PART I

INTRODUCTION

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ESTABLISHMENT AND APPROACH

1 ESTABLISHMENT AND APPROACH

BACKGROUND

Many children in state care have been abused and neglected, not only by their families but by the system that was supposed to protect them. It is time for that to change. It is time for all of us to work together to give all our children the life they deserve.

This Child Protection Systems Royal Commission was established at a time of escalating public concern about the child protection system in South Australia. The arrest of Shannon McCoole for despicable crimes against children in the care of the state understandably shocked the public and highlighted the need for a detailed examination of the child protection system, including a consideration of the reforms needed.

Although those events brought about the Commission's establishment, the Terms of Reference required a more comprehensive examination of the child protection system. The Commission adopted a liberal approach to the Terms of Reference. The determination of what amounted to a risk of harm was not limited to questions of physical or sexual safety, but was taken to include such matters as emotional, social and educational development.

Many inquiries, reviews, reports and political statements have focused on issues of child protection in South Australia. Against the background of such scrutiny over a long period, with little evidence of change, the Commission was challenged to ensure that this inquiry would make a difference, not just to statistics or performance measures but to the lives of children.

Many sections of the community were also concerned about whether another report would make any difference. The Commission often heard, particularly in its early days, comments to the effect that it would be pointless to assist because all that would be achieved would be yet another report, and then everything would remain the same.

Problems with the child protection system are not unique to South Australia. In the course of this inquiry the Commission did extensive research in the hope of finding the perfect system to emulate. That search was unsuccessful, as it became evident that governments everywhere continue to struggle to find the best possible system to protect some of the most vulnerable members of our society.

THE APPROACH

In gathering evidence to understand the nature of the problems, and their potential solutions, the Commission considered it important to provide a process that was accessible to people working in the child protection system, carers, service users and children. In particular, the Commission made an early decision to receive some submissions on a confidential basis, and generally hold private hearings.

The Commission received written submissions, and then embarked on a hearing schedule shaped by the issues raised in the submissions. A number of witnesses who had contributed written submissions, and others who the Commission identified as having relevant information, gave oral evidence. The Commission travelled to Port Augusta and Mount Gambier to hear evidence, and heard from a number of witnesses from the APY Lands and interstate via video-link. In the course of the hearing schedule, a number of senior executives and managers from government and non-government organisations were called to give evidence.

Many witnesses told the Commission that they felt more able to speak freely about matters in private hearings. Evidence sometimes included the sharing of personal information about witnesses' own families, which assisted the Commission by highlighting system challenges and gaps as they relate to children's actual experiences. Private hearings also made it possible for witnesses to speak openly about children without compromising the children's privacy. Witnesses also felt able to give candid and forthright evidence about contentious issues, unlikely to be aired in a public hearing. The quality of the evidence received confirmed that the Commission's evidence-gathering processes were well served by the decision to take evidence in private.

Although the Terms of Reference required a consideration of system issues, the Commission also heard five case studies (see Volume 2) which investigated particular matters of importance:

1   Vulnerable children, birth to school age (James);
2   Intervening in high risk families (Abby);
3   Leaving care (Hannah);
4   Children with complex needs in out-of-home care (Nathan); and
5   Keeping children safe in their environment (Shannon McCoole).

Each of the children in the first four case studies came to the attention of the Commission through oral evidence or consultations. They were selected on the basis of the capacity of the circumstances to elucidate system issues, and the valuable insight obtained in the course of these case studies highlighted the value of this process. In case study 4, Nathan, the Commission also heard specific evidence on the topic of Families SA's compliance with a number of summonses issued by the Commission. This evidence informed the Commission's consideration of the adequacy of Families SA's record keeping and information technology systems. McCoole gave evidence in the course of case study 5.

The Commission was also assisted by an Expert Advisory Panel, established pursuant to section 7 of the *Royal Commissions Act* 1917 (SA). Members of the panel were Dr Diana Hetzel, a medical practitioner, Di Gursansky, a social worker, and Rosemary Kennedy, a registered psychologist. They conducted research and prepared a number of reports which the Commission relied on in forming conclusions and recommendations.

Further detail about establishing and staffing the Commission, other experts who assisted the Commission, and the qualifications and experience of the expert panel can be found in Appendix B.

Evidence from Families SA workers, both past and present, provided considerable assistance. Some current employees made submissions or gave evidence, notwithstanding concern that in so doing their employment might be jeopardised. The thoughtful information from these witnesses on deficits in the system was invaluable, but the vast majority of them appeared overwhelmed by the nature and volume of their work, and the weight of community expectation that the child protection system should be capable of fixing all of society's ills. It was apparent that many of these workers felt unsupported by senior management as they struggled to perform their daily tasks in the face of ongoing adverse publicity directed at Families SA.

In the course of examining deficits in the child protection system, it has been necessary to make certain observations about the current standard of work of Families SA. In so doing, the Commission is mindful of the impact such observations may have on an already compromised workforce. However, comments about practice quality and past inadequacies must be included to explain past system failures and the changes needed.

A consistent challenge for this Commission was to examine a system which appeared to be in a constant state of flux. The Commission appreciated that some administrative and legislative change was likely before delivery of this report but expected to be kept informed of such changes. On a number of occasions, the Commission discovered, usually in response to a summons for information, that substantive changes in the Department for Education and Child Development had been made without notice or advice. In some cases, the Department had commissioned additional reports from outside sources on topics that were the subject of the Commission's investigation. The Commission's processes were sometimes frustrated and distracted, and time was wasted because documentation, policies and procedures changed. This created an extra burden for the Commission in carrying out its investigation.

STRUCTURE OF THE REPORT

In presenting the various observations and recommendations, the Commission has attempted to group topics in the most logical and accessible way. Part I, Introduction, reviews some fundamental considerations important to understanding the approach taken in the rest of the report. These include: why the child protection problem is persistent, and apparently resistant to reform; how abuse and neglect affect children and why safe care of children is essential for their long-term development and wellbeing; and the major external influences on the system in South Australia.

Part II considers some fundamental challenges to reform of the child protection system. It considers in detail challenges for the Agency and its workforce.

Terminology

A major recommendation of the Commission is for a structural change that will locate statutory child protection services in a new department devoted to that function.

The Commission thus faced a challenge in the language that it would use to describe the statutory agency's operations in the past, and what is intended for the future.

The Commission uses the terms Families SA and the Agency interchangeably. The Office for Child Protection (called the Office for Child Safety until 25 October 2015) is the administrative division of the Department for Education and Child Development responsible for child protection. Families SA refers to the office's service delivery or operational arm, although the name is often used to refer to the office as a whole.

References to the Department are references to the Department for Education and Child Development, which, for the moment at least, is the department within which the statutory agency sits.

Parts III and IV consider issues arising at each stage of a child's journey through the system: identification and notification of children at risk of harm; prevention and early intervention; the response delivered to children who are at immediate risk; and keeping children safe in out-of-home care. The Commission has also considered issues relevant to children's transition out of care as they approach the age of 18, and the use of legal options that give carers greater permanency, such as adoption and Other Person Guardianship. In Part V the Commission considers overarching topics relevant across each stage: specific issues relating to Aboriginal and Torres Strait Islander children, children living in regional areas, children with disabilities and children from culturally and linguistically diverse backgrounds. Part VI outlines the reforms necessary at a system level: screening adults who work and volunteer with children, better coordination of responses from various government and non-government agencies, and changes to information-sharing powers and obligations to keep children safe.

CONFIDENTIALITY

Most of the cases examined by this Commission relate to children whose circumstances are still current. The Commission examined hundreds of files relating to children and young people, and considered many confidential submissions in which children and young people were mentioned by name.

Information that the Commission received about these children and young people informed the findings in this report. In some cases, such as the factual background of the case studies, it was difficult to recite the facts and present intelligible findings anonymously. Accordingly, for ease of reading and understanding the Commission has replaced the name of any living child mentioned in this report with a pseudonym. Sometimes, because of the specificity of the circumstances described, other details have been changed to preserve privacy, such as the names of persons associated with the child or children, or the geographical location of their residence. Such details have been changed only where the Commission considered it would not affect the description of the child's overall circumstances.

THE VOICE OF THE CHILD

The guiding aim of any reform of the child protection system must be keeping children safe and improving the quality of their lives. Thus children's experiences must be understood, and children must be heard. The evidence in the McCoole case study highlights the dangers of a system that fails to listen to what children say, either directly or through their behaviour.

In the course of hearing evidence the Commission was privileged to hear from children whose lives had been affected by the child protection system. Contributions were also sought in a group consultation from children currently in care, or who had recently left care. Staff from the Guardian for Children and Young People (GCYP) and CREATE Foundation, the peak national body that represents the voices of children and young people with an out-of-home care experience, arranged and undertook this consultation. The full report is available at www.agd.sa.gov.au/child-protection-systems-royal-commission

Verbatim contributions from some of the participants are, where appropriate, reproduced throughout this report. They include the following messages, for the Commission and the community as a whole, about some basic notions for taking better care of children:

- *Show us respect by informing us what is going on and seek our input to decision making that affects our lives*

- *Talk to us in a way that we understand*

- *Acknowledge our cultures*

- *Treat us fairly*

- *Don't overburden us, but when we can lead, let us*

- *Don't just look after us, take care of our families (we know our situations are just part of bigger problems)*

- *If adults see something bad happening, they should do something*

- *Provide us with someone we can trust*

- *Make the system work for us …*

The Commission thanks all the children and young people who generously contributed their wise words and shared their knowledge with us.

The recent past has exposed occasions where children at risk have not been well served by the very system established to keep them safe. For the reforms outlined in this report to have any effect on the lived experience of children, the system needs to place greater weight on understanding and valuing the experience of children. For children who are at risk, or who are taken into the care of the state, the system needs to do better to deliver them the life they deserve.

2

THE PERSISTENCE OF THE CHILD PROTECTION PROBLEM

OVERVIEW

Child protection has been, and continues to be, a persistent challenge throughout the developed world. Numerous national and international inquiries into child protection systems—many resulting from deaths of children—attest to the systems' inability to adequately meet the complex needs of the families and children involved in notifications to authorities. The systems are complicated and highly intertwined with other, equally complex service systems.

It has been evident since at least the mid-1980s[1] that child protection systems need major reform, yet attempts to achieve this have generally made few inroads.[2] Further, policy makers have found it difficult to fix problems with the system because legislation and interventions are underpinned by unsupported assumptions.

A SYSTEM OUTGROWN BY SOCIAL CHANGE

The rate of child maltreatment in a community is a barometer of its psychological and physical health, and social and economic wellbeing.[3] In Australia during the past three decades there has been a rise in the recorded rates of child maltreatment, which reflects both a more advanced understanding of the detrimental outcomes of child abuse and neglect and an increased focus on intervening to prevent harm to children. This more developed understanding has produced an increasingly sophisticated range of preventative and tertiary interventions that focus on vulnerable children and families.[4] Rising child maltreatment rates also attest to the extreme disadvantage facing some children and families in Australia today.

Contemporary child protection systems are ill-equipped to deal with the social and economic complexities of the 21st century and were never designed to do so. Child protection issues intersect with the health, education, police, probation and justice systems, but the challenge of protecting vulnerable children primarily remains the remit of relatively small statutory child protection systems.[5]

Australian child protection systems, as well as those of other countries including the United Kingdom and the United States of America, have developed a strong focus on receiving reports and conducting investigations that consider whether alleged child maltreatment has been substantiated. A response from the statutory agency is often only activated after a child has been harmed. Statutory agencies rely on reports of suspected abuse and neglect from the community and professionals, some of whom are mandated to make such reports. This approach assumes that children's needs are met within their families and that child protection services have a role only when this fails. Conversely, countries such as Norway and Sweden have adopted a family services

approach, where the care of children is viewed as both a state and family responsibility, and the focus is on providing services to vulnerable families and children.[6]

Today's child protection response originates from the discovery in the 1960s by Kempe and colleagues of the 'battered-child syndrome'.[7] Out of this research developed an individualised forensic-legal approach to what was conceived as a detectable problem affecting a small number of children. The primary aim of this approach was to produce evidence of whether harm to children had occurred and, if so, to determine who was responsible.

