply for an amendment to their grant of assistance before the young person turns 24.

148. While financial assistance does not cover general living expenses, it can cover ongoing counselling and medical needs as well as other expenses, where exceptional circumstances exist, that can significantly help the victim to recover from an act of violence. For example, in relation to a young person leaving care, they could be eligible for financial assistance for training or tutoring expenses where the young person has been unable to complete study due to the violence committed against them during their childhood.

149. Based on data from VAQ's case management system in Table 3, the majority of applications relating to young people are made between the ages of 18 and 25, with a smaller number made prior to young people turning 18.

Table 3: Applications by young people 25 years and under, 1 December 2009 to 27 February 2012

Age	Number of applications
< 10	249
10-14	227
15-17	218
18-25	1125
Total	**1819**

Source: Unpublished data, DJAG.

150. VAQ recently conducted a youth engagement project that involved consultation with the youth services sector and explored strategies to ensure that child victims of crime under the age of 18 are made aware of the financial assistance available to them through VAQ. Consultation with the sector confirmed that young people leaving care at 18 continue to need assistance in navigating the legal system, including their right to make a financial assistance application. Consultation with the sector also identified the following issues specific to this cohort:

- information products promoting the scheme need to specifically target young people; and
- young people who have been victims of an act of violence will have complex needs and may not necessarily identify as a victim of crime.

151. VAQ and Child Safety Services have worked together to develop practice guidelines for child safety officers and staff that are now included in the *Child Safety Practice Manual*.[27] These guidelines outline the process for advising parents, children, staff members and approved carers about assistance available under VOCAA for eligible victims.

152. DJAG supports the Commission giving further consideration to opportunities for government and non-government organisations to better assist and support children in care and leaving care to access services and support, including financial assistance under VOCAA.

CHAPTER 9: OVERSIGHT AND COMPLAINT MECHANISMS

Question 34: Are the external oversight mechanisms – community visitors, the Commission for Children and Young People and Child Guardian (CCYPCG), the child death review process and the Ombudsman – operating effectively? If not, what changes would be appropriate?

153. DJAG supports the need for independent and robust external oversight of the Queensland child protection system for the purposes of proper public accountability and the effective ongoing operation of the system. A high degree of oversight and close scrutiny of decisions is particularly important for child protection given the vulnerability of children and the power imbalance that exists between the State and parents who are often from backgrounds of extreme disadvantage.

154. There is some interplay between the roles of the CCYPCG, the Queensland Ombudsman, which investigates complaints about Queensland Government departments, including Child Safety Services and the State Coroner, who

[27] Department of Communities, Child Safety and Disability Services (Child Safety Services), 'Victims of Crime and the Role of Victims Assist Queensland', *Child Safety Practice Manual*, Section 10.20 < http://www.communities.qld.gov.au/childsafety/child-safety-practice-manual/chapters/10-general/10-20-victims-of-crime-and-the-role-of-victim-assist-queensland>.

investigates reportable deaths. DJAG is of the view the current system works well as described below.

Role of the State coronial system

155. The death of a child "in care" is reportable to a coroner under section 8(3)(f) of the *Coroners Act 2003* (Coroners Act). In practice, this captures any death of a child who at the time of their death was the subject of a custody or guardianship order, assessment care agreement or child protection order dealing with their custody or long-term guardianship (Coroners Act, section 9(3)(d)).

156. The coroner is required, to the extent possible, to make findings about the child's identity, when, where and how they died and the medical cause of their death.

157. If the circumstances of the child's death raise issues about their care, the coroner must hold an inquest into the death (Coroners Act, section 27(1)(a)(ii)). The coroner may also decide to hold an inquest into the death of a child in care if satisfied it is in the public interest to do so (Coroners Act, section 28). The coroner can only make preventative recommendations at inquest.

158. Each year, only a very small number of deaths of a child "in care" are reported to coroners. In 2011-12, seven such deaths were reported. Less than four per cent of all deaths reported to coroners each year proceed to inquest. Of these inquest matters, only a very small number relate to "child protection" deaths. In 2011-12, two inquests were finalised in relation to children known to the child protection system.

159. The coroner routinely releases coronial investigation material (police report of death to coroner, autopsy certificate, autopsy and toxicology reports, and findings) to Child Safety Services and the Child Death Case Review Committee to inform both tiers of the current child death review. In turn the coroner routinely receives de-identified reports generated by both Child Safety Services' Child Death Case Review and the Child Death Case Review Committee. These reports are generally quite comprehensive, produced within a timely fashion and are helpful in informing the coroner's consideration about whether there are issues warranting further investigation or response from Child Safety Services.

160. Coronial investigations and inquests benefit significantly from the child death review process as it uses specialist child protection expertise not otherwise readily available to coroners to identify child safety service shortcomings and propose recommendations to address those shortcomings. This assists coroners greatly in narrowing the investigation issues, progressing the coronial investigation in a timely fashion and informing consideration of reasonable, workable coronial recommendations in the few child protection deaths that proceed to inquest.

161. Coroners routinely seek information from Child Safety Services about the status of its implementation of child death case review recommendations and this information can be very influential in a coroner's determination of whether there is a need to proceed to inquest in respect of any child safety system deficiencies identified by his/her investigation.

162. In this way the coroner is able to provide independent oversight in relation to the functioning of the child protection system, including the system of internal and external review and the implementation of recommendations. If the Child Death Case Review Committee process did not exist the coroner would need to obtain specialist child protection advice on a fee for service basis to determine whether particular action taken in relation to the child was in accordance with relevant child protection standards and best practice, identify issues and formulate recommendations.

163. This independent oversight function of the coronial system applies similarly in other areas where a specialist investigative agency exists. For example, Workplace Health and Safety Queensland for workplace deaths; Australian Transport Safety Bureau for air crashes; the Mining Inspectorate for mining related deaths. In these cases the coroner awaits the outcome of the investigation by the specialist investigative agency before reviewing that agency's investigation and deciding whether there are further issues for consideration by the coroner.

Role of the Ombudsman

164. As the Commission has identified, the Queensland Ombudsman has jurisdiction to investigate complaints about the decisions made by Child Safety Services and other government agencies that provide services to children and young people. In addition, QCAT has jurisdiction to review Child Safety Service decisions in relation to the child's contact with their family group and placement. CCYPCG also has the power to investigate complaints in relation to Child Safety Services.

165. DJAG notes that in some jurisdictions the role of the Ombudsman is broader and includes, for example responsibility for the child death review function and the community visitor function.

166. The CCYPCG has the advantage of having a specialised focus on issues affecting children and young people and knowledge built over a number of years that informs its approach to its complaints and investigation role and recommendations on system improvements. It is directly concerned with complaints about the services provided (or failed to be provided) to children and young people and ensuring that services are delivered consistently with the rights, interests and wellbeing of children (see *Commission for Children and Young People and Child Guardian Act 2000*, section 55). Should the CCYPCG's investigatory powers be removed, it also may adversely impact its ability to perform its other functions, including reducing the Commission for Children and Young People and Child Guardian's capacity to influence and drive system reform.

167. The Ombudsman is not currently resourced to allow it to assume sole responsibility for child protection complaints. Any move to change current oversight arrangements would need to consider potential resourcing impacts.

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