Since the 1960s the circumstances that child protection services were originally designed to address have changed. With increasing knowledge of what harms children, statutory services now respond to physical abuse, sexual abuse, emotional abuse, neglect and, more recently, exposure to domestic violence.[8] The threshold at which statutory child protection services intervene to protect a child has been lowered from severe physical harm such as bone fractures in the 1960s to now include outcomes such as bruising, developmental delay and psychological harm.[9]

Historically, children who could no longer live with their families were placed into foster care arrangements. The voluntary nature of these arrangements was more easily accommodated in single-income families where there was a larger home and someone at home full-time to care for the children.[10] These conditions are less likely to exist today.

While the scope of child protection services has grown significantly since the 1960s, until recently the design of the system had not. Consequently, it has struggled to respond appropriately to vulnerable children whose families require support to meet their children's needs, rather than coercive court-ordered interventions to protect children.[11]

WHY THE CHILD PROTECTION PROBLEM PERSISTS

Some commentators have argued that attempts to reform the child protection system have failed because they are predicated on a flawed view that child abuse, as currently conceived, is a solvable problem. They argue that the problem of child protection requires re-conceptualisation to acknowledge that it is a 'wicked problem': that is, a problem resistant to resolution.[12] Wicked problems are highly complex and often arise where the components of the system in which the problems reside are interactive and intertwined. The solution to one problem often reveals another problem of greater complexity.[13] Policy solutions are traditionally linear and presuppose that each part of the system or problem is distinct and logically follows from the part before it. When applied to wicked problems, such solutions are bound to fail.[14]

The child protection system is fundamentally complex and highly intertwined with other difficult and complex socioeconomic drivers and associated service systems. It is not surprising that resolving its shortcomings poses significant challenges.

Families entering the child protection system are typically contending with a complex combination of chronic issues, including substance abuse, mental illness, young parenthood, violence, multi-generational abuse, homelessness, poverty and the impact of child removal.[15]

Aboriginal families are grossly over-represented in the system, which still seeks to address the complexity of unique challenges in these families and communities with mainstream child protection approaches.[16]

The signs and symptoms of child abuse and neglect are often ambiguous and difficult to identify. Predictions as to the risk of future abuse are inevitably imperfect and often based on the performance of an imperfect system.[17]

Historically, there has been a chronic lack of evidence-based child protection interventions, a lack of access to existing interventions, and poor translation of available evidence into practice.[18] Further, there is no certainty that any particular intervention will result in a permanent change in family behaviour.[19]

The organisations within which child protection workers are expected to manage the ambiguity and uncertainty of practice are often defensive and sometimes toxic. They are also likely to experience chronically high workloads and ongoing staff shortages.[20]

The child protection policy domain is highly complex. Traditionally contested values about the role of the state in the family, strong community emotions, intense media attention and political sensitivity become the major drivers of policy development.[21]

Re-orientating to an evidence-based policy-making environment is hampered by the differing drivers of policy, practice and research.[22] For example, the work of policy makers is to implement political decisions that take account of divergent views and controversies, and often require answers to questions of feasibility, implementation benefit and relevance in a short timeframe.[23] Similarly, practitioners strive to respond to pressing human needs and want instant answers as to what works and whether it is effective and efficient.

On the other hand, researchers require longer timeframes to produce quality research, are interested in questions that can be answered scientifically, and seek to be objective and value free. Their research is influenced by academic achievement, international research reputation

and sources of funding. These key differences create barriers to producing and using research evidence to inform policy making and practice.[24]

In this politically fraught environment, ideas that might appear radical or new may not find traction. Public tolerance for new approaches to the problem can be heavily influenced by fluctuating levels of media interest, which is often linked to child deaths and major inquiries into child protection systems.[25]

Policy making in child protection has also struggled to rectify problems with the system because both legislation and available interventions are underpinned by assumptions that are not supported, have not been challenged, and have often resulted in unintended consequences for children and families.[26]

The key assumptions are that[27]:

1 the child protection problem is measurable and solvable;

2 risk can be eradicated;

3 child abuse and neglect are relatively rare in Australia;

4 doing nothing costs nothing and harms no one;

5 simply referring families involved in child protection to services will reduce child abuse and neglect and thereby demand on the system; and

6 getting the mainstream system 'right' will have flow-on effects for Aboriginal families.

These assumptions and some of their unintended consequences are discussed below.

ASSUMPTION 1: THE CHILD PROTECTION PROBLEM IS MEASURABLE AND SOLVABLE

Policy makers and child protection organisation managers often assume that 'there is a "right way" to both manage the social ill of child abuse and to measure this performance' and 'the outcomes of an intervention or policy are predictable and that the organisation which they are managing is controllable'.[28] As a result, the current child protection system directs its efforts and resources towards the short-term outcome of identifying and securing the safety of children who are at immediate risk of harm. This approach is detrimental to achieving longer-term outcomes, such as addressing early the risk of abuse and neglect, and detrimental to children who have already been abused or neglected.[29]

ASSUMPTION 2: RISK CAN BE ERADICATED

It is assumed that uncertainty in child protection work can be managed by assessing and managing risk. However, as Professor Eileen Munro argues in her review of the United Kingdom child protection system, 'Risk management cannot eradicate risk; it can only try to reduce the probability of harm'. Further, low probability events still occur in circumstances where the risk has been assessed as low, even where the quality of professional practice is high.[30]

'Risk management cannot eradicate risk; it can only try to reduce the probability of harm'

Traditional risk management strategies focus on improving practice by standardising service systems including case management, developing prescriptive practice and standardised assessment frameworks, and imposing practice targets and performance indicators. These strategies have, over time, diminished the function of professional judgement in decision making and de-skilled workers who are tasked with wrangling these complex issues.

Limiting the professional ability of workers to adequately respond to children's needs has created a perpetual cycle of unintended consequences.[31] Prescriptive practice at the expense of professional judgement creates job dissatisfaction, leading to high staff turnover and larger workloads for the staff who remain. This has produced adverse work cultures that affect workers psychologically, emotionally and professionally. These work environments compound the difficulty in attracting and retaining experienced staff, producing even higher numbers of vacant positions and placing inexperienced workers in key front-line child protection roles.[32] The ability of workers to adequately address the needs of children is further eroded, creating greater job dissatisfaction; thus the cycle begins again.[33]

The overall impact of this cycle is that families are less likely to receive a comprehensive and continuous service, leading to a deterioration in trust and rapport, and greater dissatisfaction with child protection services.[34] Children are more likely to experience placement instability, a reduced chance of permanent care, loss of trusting relationships, longer stays in foster care, and a decreased chance of family reunification.[35]

ASSUMPTION 3: CHILD ABUSE AND NEGLECT ARE RELATIVELY RARE IN AUSTRALIA

There is a tendency to assume that child abuse and neglect are relatively rare in Australia. This is primarily because a child protection system with a primary focus on incident-based detection and investigation severely misrepresents the prevalence of child abuse and neglect in the community.

Current methods for detecting child abuse apply thresholds to determine whether individual incidents reflect child maltreatment at a level that would be likely to cause long-term harm. Research shows that children reported to child protection systems for whom concerns are not substantiated demonstrate poor outcomes commensurate with children for whom reports are substantiated.[36] A study by Bromfield and Higgins indicated that in 65 per cent of families where a notification to child protection had been made, maltreatment was chronic.[37] Because child protection legislation has a single incident focus, these families may never receive the help they need and family dysfunction may escalate; eventually meeting the threshold for statutory intervention but at a high cost to the child. This is especially alarming in cases of children under one year of age. One study reported that between 26 and 31 per cent of babies who returned home after abuse were abused again.[38]

The consequence of an incident-based system approach is that the shortcomings of the system become the focus of reform, perpetuating the myth of rarity instead of exposing the larger problem of child maltreatment, which is a genuine public health problem.[39]

ASSUMPTION 4: DOING NOTHING COSTS NOTHING AND HARMS NO-ONE

The assumption that child maltreatment is relatively rare necessarily leads to the assumption that doing nothing costs nothing and harms no one. However, burden of disease studies, which estimate total years of life lost due to premature death or disability (DALYs), show that child maltreatment potentially accounts for 20 per cent of the burden of self-harm and between 15 and 20 per cent of the burden of anxiety and depression.

Table 2.1 shows that doing nothing has profound public health implications. It ranks the leading causes of burden of disease measured in DALYs. Child maltreatment is ranked tenth after prostate cancer for men and seventh after breast cancer for women. It is clear that tackling child abuse and neglect by intervening early could significantly reduce the burden of disease for adult populations and the long-term cost to the community. The burden of disease lifetime cost for the population of children reportedly abused for the first time in 2007 is estimated to be $7.7 billion.[40]

Table 2.1: Leading causes of burden of disease (DALYs) by sex, Australia 2003

RANK	MALES	DALYs	% OF TOTAL	FEMALES	DALYs	% OF TOTAL
1	Ischaemic heart disease	151,107	11.1	Anxiety & depression	126,464	10.0
2	Type 2 diabetes	71,176	5.2	Ischaemic heart disease	112,390	8.9
3	Anxiety & depression	65,321	4.8	Stroke	65,166	5.1
4	Lung cancer	55,028	4.0	Type 2 diabetes	61,763	4.9
5	Stroke	53,296	3.9	Dementia	60,747	4.8
6	Chronic obstructive pulmonary disease	49,201	3.6	Breast cancer	60,520	4.8
				Childhood maltreatment	**55,881**	
7	Adult-onset hearing loss	42,653	3.1	COPD	37,550	3.0
8	Suicide & self-inflicted injuries	38,717	2.8	Lung cancer	33,876	2.7
9	Prostate cancer	36,547	2.7	Asthma	33,828	2.7
	Childhood maltreatment	**35,876**				
10	Colorectal cancer	34,643	2.5	Colorectal cancer	28,962	2.3
11	Dementia	33,653	2.5	Adult-onset hearing loss	22,200	1.8
12	Road traffic accidents	31,028	2.3	Osteoarthritis	20,083	1.6
13	Asthma	29,271	2.1	Personality disorders	16,339	1.3
14	Alcohol abuse	27,225	2.0	Migraine	15,875	1.3
15	Personality disorders	16,248	1.2	Back pain	15,188	1.2
16	Schizophrenia	14,785	1.1	Lower respiratory tract infections	14,233	1.1
17	Osteoarthritis	14,495	1.1	Falls	13,269	1.0
18	Back pain	14,470	1.1	Parkinson's disease	13,189	1.0
19	Melanoma	13,734	1.0	Schizophrenia	12,717	1.0
20	Parkinson's disease	13,664	1.0	Rheumatoid arthritis	12,062	1.0

Sources: Australian Institute of Health and Welfare, *The burden of disease and injury in Australia 2003, 2007,* www.aihw.gov.au/publication-detail/?id=6442467990; SE Moore et al., 'Burden attributable to child maltreatment in Australia', *Child Abuse & Neglect* 48, 2015, pp. 208–220, http://dx.doi.org/10.1016/j.chiabu.2015.05.006

Current faith in the form, as opposed to the function, of existing child protection systems has meant that the child protection workforce in this state is primarily mono-disciplinary and not adequately trained to address the complex needs of vulnerable children. This is in contrast to fields such as health, which could also be conceived as a wicked problem but has sophisticated systems and highly specialised workforces to address the complex issues.

Despite accumulating evidence that child maltreatment is an urgent public health problem, the child protection system has failed to recognise that:

• children who have been extremely maltreated require evidenced-based therapeutic responses; and

• prevention of abuse is essential to the success of public health interventions, but has, to date, been neglected.[41]

ASSUMPTION 5: SIMPLY REFERRING FAMILIES INVOLVED IN CHILD PROTECTION TO SERVICES WILL REDUCE CHILD ABUSE AND NEGLECT AND THEREBY DEMAND ON THE SYSTEM

A consequence of continuing to invest in a dysfunctional system is that alleviating *demand* becomes the focus of policy at the expense of *reducing harm* to children. This in turn skews the aim of prevention and early intervention towards alleviating system demands rather than addressing the needs of children.

A synthesis of the common themes of recommendations made in recent major reports and inquiries into Australian jurisdictional child protection systems illustrates this point (see Table 2.2).

One consequence of this focus on alleviating demand is a scarcity of evidence-based approaches to working with children and families.[42] It is estimated 80–90 per cent of practitioners in the United States children's services system do not use evidence-based interventions.[43] In an effort to meet the urgency of system demands, major funding initiatives are implemented before well-designed research has occurred.[44] Service providers are given short-term funding to address the needs of families that require an intense, long-term commitment, at the same time as being pressured to show evaluation outcomes, no matter how small, to support continued funding.[45]

Any attempts to implement evidence-based practices are often quickly adapted or changed, losing the key ingredients that were critical for effectiveness.[46] To be effective, programs require five elements:

• an explicit objective;

• a clear target population;

• a clear theory of change;

• program components implemented as intended; and

• clear alignment between the first four elements.

A review of 52 home-visiting interventions for vulnerable families with infants found that programs incorporating these five elements were successful in preventing abuse and neglect. Where only some of the elements were present, 60 per cent of programs were successful, and where none of the elements was present, no program was successful.[47] Evaluation efforts in the sector have highlighted that the links between service activities, their intended target group, the issue they are intended to address and their anticipated outcomes are not always clear.[48]

Vulnerable families have highly complex needs and often live in chaotic circumstances characterised by parental alcohol and drug misuse, parental mental health problems, and high levels of family conflict and violence.[49] Approaches to working with vulnerable families that are not evidence-based may not only be ineffective, but also harmful.[50]

ASSUMPTION 6: GETTING THE MAINSTREAM SYSTEM 'RIGHT' WILL HAVE FLOW-ON EFFECTS FOR ABORIGINAL FAMILIES

Nationally, Aboriginal and Torres Strait Islander children (birth to 17 years) are seven times more likely to be the subject of a substantiated report of child maltreatment than other children. In South Australia, the figure is 10½ times.[51] A statistical analysis of longitudinal child protection data relating to South Australian children born in 1991 showed that when compared to non-Aboriginal children, Aboriginal children were more likely to:

• be the subject of a child protection notification, investigation and substantiation (40 per cent of Aboriginal children receiving a notification had abuse substantiated compared to 24 per cent of non-Aboriginal children);

• be the subject of higher ranked (more serious) notifications of abuse;

• be notified for emotional abuse and neglect;

• have a first notification at a younger age;

• be notified on multiple occasions; and

• go on to experience an alternative care placement, adolescent at-risk intake, emergency financial assistance, or young offender order.[52]

A comparative analysis of children born in 1991, 1998 and 2002 showed Aboriginal and non-Aboriginal children born in the later years were increasingly more likely to be notified.[53] The rate of notification for Aboriginal children appears to have increased at a faster rate than for non-Aboriginal children. The belief that if effort is applied in the mainstream system, the benefits will flow on for Aboriginal families, is not borne out by these observations. The consequences of inter-generational trauma remain unaddressed.

Table 2.2: Ten common themes of recommendations from major Australian child protection reports, 1999–2012

1	Accountability and transparency	• External review and monitoring of, as well as regular reporting by, government departments and non-government organisations
2	Community, child, youth and family involvement	• Involvement in policy and decision-making processes of services and programs (both as clients and as employees or consultants), as well as in service provision • Providing information to children about what is happening to them and giving them opportunities to contribute
3	Complaints handling	• Development, amendment and clarification of procedures for receiving, assessing and responding to complaints, including of child abuse in out-of-home care settings and juvenile detention
4	Funding and resources	• Additional funding or resources for specific services and programs, as well as the termination or merging of funds and other resources
5	Information systems	• Information, data and records collection and management
6	Inter-agency collaboration	• Inter-agency consultation, partnerships and information-sharing processes
7	Legislation change and policy making	• Amendments to expand the power or responsibility of departments or services, reflect suggested organisational changes, and improve services to children and young people and their families
8	Organisational reform	• Merger, separation and termination of various departments, services and specific programs. Includes appointing new positions at varying levels of management
9	Services and programs	• Provision, expansion and development of specific services and programs
10	Staffing and management	• Recruitment, professional development and training, clarity of responsibility and supervision/management chains • Workload assessments to determine staffing need

Sources: Board of Inquiry into the Child Protection System in the Northern Territory, *Growing them strong, together: Promoting the safety and wellbeing of the Northern Territory's children,* summary report, Northern Territory Government, 2010; Crime and Misconduct Commission Queensland, *Protecting children: An inquiry into abuse of children in foster care,* 2004; P Cummins (Chair), D Scott and B Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry,* Department of Premier & Cabinet, Government of Victoria vol. 1, 2012; *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions, Commissions of Inquiry Order,* Report No 1, Department of Communities, Child Safety and Disability Services, Queensland Government, 1999; *Putting the picture together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities,* Department of Premier & Cabinet, Government of Western Australia, 2002; Commissioner for Children, Parliament of Tasmania, *Report on child protection services in Tasmania,* 2006; Commissioner for Children, Parliament of Tasmania, *Final report of the Inquiry into the circumstances of a 12 year old child under Guardianship of the Secretary,* 2010; Select Committee on Child Protection, Parliament of Tasmania, *Final report of the Select Committee on Child Protection,* 2011; Standing Committee on Social Issues, Legislative Council, Parliament of New South Wales, *Care & support: Final report on child protection services,* Parliamentary paper no. 408, 2002; C Vardon, *The Territory as parent: Review of the safety of children in care in the ACT and of ACT child protection management,* Commissioner for Public Administration, Australian Capital Territory, 2004; J Wood (Commissioner), *Report of the Special Commission of Inquiry into Child Protection Services in New South Wales,* Executive summary and recommendations, NSW Government, 2008.

THE MEDIA'S ROLE IN PUBLIC PERCEPTIONS

The mainstream media plays a crucial role in shaping the public perception of child protection issues and in promoting changes to policies, practice and systems.[54] Media campaigns can shift both public and political attitudes by drawing attention to scandals, tragedies and system failures, and can be more influential in initiating policy reform than calls for change from child protection workers.[55]

The fast-paced media environment, the need for newsworthy stories, a focus on politically oriented reporting, restricted publication space, and the non-cooperation of official child protection sources can result in child protection issues being sensationalised, distorted and incompletely reported by the media.[56] Hostile reporting and intense media scrutiny can generate a climate of fear, mistrust and blame in public attitudes towards child abuse, the effectiveness of child protection services, and the actions of individual child protection workers.[57]

In reporting one particular child protection tragedy in England, individual social workers connected to the case were 'named and shamed' with calls from the media to have them 'sacked'.[58] This experience has parallels with recent experiences in South Australia concerning the reporting of high-profile inquests into child deaths. This approach has significant ramifications, not only for those individuals named, but also for overall staff morale, wellbeing, recruitment and retention. Media reporting can also skew public understanding of the nature and incidence of child maltreatment, including emotional abuse and neglect, due to its focus on criminal cases that involve physical abuse, sexual abuse or severe neglect.[59]

The media has an important role to play in directing public attention towards system failures and reform. However, this attention often has the inadvertent consequence of adding to already overburdened services by arguing for narrowly conceived responses which result in increases in notification of children and applications for children to be placed in out-of-home care.[60] Experts in child protection need to have a more prominent voice in the current public discourse about child protection. While maintaining confidentiality in relation to particular cases will need to be the dominant consideration, there is no reason why staff from the statutory agency should not be authorised to attempt to improve the information base on which the current debate proceeds.

THE IMPACT OF EARLIER SOUTH AUSTRALIAN INQUIRIES

Four independent child protection inquiries have been undertaken in South Australia. They are:

- RA Layton, *Our best investment: A state plan to protect and advance the interests of children,* Report of the Review of Child Protection in South Australia, 2003 (the Layton Review);
- EP Mullighan, *Children in State Care Commission of Inquiry: Allegations of sexual abuse and death from criminal conduct,* Children in State Care Commission of Inquiry, Adelaide, 2008 (the CISC Inquiry);
- EP Mullighan, *Children on Anangu Pitjantjatjara Yankunytjatjara (APY) Lands Commission of Inquiry: A report into sexual abuse,* Children on APY Lands Commission of Inquiry, Adelaide, 2008 (the APY Lands Inquiry); and
- BM Debelle, *Royal Commission 2012–2013: Report of Independent Education Inquiry, Independent Education Inquiry,* Adelaide, 2013 (the Debelle Inquiry).

This Commission asked the Australian Centre for Child Protection (ACCP) to review the implementation of recommendations from the four inquiries.[61] The review identified that the intent of only the CISC and Debelle inquiries had been generally met. It was difficult to ascertain the status of many recommendations of the Layton Review. Many recommendations of the APY Lands Inquiry remained outstanding.

The overall intent of the CISC Inquiry was to ensure the safety and wellbeing of children in the care of the state, including those children who run away from their out-of-home care placement. Forty-two of the 54 recommendations were fully or partially implemented. Recommendations were broad ranging, from establishing advocacy positions for children in care to fast-tracking sexual abuse cases involving minors through the court systems. The ACCP found that the state government's response generally met the intent of many of the recommendations, but concerns were identified about how well it satisfied the intent in relation to others.

The overall intent of the Debelle Inquiry was to ensure that allegations of sexual misconduct involving schoolchildren are identified, responded to and documented appropriately by school staff; that the Minister for Education and Child Development is kept informed; that support is provided to victims, their parents and other school members; and that schools are equipped to manage the complexities of informing the school community about such incidents. Thirty-seven of the 43 recommendations were wholly or partially implemented. The process of making recommendations was consultative, whereby round-table discussions with the relevant department and SA Police were held to ensure that recommendations were useful and practical. In response to the recommendations, the government implemented the *Managing allegations of sexual misconduct in SA education and care settings* policy in all schools, including non-government schools. Overall, the government's responses appeared to satisfy the intent of the recommendations.

The Layton Review made 206 recommendations. Their scope was broad and far-reaching, reflecting the review's vast terms of reference. The recommendations had a strong preventative focus and recognised the need for major reform. Accordingly, many had heavy resource implications, and were not actioned. The Government response to the Layton Review did, however, result in the introduction of key reform initiatives, including the establishment of the Guardian for Children and Young People, the expansion of the categories of individuals required to hold a working-with-children check, and the publication of *Information sharing: Guidelines for promoting the safety and wellbeing of children, young people and their families* in 2008 as part of the government's Keeping Them Safe child protection reform program. However, in its assessment of the Layton Review, the ACCP had difficulty locating reliable evidence of the implementation of other recommended reforms. Given this, and the fact that it has been 13 years since the Layton Review was published, it was not possible to determine whether the intent of the review's recommendations was met.

The primary intent of the APY Lands Inquiry was to address the issue of child sexual abuse on the APY Lands. The 46 recommendations ranged from mandatory reporting and policing reform to service provision and community education. The ACCP review found that government responses either missed the intent of the recommendation or did not achieve the desired outcome. Further, a number of responses that are listed as complete involve ongoing or outstanding items, particularly where services or policies were due for review. The Anangu Lands Paper Tracker, a Uniting Communities' project launched in 2007 to monitor government commitments to Anangu people, highlights concerns regarding the monitoring of both child protection issues on the APY Lands and the inquiry's

outstanding recommendations. The lack of funding for continued reform stymied implementation of a number of recommendations.

MAKING GOOD RECOMMENDATIONS

In addressing its terms of reference, the Commission has sought to better understand why some past recommendations for reform of the child protection system in South Australia have not been implemented.

While there has been wide-scale *acceptance* in principle of a large number of past recommendations, in many cases it is difficult to identify whether the recommendation has been implemented in a way that is true to its intent.

Recent research into the impact of inquiries into child protection issues provides an insight into the factors that influence the extent to which their recommendations find traction.

A review of recommendations of five reports concerning child protection failings in Ireland identified several key factors that influence reform and the implementation of recommendations.[62] These include:

- policy fit;
- political and professional 'buy in';
- resources and funding;
- attitude towards, or resistance to, change;
- congruence with current social and cultural norms;
- degree of consultation between the inquiry team and policy makers;
- 'ownership' over the recommendations;
- clarity—vague or aspirational recommendations are difficult to address; and
- repetition of inquiry recommendations.

Recommendations involving management, inter-agency information sharing using central registers, and disciplines that lie beyond the child protection system's realm of influence were repeatedly made, but implementation fell short.

Buckley and O'Nolan propose a collaborative approach to developing recommendations, as an alternative to today's reactive approach.[63] They say recommendations should be non-prescriptive, supported by a base of evidence, promote learning, and clearly state desired outcomes. Further, recommendations should include an explanation of how the outcomes can be attained and who is responsible for implementation.

Munro emphasises, in reference to the recommendations in her final report, that: 'The recommendations are to be considered together' and cautions strongly 'against cherry picking some of the reforms to implement'.[64]

A recent report produced by the Parenting Research Centre (PRC) for the Royal Commission into Institutional Responses to Child Sexual Abuse, which researched previous Australian child protection inquiries and interviewed 44 current public servants and 43 key stakeholders, identified a number of factors that help to facilitate the implementation of recommendations.[65] These include:

- processes and structures to facilitate implementation;
- strong leadership and stakeholder engagement;
- an accountability framework and monitoring process;
- consultation with stakeholders before recommendations are handed down, and articulation of the 'vision' of the reforms to gain support;
- development of recommendations that focus on outcomes and are evidence based, realistic, feasible and tailored to different jurisdictions and agencies; and
- the consideration of resourcing implications.

In her review of the United Kingdom child protection system, Professor Munro emphasised the pitfalls of relying on procedural and administrative reforms to address the shortcomings of the system. As highlighted earlier, this not only increases the administrative and supervisory burden on workers in child protection services, but also diverts the focus from vulnerable children and families involved with these services.

Munro reported that in this situation workers become more focused on adhering to procedure and protocol—even if they do not understand the underlying reasons why—than on improving outcomes for vulnerable children and families. For example, workers often have to complete forms before a child or family becomes eligible for services, which diverts workers from immediately addressing their urgent or obvious needs.

Focusing on prescriptive processes also promotes passive compliance and stifles the development of expertise and professional growth.[66] Guidelines cannot fully encompass the variety of possible scenarios that can occur in the child protection arena, and attempts to make guidelines do so have led to large, cumbersome manuals that are harder for workers to apply in their daily practice.

Munro argued that the overall effect of emphasising prescriptive practice is greater system malfunction through the perpetual cycle of job dissatisfaction, high turnover and heavy workloads referred to earlier in this chapter. However, it is important to emphasise that Munro warned against reducing prescriptive practice without also creating a learning system and supporting professional development:

> *Reducing prescription without creating a learning system will not secure the desired improvements in the system. On the other hand, delaying the reduction of prescription until services show they can take responsibility prevents them from demonstrating it.*[67]

The ACCP analysis of the South Australian inquiries also provided an important insight into the factors that make recommendations 'stick'. It found that the way recommendations are conceived and framed will assist those charged with implementation to capture the intent without having to slavishly adhere to recommendations that do not prove to be meritorious in practice. The following factors emerged as important considerations:

- The more targeted the inquiry (for example, the Debelle Inquiry), the more likely that recommendations would be implemented.
- The broader the terms of reference, the less likely that all recommendations would be implemented.
- Reform efforts directed at the government department that is responsible for implementing them often focus on managing, rather than on meeting, demand (that is, meeting the needs of children and families).
- Recommendations are more likely to be implemented where some form of accountability framework and monitoring process is in place.

THE DANGERS OF PIECEMEAL, REACTIVE REFORM

The interconnectedness and complexities of child protection policy and service systems create complex or wicked problems that are difficult to solve, particularly when their resolution is left to one component of the system.[68]

As highlighted earlier, rational policy-making approaches cannot solve intractable problems. Piecemeal attempts at reform, particularly when driven by public discourse and media criticism or following an emotional response to inquiries into system failures, are bound to fail. At worst, such reforms have unintended consequences for the system itself, for those working in it, and for the families with whom they work.[69]

Attempts to address intractable problems should instead aim to achieve sustained behavioural change through collaboration as a response to social complexity.[70] An Australian Government discussion paper on wicked problems from a public policy perspective suggested that tackling such problems requires[71]:

- holistic, not partial or linear, thinking;
- innovative and flexible approaches;
- an ability to work across agency boundaries;
- an increase in understanding and applying the accountability framework;
- effective engagement of stakeholders, including the public, to help them understand the problem and identify possible solutions;
- skills including communication and big-picture thinking, and the ability to work cooperatively with, and influence, others;
- a better understanding of behavioural change by policy makers;
- a comprehensive focus and strategy;
- tolerance of uncertainty; and
- acceptance of the need for a long-term focus.

With these challenges in mind, the Commission has attempted to make recommendations that will address system changes in a cohesive way. Where possible, the Commission has avoided making recommendations that would increase the administrative burden and create an over-prescriptive practice. Doing these things will not improve the quality of professional practice in child protection. Rather, sustainable improvement will be achieved by supporting the development of the professional staff who are charged with performing this important work.

Similarly, in expressing recommendations the Commission has attempted to precisely identify the issue and what is currently the best way to address it. There will be occasions in the implementation of these reforms when an alternative approach to the problem is identified. Some reforms may not have the desired impact. As noted in this chapter, reform of complex problems requires a degree of tolerance of uncertainty. It is critical that those charged with the implementation of these important reforms are empowered to deliver the reform program flexibly, with an understanding that if a proper evidence-based review suggests that the reforms are not achieving the desired result, they are adjusted.

The recommendations in this report should be seen as the starting point of this important reform process. The implementation of the recommendations and the evaluation of strategies as implementation proceeds are critical parts of transforming the system to one based on best evidence and ongoing evaluation.

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Some oral evidence, witness statements and submissions were received on a confidential basis. The source is known to the Commission, and is identified by a number in the endnotes.

3

HOW ABUSE AND NEGLECT AFFECT CHILDREN

3 HOW ABUSE AND NEGLECT AFFECT CHILDREN

OVERVIEW

The Terms of Reference require the Commission to review the adequacy of the state's child protection system in protecting children at risk of harm. Historically, harm has been narrowly interpreted as physical harm resulting from abuse. As our understanding of what children need to grow and flourish develops, so too does our understanding of what harms children. Therefore the Commission has taken a broad view of what risk of harm means, which includes threats to children's physical, developmental, emotional and psychological safety.[1]

A good childhood is one in which children have their physical, developmental, emotional and psychological needs met, and their care environment and experiences do not significantly compromise their ability to achieve their life potential. A good childhood provides a child with the developmental foundation for physical, mental and economic wellbeing as adults. Securing good childhoods therefore improves the collective prospects of the next generation.

The strongest level of influence on a child's development is the family environment, which includes extended family and other carers. Where families are able to do so, the state should allow them to determine how optimal growth and development of a child is best achieved.

However, when this proves difficult, supporting a family to parent well rather than removing the child from that family is morally and economically responsible social policy. Identifying families who cannot provide good enough parenting, even with support, is also a critical part of the state's responsibilities. Where families show themselves incapable of providing the environment necessary to secure their children's safe development, it is the task of the child protection system to intervene in an efficient, proportionate and well-aimed way.

This chapter considers the range of environments, both inside and outside the family, which can influence a child's development.

Consideration of reforms to improve outcomes for children at risk must include the social conditions that exist beyond a child's immediate family. Protecting children at risk of harm cannot be achieved by focusing entirely on a child's immediate family environment as the source of beneficial and/or detrimental experiences. Just as improvements in family conditions can affect a child's care, improvement in other spheres of influence—such as local neighbourhoods, early childhood programs, childcare, schools and other key health, welfare and housing services—can assist to keep children safe.[2] Research has shown that conditions outside a child's family can contribute to resilience, which might strengthen a child's capacity to flourish in less than ideal family conditions.

If society intervenes early enough, outcomes for disadvantaged children can be improved. Such interventions are estimated to have high benefit–cost ratios and rates of return. The longer society waits to intervene in the life of a disadvantaged child, the more costly it is to remediate the effects of that disadvantage.

Critically, any intervention must be accomplished with the child's right to a good childhood—the satisfaction of their social, emotional, psychological and developmental needs—kept firmly at the centre of decision-making. The starting point for any reform effort in the child protection system must be what *children* need, not what the system needs.

The matters discussed in this chapter as to what supports children to become healthy adults and the circumstances that threaten their growth and development have informed the Commission's consideration of what reforms are necessary to improve the South Australian child protection system.

Much of this chapter draws on a report prepared for the Commission by Dr Diana Hetzel, a member of the Commission's Expert Advisory Panel.[3]

INFLUENCES ON CHILD DEVELOPMENT

At the most fundamental level, child development is the result of the interplay between a child's environment, and characteristics such as their genes, gender and temperament, both before and after birth.

Before birth, biological and physical factors influence the developing foetus. Maternal nutrition, smoking, illicit drugs, infections such as bacteria and viruses, and exposure to toxic stress and violence all affect the development of different areas of the brain at different stages of pregnancy.[4] Alcohol consumption during pregnancy can have an insidious impact on the developing foetus, and pre-natal alcohol exposure can affect children even when the specific features of foetal alcohol syndrome are not present.[5]

Infancy and childhood are particularly important and sensitive periods in brain development. Permanent, large-scale changes in brain circuitry are produced through particular sensory experiences during this time.[6] These 'sensitive periods' follow the same chronology for all human beings. The first two years of life, in particular, are likely to be critical to the development of capacity for attention, perception, memory, motor control and the modulation of emotion.[7] At this stage, the qualities of a child's immediate environment (most often their parents and wider family) have the most significant impact on their development.[8]

New but increasingly coherent evidence[9] traces chronic disease, behavioural problems and lasting afflictions of adulthood to experiences of adversity, maltreatment and stress in the early years of life, and highlights the resilience of individuals despite such experiences.[10]

PARENT–CHILD ATTACHMENT

Researchers since the 1950s have been aware of the developmental significance of the parent–child attachment relationship. Attachment refers to the selective relationship that infants develop towards their primary caregiver between about six months and four years of age.[11] It is thought the drive to develop an attachment relationship is an inbuilt and genetically determined motivation which carries a survival advantage for the infant insofar as it ensures the infant remains close to adults.

Attachment is thought to influence four principal areas of child development: physical, social and emotional development; pro-social attitudes and positive relationships; concept of self; and ability to take risks, accept challenges and cope with failure.

Several aspects of caregiver behaviour affect the quality of the developing attachment relationship. Accessibility and responsiveness describe the extent to which a caregiver is available, physically and emotionally, and the extent to which the caregiver is able to understand and respond to the child's needs. Children who consistently have their physical and emotional needs met will feel secure as to future needs and safer about exploring and experiencing their world. A child whose needs have been inconsistently met and whose caregiver has been inconsistently responsive may 'remain pre-occupied with needs provision and this leaves an indelible mark on their behavior and adjustment'.[12] For example, children who have experienced inconsistency in having their needs met may go on to have long-term issues with hoarding and stealing food, long after they are removed to an environment where food is plentiful and their needs are consistently met.

The role of attachment can be described in the following terms:

Although infants become attached to their caregivers whether or not those caregivers are sensitive and responsive, attachment thrives especially on predictable, sensitive, attuned communication in which a parent shows interest in, and aligns states of mind with those of a child … Early attachment experiences directly affect the development of the brain … Human connections create neuronal connections … Caregivers are the architects of the way in which experience influences the unfolding of genetically pre-programmed but experienced-dependent brain development … These salient emotional relationships

have a direct effect on the development of the domains of mental functioning that serve as our conceptual anchor points: memory, narrative, emotion, representations and states of mind. In this way, attachment relationships may serve to create the central foundation from which the mind develops.[13]

ATTACHMENT, STRESS AND ADVERSITY

Learning how to cope with adversity is an important part of healthy child development. When a child's stress response systems are activated in an environment of supportive relationships with adults, these physiological effects are buffered and brought back to baseline. The result is the development of a healthy stress response.

How this occurs in the context of healthy attachment relationships can be explained as follows:

Normal development, expressed in play and exploratory activity in children, requires the presence of a familiar attachment figure or figures, who modulate their physiological arousal by providing a balance between soothing and stimulation. The heart rate curves of mothers and infants parallel each other during interactions. This capacity of the caregiver to modulate physiological arousal reinforces the child's attachment to her, and allows a smooth alternation between activities, that increase and reduce arousal as they go back and forth between exploring the environment and returning to their caregiver.

The response of the caregiver not only protects the child from the effects of stressful situations by providing soothing where appropriate, it also enables the child to develop the biological framework for dealing with future stress. In this process, the caregiver plays the critical role. The caregiver is the leader of the child, helping the child to know their own feeling states by giving words to their experience (oh, you look tired, what a beautiful smile, you look so happy, you're really upset now), helping the child to regulate their physical bodies and to know physical boundaries by holding, touching, playing with and comforting them. Without these early experiences, children grow up not recognising or understanding their emotional and physical states and consequently not able to make good decisions and judgements, not able to manage strong emotions and lacking trust in the world.

Another important thing a secure infancy gives a child is the capacity to cope with stressful or traumatic events. If we have been well cared for, we will have responses to stress and trauma but we will recover more quickly than those who had neglectful or harsh early parenting. Those children who had a caring, attentive caregiver were more likely to be comforted when something painful or scary happened, than those who did not. [14]

If the stress response is extreme and long-lasting, and buffering relationships are unavailable to the child, the result can be damaged, weakened stress systems and brain architecture, with lifelong repercussions.[15]

Three different responses to stress are recognised: positive, tolerable and toxic. These terms refer to the effect that the stress response system has on the body in each type of response:

- Positive stress response is a normal and essential part of healthy development, characterised by brief increases in heart rate and mild elevations in hormone levels.
- Tolerable stress response activates the body's alert systems to a greater degree as a result of more severe, longer-lasting difficulties, such as the loss of a loved one, a natural disaster, or a frightening injury. If the activation is time-limited and buffered by relationships with adults who help the child adapt, the brain and other organs recover from what might otherwise be damaging effects.
- Toxic stress response can occur with strong, frequent and/or prolonged adversity without adequate adult support. Adversity may include ongoing physical or emotional abuse, chronic neglect, caregiver substance use or mental illness, exposure to trauma and violence, and/or the accumulated burdens of family economic hardship. This prolonged activation of the stress response systems can disrupt the development of brain architecture and other organ systems, and increase the risk of stress-related disease and cognitive impairment, well into the adult years.

When toxic stress response occurs continually or is triggered by multiple sources it can take a cumulative and lifelong toll on an individual's physical and mental health.

FAMILY

To become productive and competent adults, children need to live in environments that provide order and meet their developmental requirements, as well as their physical, learning, emotional and material needs.[16]

A family's social resources will dictate the extent to which it is able to provide this environment. Family resources include parenting skills and education, cultural practices and approaches to child-rearing, physical and mental health, and the nature of intra-familial relationships. It is possible in many cases to improve a family's resources by providing appropriate support and services.

Families are also responsible for controlling a child's exposure to the wider community and protecting a child from negative influences. Children who thrive in spite of adversity often do so because of the influence of a consistent, caring adult who engages the child in an ongoing relationship.[17] Children also require adults

in their immediate environment who instil a positive sense of responsibility and pass on social and moral expectations.[18]

There is an association between socioeconomic status and outcomes across an individual's lifespan. Family socioeconomic status is also associated with other developmental outcomes for children, such as low birth weight, risk of child abuse and neglect and family violence, poorer cognitive test scores, risk of disengagement from school, difficulties with behaviour and socialisation, and adult education attainment, health and employment.[19] Inadequate economic resources in a family can also increase family stress, affecting its capacity to maintain the supportive environment that is necessary for child development.[20] Improvements in basic aspects of a family's economic status can therefore improve the quality of care available in that family.

RELATIONAL COMMUNITIES

Children's development is shaped by the nature of the relational communities which surround their families.[21] Relational communities are a primary support for many families and are often the source of information about child-rearing practices and child development.[22] These communities influence how children identify themselves and others, help build self-worth and a sense of belonging, and can be a source of social inclusion.

Relational communities that occur naturally for families who are socially well-connected can be devised for socially isolated families through the delivery of appropriate services.

Programs that improve social connectedness, provide parent education and enrichment, and child care can replicate for socially isolated families the support available in naturally occurring networks.[23]

Early child development programs are an effective way to address inequalities in learning and development.[24] There is good evidence that investment in effective programs that enhance all aspects of children's development can reap benefits many times over for children, families and communities, if the children start the programs early and continue throughout childhood.[25] The quality of these programs and services is critical to achieving good developmental outcomes, especially for children from disadvantaged families.[26]

Early childhood education and quality childcare can also enhance children's development. It is important that children in vulnerable families with few economic resources are not denied access to these important opportunities.[27]

CHILDREN'S DEVELOPMENT: RISKS, PROTECTIVE FACTORS, AND RESILIENCE

RISKS AND PROTECTIVE FACTORS

A child's developmental outcomes will be the result of multiple influences, and the interplay of risk factors, protective factors and individual responses to those factors will be determined differently for each child. This is evident in the number of children who manage to flourish despite adversity.

Protective factors are those influences, characteristics, and conditions that buffer or mitigate a person's exposure to risk.They are individual characteristics and environmental conditions which interact with specific risk factors present in either the child or the child's environment.[28]

Until recently, the main approach to understanding childhood vulnerability was to study how specific risk and protective factors in individuals and populations were associated with undesirable life outcomes. This approach failed to recognise the complexity of child development and the joint interaction of genes, biology and environment.[29] It also implied that outcomes generally were explicable as the balance between risk and protective factors. That suggests that protective factors can be identified on the basis of their nature, rather than their effects. In many circumstances that may be true, but protection also comes from risk experiences that lead to successful coping. The approach also assumes that most individuals will respond to stress and adversity in much the same way and to the same degree. However, that is not the case.[30]

Research indicates that the presence of co-occurring risk factors (sometimes referred to as 'cumulative' risk) rather than a single risk factor affects negative outcomes. The greater the number of risk factors the greater the prevalence of clinical problems.[31] Timing also seems important, with the number of risks in early childhood predicting an increase in behaviour problems.[32] Other research suggests that the impact of abuse and neglect on children's wellbeing may be greater during critical periods of early brain development.[33]

The cumulative impact of protective factors is as important as the cumulative impact of risk factors. With an increasing number of protective factors, there is likely to be an increase in positive outcomes.[34]

QUALITY PARENTING

One of the most important influences on whether a child flourishes is the quality of parenting they receive. Our current state of knowledge has brought us nearer to agreeing where parenting is clearly competent and children are thriving; and where it is undoubtedly dysfunctional and there is evidence of abuse or neglect. Parenting behaviours and practices identified

from research are listed in Table 3.1, and different combinations of these make up an adult's parenting style.[35]

Table 3.1: Characteristics of 'good' and 'poor' parenting

GOOD PARENTING	POOR PARENTING
Realistic expectations of the child	Unrealistic expectations of the child
Providing a secure environment, attentive to the child	Inability to provide security or continuity of care
Good supervision	Poor supervision/intrusion
Attachment and bonding	Lack of bonding and attachment
Maturity	Inexperience/ ignorance
Affection	Conditional affection
Flexible control	Cruel control
Acceptance	Rejection
Positive affectivity	Negative affectivity
Warmth and positive regard	Low warmth, provocation and high criticism
Consistent, predictable, appropriate and non-harsh discipline and limit-setting	Unpredictability, harmful or cruel discipline, laxity and inconsistency
Absence of violence in the family	Violence in the family
Meets the child's physical, emotional and developmental needs	Unable/unwilling to meet the child's physical, emotional and developmental needs
Child centred	Lack of empathy for child
Absence of hostility and aggression	Hostility and aggression
Behaviours/activities that promote health, learning or development	Behaviours/activities that impair health, learning or development
Teaching by example	Exposure to inappropriate role models
Engaged with child's education	Not engaged with child's education

Source: J Taylor, N Spencer & N Baldwin, 'Social, economic and political context of parenting', *Archives of Disease in Childhood* 82, no. 2, 2000, pp. 113–120; M Hoghughi & A Speight, 'Good enough parenting for all children: A strategy for a healthier society', *Archives of Disease in Childhood* 78, no. 4, 1998, pp. 293–296; VC McLoyd, 'Socioeconomic disadvantage and child development', *American Psychologist* 53, no. 2, 1998, pp. 185–204.

However, there are many circumstances where parenting cannot be easily defined as 'good' or 'bad', or where there are complicating factors, for example, a parent with intellectual and learning difficulties, or a child with complex needs. Although individual parenting attributes are important contributors to child wellbeing, the broader social, economic and political contexts of children's and their families' lives are also powerful influences on parenting quality.[36] Parents who experience significant social and economic hardship, such as poverty, family violence, homelessness, war and dislocation, face challenges that make parenting a far more difficult task.

RESILIENCE: WHEN A CHILD PREVAILS OVER ADVERSITY

Resilience refers to an individual's capacity to adapt successfully to change and to manage stressful events in healthy and constructive ways.[37] It is a dynamic process involving an interaction between both risk and protective processes that act to modify the effects of adverse life events.[38]

Complex interactions of child resources and family and community supports are likely to be the best predictors of resilience.

Resilience can be strengthened by encouraging positive environments in families, schools and communities to counteract risks in children's lives

Resilience can be strengthened by encouraging positive environments in families, schools and communities to counteract risks in children's lives. Of these three environments, the family as the immediate care-giving environment has the greatest impact on the development of resilience in children.[39] However, there is evidence from Australian and international studies that the level of neighbourhood advantage and disadvantage is also strongly associated with children's behaviour and development.[40] Strengthening protection in communities and neighbourhoods may therefore provide a buffer for the risks experienced by some children.[41] This observation highlights the opportunities to improve outcomes by improving social conditions more broadly.

CHILDREN'S VIEWS OF WHAT MAKES A GOOD CHILDHOOD

Internationally, researchers have recognised the importance of listening to what children tell us is important to their wellbeing. From 2006 to 2008, the UK Children's Society conducted *The Good Childhood Inquiry*, which included a survey of more than 18,000 children and young people for their views as experts in childhood in the 21st century.[42]

Seven significant elements emerged from this survey of what children need to flourish. They need[43]:

- loving families, where they observe and experience love, and thus learn how to love others. They also need boundaries to be set by parents and carers who are firm but not dictatorial;
- friends, as they begin to explore relationships outside the family. From developing their friendships, they learn many of the basic lessons of living;
- a positive lifestyle, in which they develop interests which satisfy them and avoid the enticements of excessive commercialism and unhealthy living;
- solid values, which give meaning to life and are acquired from parents, schools, media, political and faith organisations;
- good schools, where they can acquire both values and competence;
- good mental health, and help with any difficulties; and
- enough money to live among their peers without shame.

In an Australian project, researchers worked with 126 children (aged 8–15 years) in rural and urban locations to develop indicators of wellbeing from the children's perspectives.[44] The study concluded that the three overriding concepts of wellbeing were: a positive sense of self, security, and agency. Emotional and relational wellbeing were integral to these concepts.[45]

WHAT THREATENS A GOOD CHILDHOOD

ABUSE AND NEGLECT

The overwhelming majority of abuse and neglect of children is committed by parents and caregivers. Of all the categories of abuse and neglect, child sexual abuse is the only category more likely to have been committed by a perpetrator who is other than a caregiver.[46] By definition, neglect can be committed only by a person obliged to provide a child with appropriate care. In those circumstances, it is not surprising that biological parents are responsible for the majority of neglect and, of those parents, mothers are responsible for neglect more often than fathers.[47]

This observation does not reflect a higher risk of neglect by a mother over a father, but rather reflects the social reality that mothers are more likely to be engaged as a child's primary caregiver and placed in a position where they are obliged to provide appropriate care.[48] The limited research available suggests that emotional abuse originates mainly from caregivers, approximately evenly spread between male and female carers.[49]

What must be borne in mind is that most families want to do a good job of parenting their children. However, poverty, social isolation and deprivation, drug and alcohol abuse, family violence, mental illness, and psychological or intellectual deficits can all challenge parents' determination to do the best for their children.

THE PREVALENCE OF CHILD MALTREATMENT

At what point child maltreatment becomes severe enough to pose a threat to the safety and healthy development of children is difficult to identify with precision. What is damaging to wellbeing is different for every child and depends on the interplay of individual risk and protective factors, together with a child's unique capacity to respond to those factors.

Commonly identified categories are used to describe behaviours which have the potential to harm children. They are broadly divided into conduct of omission (neglect and emotional neglect) and commission (physical abuse, sexual abuse, some forms of emotional abuse). Increasingly, researchers and commentators include witnessing family violence as a child maltreatment category warranting separate attention.

The rate of abuse in the population is measured and tracked in different ways. There is no nationwide rigorous study which measures the prevalence of child abuse and neglect. Measurement of prevalence relies on several smaller-scale studies which have reached varying conclusions or assessments from proxy measures such as child protection notifications. Some differences in prevalence rates reported in these studies can be traced to variation in study design, definitional differences associated with each type of abuse, and the manner and frequency with which questions seeking a response about certain kinds of abuse are asked.[50]

Professor Fiona Arney, Director of the Australian Centre for Child Protection, told the Commission that:

> If anyone ever asked me … [the] question, 'Is abuse and neglect getting worse?', I have no answer for that. Are we detecting more? I have no answer for that, simply because we have no prevalence rates. We do not know the level of child abuse and neglect that's happening in our community.[51]

Professor Arney said proxy measures of prevalence such as child protection system notification or substantiation rates should be viewed cautiously because of what is known about the underreporting of child abuse and neglect.[52]

The fact that abuse types are separately defined and counted for statistical purposes should not be misunderstood as indicating that each type occurs in isolation. Many maltreated children experience multiple types of abuse or neglect across their lifespan. In addition, many acts of maltreatment can be counted in more than one category, depending on the way in which they are described.

For example, a caregiver who engages in excessive physical discipline might at the same time use insulting and belittling words to the child. In the long term the emotional damage of the insults may be more pervasive than the physical harm. Is such an event properly characterised as physical abuse or emotional abuse? If a caregiver sexually assaults a child, but at the same time uses physical force, is that physical or sexual abuse? What of the gross breach of trust that is inherent in that act, and associated emotional damage? Is the act also emotional abuse? The approach taken to the behaviour by the person coding the notification often therefore will influence the approach to assessment and, subsequently, how the notification is counted.

Noting these limitations, the smaller-scale prevalence studies have been relied on to estimate nationwide prevalence rates and these figures are quoted in this chapter. The rates in general relate to at least one occurrence of the abuse or neglect type during an individual's childhood.

Physical abuse is commonly defined as the infliction of a physical injury (whether an injury was intended or not) by punching, kicking, beating, burning or otherwise harming the child. The injury may result from excessive discipline, or discipline that is inappropriate to a child's age and development (for example, shaking an infant). Examination of data across a number of studies has estimated the prevalence of physical abuse of children in the general population at approximately five per cent.[53]

Sexual abuse encompasses a wide range of conduct. Some behaviour is easily defined as sexual abuse, for example, sexual activity of any kind with a young child. However, there may be disagreement about other behaviour. For example, consensual sexual activity between a 19 year old and a 15 year old might attract the attention of the criminal law in this state, but people might not agree that it constitutes child abuse. Circumstances such as the parties' respective ages, the existence of a familial relationship and an unequal power relationship would be relevant to whether consensual sexual activity amounted to child abuse.

Determining prevalence rates for sexual abuse is complicated by very low disclosure rates and factors (which are becoming increasingly well recognised) that prevent victims from disclosing their abuse, sometimes until many years after they have grown to adulthood. Australian studies suggest a prevalence rate for penetrative abuse of 4–8 per cent for male children and 7–12 per cent for female; and for non-penetrative abuse of 12–16 per cent for male children and 23–36 per cent for female.[54]

Emotional (or psychological) abuse includes emotional neglect. Issues arise in assessing whether some neglectful behaviours fall within emotional abuse or neglect categories for statistical purposes. Some research includes exposure to family violence in this category. The following behaviours are typically defined as emotional abuse:

- rejection, refusal to show affection, and behaviour which suggests child abandonment;
- isolation and preventing the child from participating in normal opportunities for social interaction;
- threatening severe or sinister punishment, or deliberately creating a climate of fear or threat;
- ignoring a child, being psychologically unavailable to the child and not responding to their behaviour; and
- corrupting behaviour that encourages a child to adopt false social values and reinforces deviant or antisocial behaviour such as aggression, criminality or substance abuse.

The prevalence of emotional abuse is estimated at about 11 per cent of the population.[55] National data collected by the Australian Institute of Health and Welfare shows that emotional abuse is the most commonly substantiated form of child maltreatment in Australia (43 percent of substantiations in 2014/2015).[56] The inclusion of reports that relate to children witnessing family violence and a growing awareness of the impact of this type of environment on children are likely to be contributing to this high level of substantiations.

Children who experience chronic stress associated with ongoing domestic violence can suffer the effects of toxic stress discussed earlier. Some research estimates the co-occurrence rate of domestic violence and other forms of child abuse and neglect as between 40 and 80 per cent[57], highlighting the need for child protection authorities to look beyond the immediate physical safety concerns associated with children being present during violent episodes, and to closely examine the child's lived experience.

Neglect refers to a failure by a parent or caregiver to provide the conditions which are culturally accepted as being essential for a child's physical and emotional development and wellbeing. The following subcategories describe the range of behaviours which may be considered in this category:

- failure to provide basic physical necessities such as housing, food, healthcare, clean and adequate clothing;
- lack of caregiver warmth, nurturing, encouragement and support;
- failure to provide appropriate educational opportunities; and
- failure to provide a safe environment (including supervisory neglect).

One of the challenges of identifying the prevalence of child neglect is that neglect inevitably exists on a continuum (from meeting all a child's needs to meeting none), and it is difficult to determine the point at which the standard of care crosses over to being unacceptable.[58] A related difficulty is that social and cultural groups have differing ideas as to what constitutes acceptable parenting behaviour. For example, in some cultures it is considered acceptable to leave younger siblings in the care of children as young as eight without an adult caregiver, while in others that would be considered supervisory neglect.[59] The best available evidence estimates neglect prevalence at approximately 12 per cent of the population. However, more research is needed.[60]

These prevalence figures create a somewhat alarming view of high levels of substandard care experienced by children in Australia. However, not every incident of neglect or emotional, physical or sexual abuse will necessarily require a response from a child protection service. Many people can identify incidents in their childhood that constituted abuse or neglect, yet they regard their childhood as having been good overall. The response to abuse or neglect would depend on its severity, persistence and impact on the child. The occurrence of an incident or circumstances that might be defined as abuse or neglect does not mean that the child's safety is necessarily compromised on an ongoing basis. Prevalence rates highlight the pervasiveness of the problem of child maltreatment, but they do not equate to an estimate of the numbers of children who require a child protection response.

The maltreatment might be isolated, unlikely to recur and have no lasting impact on the child's wellbeing. In many cases, a protective and competent caregiver will recognise the abusive nature of the behaviour and take steps to protect the child. In these cases no state response would be required. However, a child protection system response is required when the child's caregivers are incapable of providing the protection that the child needs, and there is evidence that the maltreatment is affecting the child's wellbeing.

THE IMPACT OF CHILD ABUSE AND NEGLECT

Maltreatment can affect all areas of a child's development. Infants and babies who are maltreated or who are deprived of the opportunity to develop healthy attachment relationships with a consistent caregiver are at risk of developing insecure or disorganised attachment patterns. Where the caregiver, who should be a consistent source of safety, comfort and protection, instead becomes the source of danger and harm, the capacity of a child to develop the ability to communicate, interact and maintain healthy relationships with others is compromised. These issues can persist and develop into adult psychological difficulties.[61]

Children can also suffer lifelong effects from chronic low-level maltreatment. Research has shown that this can lead to poorer outcomes for children than abuse that is restricted to transitory or isolated incidents of maltreatment.[62] Children who are victims of more than one type of maltreatment also suffer poorer outcomes.

'Complex trauma' describes the range of cognitive, affective and behavioural outcomes that arise from experiencing trauma.[63] A characteristic of complex trauma is a disturbed ability to relate to others and form healthy relationships.[64] Sufferers often have difficulties with emotional regulation and an impaired sense of self and of wellbeing.[65]

Cumulative harm is used to describe outcomes from child maltreatment that occurs over a period of time, often across different developmental periods. Chronic trauma and maltreatment that persist over time increase the risk of a range of adverse outcomes, such as[66]:

- disturbed patterns of attachment;
- difficulty in controlling the emotional state;
- rapid behavioural regression and shifts in emotional states;
- loss of autonomous striving (independent actions);
- aggression towards self and others;
- anticipation and expectation of trauma;
- lack of awareness of danger and self-endangering behaviour; and
- self-hatred, self-blame, and chronic feelings of ineffectiveness.

Developmental impacts of childhood trauma have been found to include[67]:

- memory and attention disturbance; dissociation, sleep disturbance and trauma re-experiencing;
- difficulties with interpersonal relationships;
- changes in systems of meaning, leading to feelings of despair and hopelessness, loss of beliefs that were previously sustaining, suicidal thinking, and risk taking, including risky sexual behaviour;
- alterations of perception and distorted thinking about their abuser and themselves;
- disturbances of information processing;
- physical symptoms related to the digestive system, chronic pain and cardiopulmonary symptoms; and
- anxiety and personality disorders.

Long-term harm to a child is more likely to result from a chronically abusive environment and the emotional impact of abuse, than from physical injury. The personal experience of the child, how they perceive the abuse, and the meaning they attribute to it is more determinative of the degree of psychological harm than the force used or the degree of injury caused.[68]

These findings underscore the importance of understanding the child's cumulative experience of their caregiving environment, as well as the objective seriousness of the caregiver's acts or omissions when determining what, if any, child protection response is required.

NOTES

1   The *Children's Protection Act 1993* (SA), s. 6, defines abuse and neglect to include physical, sexual or emotional abuse of a child. The definition also refers to the infliction of a physical or psychological injury detrimental to a child's wellbeing, or where a child's physical or psychological development is in jeopardy. The test for statutory intervention is necessarily higher than the test for harm which might justify some other kind of voluntary assistance or family support.

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4 EXTERNAL INFLUENCES ON SOUTH AUSTRALIA

4 EXTERNAL INFLUENCES ON SOUTH AUSTRALIA

OVERVIEW

Child protection policy and practice are influenced by a number of forces at a national and international level. The child protection system must not only operate in accordance with local conditions, but also have regard to national and international obligations and research, child protection systems in other states and the political priorities of the governments of the day.

There is a strong movement towards closer relationships between Australian child protection jurisdictions, and the current pressure at a national level towards standardisation of systems across state boundaries is likely to continue. South Australia's child protection system must be structured and positioned to enable it to flexibly respond to these various—and sometimes competing—influences on its operations.

This chapter sets out some of the major influences that should guide any reform of the system. It principally relates to the Commission's Terms of Reference 5(a) to 5(h), in the context of Terms of Reference 2 and 3.

INTERNATIONAL INFLUENCES

Australia is a signatory to several international conventions that influence the protection of children. While international conventions are not binding in domestic law, by ratification Australia is obliged to recognise the human rights conveyed. Recognition of these international obligations must find expression in both strategic direction and law and policy reform.

The United Nations Convention on the Rights of the Child[1] applies to all children and catalogues their human rights, including the right to education, an adequate standard of living and health care.[2] Of specific application in the child protection system are the rights guaranteed in the following articles of the convention:

• Article 3—that the best interests of the child are the primary consideration in actions concerning children;

• Article 9—that a child should not be separated from its parents against their will, except in prescribed circumstances with judicial oversight;

• Article 18—that the state render appropriate assistance to parents and legal guardians in their performance of their child-rearing responsibilities;

• Article 19—that the state ensure that children are protected from maltreatment and abuse;

• Article 20—that a child deprived of his or her home environment in their best interests will be entitled to special protection and assistance provided by the state; and

• Article 34—that children should be protected from sexual abuse.

Specific reference to children with disabilities and Aboriginal and Torres Strait Islander children is found in the UN Convention on the Rights of Persons with Disabilities[3] and the UN Declaration on the Rights of Indigenous Persons[4] respectively. It is important that specific regard is had to these conventions in light of the over-representation of children with disabilities and Aboriginal and Torres Strait Islander children in the child protection system.

Both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities require Australia to report regularly to the UN on their commitment to the preservation and recognition of children's rights.[5] Accordingly, the conventions identified should be reflected in the strategic direction and policies of all agencies operating in the child protection system by identifying how these human rights will be recognised in practice.

A substantial and growing body of evidence exists about child protection. This includes peer-reviewed literature, professional knowledge and experience, all of which are available to people working in the South Australian child protection system. This evidence must inform education and training, and lead policy and practice development. Subscription journals that focus specifically on child abuse and child protection, such as *Child Abuse & Neglect, Child Abuse Review* and *Child and Youth Services Review*; and resources including the United Kingdom's National Society for the Prevention of Cruelty to Children and Barnardos Ireland are available via the internet. Each year, there are opportunities for practitioners and leaders to attend international conferences on topics of child abuse and protection.

Remaining up to date with the most recent research and thinking in the field is a critical part of ensuring that South Australia's child protection system is efficient and effective. The need for a greater connection to universities and other centres of research for the statutory agency is discussed later in this report.

NATIONAL INFLUENCES

The division of government power mandated in Australia's Constitution leaves the protection of children at risk of abuse and neglect, by and large, the responsibility of the states and territories. Although physical borders between states and territories have become less important than they once were, and the population is far more mobile, system boundaries remain. Information held by child protection agencies in each jurisdiction is not freely shared, and there are barriers to the transfer of orders made to secure the safe care of children.

There is increasing pressure at a federal level for greater standardisation and integration of the child protection systems operating in each state and territory. There is merit in this objective, as the breaking down of jurisdictional boundaries and a simplification of information-sharing processes are critical to meeting the challenges of a mobile population of children who require a child protection response.

NATIONAL FRAMEWORK FOR PROTECTING AUSTRALIA'S CHILDREN

The National Framework for Protecting Australia's Children 2009–2020 is an initiative of the Council of Australian Governments (COAG). It provides an overarching plan for the development of child protection services across each Australian jurisdiction. The priorities and actions identified through the National Framework action plans must be closely considered in any cohesive reform at a state level. In the course of its investigations, the Commission became aware of some areas where South Australia has a poor level of compliance with national standards and insufficient regard to national approaches.

The National Framework is a strategic plan that mandates collaboration among jurisdictions to 'provide the foundation for national reform'.[6] It aims to raise the national profile of child protection and improve standards for children in care, as well as develop coordinating mechanisms between the jurisdictions. It has one high-level outcome—that Australia's children are safe and well—underpinned by six outcomes:

- Children live in safe and supportive families and communities;
- Children and families access adequate support to promote safety and intervene early;
- Risk factors for child abuse and neglect are addressed;
- Children who have been abused or neglected receive the support and care they need for their safety and wellbeing;
- Indigenous children are supported and safe in their families and communities; and
- Child sexual abuse and exploitation is prevented and survivors receive adequate support.

The National Framework also promotes a change of focus from solely responding to abuse and neglect to promoting the safety and wellbeing of children through prevention. It recommends the public health model (see box) as the appropriate model to achieve this shift.[7]

Figure 4.1 represents the recommended distribution of resources under the public health model.

The public health model

The public health model proposes multiple levels of intervention:

- Primary or universal interventions target whole communities to build public resources and prevent child maltreatment before it arises through support and education that focus on the social factors that contribute to maltreatment.

- Secondary or targeted interventions target vulnerable families who exhibit risk indicators for child maltreatment, including poverty, parental mental health problems, marital discord, family violence and parental drug and alcohol abuse, and who are in particular need of support. They 'address risk factors, alleviate problems and prevent escalation with a focus on early intervention'.[1]

- Tertiary interventions target families in which child maltreatment has occurred. They focus on reducing the long-term consequences of maltreatment and preventing maltreatment from recurring or escalating. They include statutory child protection services.[2]

[1] Australian Research Alliance for Children and Youth, *Inverting the pyramid: Enhancing systems for protecting children,* The Allen Consulting Group, 2008, p. 4.

[2] ibid., pp. 3-4; Australian Institute of Family Studies, *Defining the public health model for the child welfare services context,* CFCA Resource Sheet, AIFS, 2014, https://aifs.gov.au/cfca/publications/defining-public-health-model-child-welfare-servi

TERTIARY
Provide interventions for children experienceing maltreatment

SECONDARY
Programs targeted at families in need to alleviate identified problems and prevent escalation

PRIMARY/UNIVERSAL
Programs targeted at entire population in order to provide support and education before problems occur
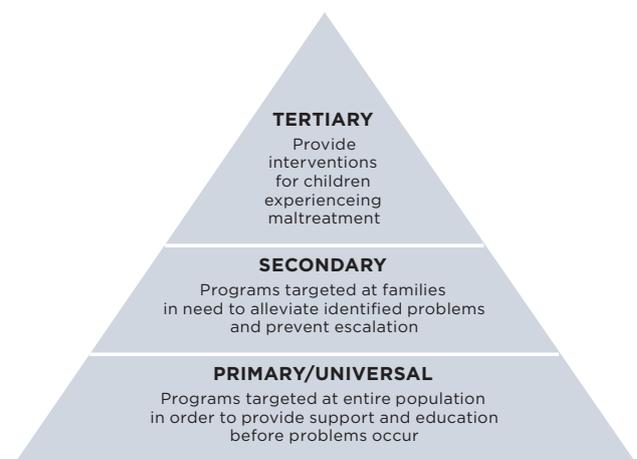
Figure 4.1: The public health model

Source: Australian Institute of Family Studies, *Defining the public health model for the child welfare services context,* CFCA Resource Sheet, AIFS, 2014, https://aifs.gov.au/cfca/publications/defining-public-health-model-child-welfare-servi

The model invests most resources in primary services, which are aimed at the population as a whole. The rationale is that this will prevent child maltreatment and reduce the amount of resources at the secondary and tertiary levels. By contrast, child protection systems in Australia tend to resemble an inverted pyramid, with too much emphasis on tertiary interventions and too little on secondary and primary interventions.[8]

Primary or universal services tend to carry less stigma for the families that use them. Seeking help from these services is seen as a normal, positive step that all families take from time to time. Examples of universal services for children and families in South Australia include the education system, including schools, kindergartens and children's centres, and the health system, including general practitioners, health clinics and the universal contact visits made after the birth of a new baby. These services spend time with vulnerable families and are well placed to identify when extra support is needed and either provide that directly or refer families to services which can provide it. At times, they serve as 'lifelines for very isolated, scared parents'.[9]

There are limits to the support these services can offer to families with complex problems. Families who come into contact with child protection systems often face multiple inter-related problems, including domestic violence, substance abuse and poor mental health. Addressing complex or entrenched problems is specialised work. It requires intensive, longer-term service models staffed by experienced workers with specialised training.[10]

Primary services may not be able to address these needs directly, but can serve as non-threatening entry points to engage families and form trusting, therapeutic relationships with them. In so doing, primary services need to be equipped to identify more complex needs and coherent pathways to refer families to secondary services that can address these needs.

There is a growing interest in developing and delivering primary services on the basis of 'proportionate universalism'. Proportionate universalism describes an approach where 'actions must be universal, but with a scale and intensity that is proportionate to the level of disadvantage'.[11] This addresses the argument that universal services deliver benefits to families that are least in need because the most vulnerable families are more likely to face barriers to services, including cost, transport, language or stigma. On the other hand, targeted programs do not necessarily eliminate barriers such as stigma and they have the potential to miss many people who, while not the most vulnerable, are vulnerable nonetheless.[12] Proportionate universal services offer some support to all of the population through primary interventions, with increasing levels of service for those who need it.

Under the National Framework, three action plans have been developed (2009–12, 2012–15 and 2015–18), which set out strategies to achieve the outcomes. For the first plan, nationally consistent approaches to out-of-home care standards and the provision of support to young people leaving care were among the 12 priorities. Actions have resulted in the development of national standards for out-of-home care, and a nationally consistent approach for transition planning.[13]

The second action plan identified the need to integrate the National Framework with other national social reform priorities, in particular:

- early childhood;
- education;
- domestic and family violence;
- health and mental health; and
- disability.

The need to invest in the development of the non-government sector and engage the whole community in taking responsibility for child protection was also identified.[14]

The current action plan identifies early intervention (particularly action in a child's first 1000 days) as a key focus.[15] Actions under this strategy include increasing community awareness of child development and normalising the seeking of help to raise safe and healthy children. The plan also identifies the need for an increased focus on joined-up services for families, in particular greater integration of child care, maternal and child health, and family support services.[16] The Commission has also identified these principles as priorities at a state level, and they inform the recommendations in this report.

An ongoing priority for the National Framework is reducing the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. Pursuant to the National Framework's outcome that 'Indigenous children are supported and safe in their families and communities'[17], the Secretariat of National Aboriginal and Islander Child Care has produced a policy and practice framework, Pathways to Safety and Wellbeing for Aboriginal and Torres Strait Islander Children.[18] It identifies four 'pathways' to providing better support to families and communities:

- Supporting families and communities to stay together;
- Aboriginal and Torres Strait Islander participation;
- Trauma and healing informed approaches; and
- Systems accountability to Aboriginal and Torres Strait Islander priorities.

A number of witnesses commended this framework to the Commission as a starting point for policy development for the protection of Aboriginal and Torres Strait Islander children.[19]

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

The Royal Commission into Institutional Responses to Child Sexual Abuse is due to deliver its final report on 15 December 2017. It released an interim report on 30 June 2014 and has published other reports on particular topics, including working with children checks and redress and civil litigation.[20] The Commission also has a substantial research program, the results of which are generally available to the public. It appears to be committed to research-based recommendations for reform.

The recommendations of the federal Commission are likely to result in an even greater focus on standardisation across jurisdictions of some aspects of child protection. For example, its interim recommendations on working with children checks favour a uniform system across Australia's states and territories, and greater portability of the checks.[21]

Given the breadth of the inquiry, it is likely that its recommendations will have a major impact at the state level. South Australia's reform program must progress mindful of the federal agenda that is likely to arise following the publication of the Commission's final report. Recommendations that provide a national framework for greater portability of child protection orders, and more streamlined and open information sharing, should be welcomed as a starting point for standardised reforms.

THE FAMILY COURT

The Family Court hears private applications for parenting orders that deal with where a child will live, and specific issues relating to parental responsibility or child maintenance. The way in which legislative power is allocated in Australia's Constitution has created a system whereby issues of child abuse and neglect are dealt with in different ways, depending on their context and circumstances. As Daryl Higgins, a prominent researcher in this area, describes:

> Although each of these systems deal with child abuse issues, it is important to appreciate that they play very different roles and consequently function according to distinct legislative, philosophical and operational imperatives … the key difference between the two systems is the fact that child protection law is concerned directly with state intervention into private family life. The FLA [Family Law Act] in contrast, is concerned with resolving private law disputes over parenting arrangements between two parties, most often the parents of the child who is the subject of the dispute.[22]

The two jurisdictions intersect when Family Court proceedings relate to children who are under child protection orders. Section 69ZK of the *Family Law Act 1975* (Cth) prevents the Family Court making orders in relation to these children unless the 'welfare authority' consents.[23] In South Australia, the relevant welfare authority is Families SA. The operation of section 69ZK ensures that children are not returned to the care of their parents where the Youth Court has determined that a relevant risk of abuse or neglect exists.[24]

Child protection concerns may also be raised for the first time by parties to Family Court proceedings. The Family Court has no power to investigate concerns raised on its own behalf and must refer the matter to Families SA, as the responsible welfare authority.[25] Parties to a Family Court action often lack the resources and access to systems to comprehensively investigate child protection concerns. The parties therefore often rely on investigations conducted by Families SA.

The intersection of the two jurisdictions has recently been the subject of terms of reference from the federal Attorney-General, Senator George Brandis QC, to the Family Law Council to consider the following matters:

1. The possibilities for transferring proceedings between the family law and state and territory courts exercising care and protection jurisdiction within current jurisdictional frameworks (including any legal or practical obstacles to greater inter-jurisdictional cooperation).
2. The possible benefits of enabling the family courts to exercise the powers of the relevant state and territory courts including children's courts, and vice versa, and any changes that would be required to implement this approach, including jurisdictional and legislative changes.
3. The opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services.
4. The opportunities for enhancing collaboration and information sharing between the family law system and other relevant support services, such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migrant settlement services.
5. Any limitations in the data currently available to inform these terms of reference.

The interim report of the council, published on 30 June 2015, focused on the first and second terms of reference.[26] The final report on all matters is due by mid-2016. The interim report sets out in some detail the advantages and disadvantages of a closer relationship between the two systems. It is unnecessary to repeat those matters in this report.

THE STATE INTERVENING IN FAMILY COURT CASES

When the Family Court believes it is necessary in the interests of the child, it may request that the relevant statutory authority intervene in proceedings.[27] Research shows that state agencies may decline to intervene for a variety of reasons, including that the allegations relate to an historical concern or do not meet the statutory threshold, the agency has limited resources or the referral does not attract the necessary priority rating for action. In *Secretary for the Department of Health & Human Services and Ray & Ors*, the Full Court set aside an order requiring the secretary of the Tasmanian Department of Health & Human Services to intervene in proceedings relating to two children at risk of emotional, physical and sexual abuse. The Judge at first instance was concerned that neither party, nor any available family member, was suitable to take parental responsibility.[28] The secretary declined the invitation to be joined, but the Judge nonetheless made an order in his favour. The Full Court set aside that order and held that the Family Law Act did not confer power to make parental responsibility orders in favour of state child protection authorities without the consent of the relevant authority.

Whether or not a child protection agency agrees to intervene in proceedings, the Family Court can make orders requiring that documents related to notifications, assessments or commissioned reports be produced.[29] However, production of a child's file can give an incomplete picture of a party's parenting capacity. A party may have other children for whom there have been child protection concerns, but who are not the subject of the Family Court proceedings, and material contained in those files may well be relevant to the Family Court proceedings, although they are often not subpoenaed.[30]

The Family Law Council interim report refers to the discrepancy between the family law and child protection systems 'concerning the point in which poor parenting behaviour can be regarded as neglect or abuse'.[31] The council argues that this gap has created difficulties in Family Court cases where the threshold for child protection intervention is not met, but, for the purposes of making parenting orders, neither party to the family law proceedings has the capacity to support the child's safety and wellbeing. This leaves the Family Court in the situation of being left to pick the least worst of the adults with whom the children shall live.[32]

The Family Court's Magellan Project is a collaborative case management approach for matters where allegations of serious physical or sexual abuse are raised in the context of litigation. The project aims to resolve cases within six months. Cases brought within the project benefit from a closer connection to the relevant statutory agency, as the project has the power to request intervention from the agency and/or a report on the allegations and any investigation conducted. The project

is an important example of the way in which bridges can be built between systems to enhance the operation of each.

THE APPROACH OF THE STATUTORY AGENCY TO THE FAMILY COURT

The Commission heard evidence that a perception exists in Families SA that if the Family Court is involved, the case can be closed.[33] The Commission also received a large number of submissions from litigants to Family Court matters where allegations have arisen in the course of litigation, but Families SA has not acted on notifications made. Family Court litigants have been frustrated that Families SA seemed reluctant to act on allegations made in this context.

Allegations made in the context of Family Court proceedings may not attract a response because of the statutory system's obligation to prioritise its responses according to urgency of need. For example, if a relevant notification is made by one parent who appears to be acting in an appropriately protective way (pursuing Family Court action to prevent contact from the parent alleged to be the source of the risk) and the child's arrangements do not reveal a current risk of abuse or neglect, it is unlikely to attract a priority ranking for a child protection response. The tension arises when litigants want to activate the forensic investigation powers of the statutory agency to influence future Family Court orders, which they fear may expose a child to a risk of abuse or neglect.[34]

The Commission is not in a position to ascertain whether and to what extent the existence of a Family Court action influences the response to a child protection notification in South Australia.[35] If the clear perception on the part of various Family Court litigants is right, and those notifications are less likely to attract a response, there is a risk that serious child protection concerns could fall through the gap because the Family Court does not have the powers of investigation available to Families SA, and could make orders that place a child at risk because of an absence of information quantifying that risk. There is a corresponding danger that litigants to Family Court disputes that involve no child protection issues might be tempted to activate the investigative powers of the child protection system to lever an advantage in court.

Practitioners assessing child protection notifications must have a well-developed understanding of the role and limitations of the Family Court to intervene and investigate when child protection matters arise in those proceedings. While a background of Family Court proceedings might introduce additional complexity to the assessment of a child protection notification, it must never be a factor which is decisive of whether Families SA becomes involved.

In particular, assessment practitioners must be aware of the investigational limitations of the Family Court and the danger that a child might be placed at risk by Family Court orders absent information addressing or quantifying a risk of abuse or neglect.

Until the end of 2013, Families SA employed several court liaison officers, led by a principal liaison officer. The court liaison role crossed between the Youth Court and the Family Court. It provided a contact point for strategic issues between each court and Families SA and worked to streamline processes through developing a better understanding of the work of each organisation. Liaison officers were also able to support children in care who appeared in the criminal jurisdiction of the Youth Court with no youth or social worker present.[36] In light of the gap to be bridged between the Youth Court, the Family Court and the statutory agency, a resource dedicated to that liaison role should improve both the relevant system interface and the mutual understanding of each organisation.

GRANDPARENTS AND KINSHIP CARERS BEFORE THE FAMILY COURT

There is potential for family members who are looking after children who cannot be safely cared for by their parents (kinship carers) to apply to the Family Court for a parenting order pursuant to section 64B of the Family Law Act. Such orders have the advantage of providing the kinship carer with the legal authority to make decisions about the child's education, health and travel needs, and to access support services and government benefits associated with the child. However, as the Family Law Council commented, 'Some stakeholders observed that some family members, such as grandparents who are living off retirement savings or a parent who has been the victim of family violence, may be ill-equipped to manage the demands of private legal proceedings without support'.[37] These concerns were also reflected in submissions made and evidence given to the Commission on this topic. Concerns also existed about the relatively slow pace of Family Court proceedings, and the associated cost implications for the person who had assumed the care of the child.[38]

In its report, the Family Law Council referred to the Senate Community Affairs References Committee's report, *Grandparents who take primary responsibility for raising their grandchildren* (October 2014), which suggested that grandparents' ability to acquire cost orders was significantly restricted by the cost of legal representation. This was particularly so for grandparents who were not in paid employment.[39]

The council's report also said that legal aid was not always available to help family members, noting that:

> *As a result of these financial constraints, protective carers might have to represent themselves in family law proceedings with responsibility for preparing their own documentation and running their own case.*[40]

There is merit in appropriate carers being able to make applications to the Family Court as an alternative to seeking a guardianship order. Some kinship carers request the support of Families SA to obtain Family Court orders in order to secure continuity of care for children, without the ongoing involvement and case management of Families SA.[41] However, without a state funding model, this support is provided on an ad hoc basis through local Families SA budgets.[42] It is more common in these circumstances for guardianship orders to be sought from the Youth Court over parenting orders from the Family Court.[43]

It would seem that at present pursuing parenting orders in the Family Court is sometimes not viable for kinship carers, for the reasons set out in the Family Law Council's Interim Report. The answer to these challenges lies in either a closer connection between the family law and child protection systems insofar as they concern kinship carers, or more formalised funding support for kinship carers to be represented to make Family Court applications. For appropriate cases, it may be more cost effective to support kinship carers to secure parenting orders through a grant of legal aid than to bring the child unnecessarily into the child protection system. Opportunities to improve access of kinship carers to the Family Court are being pursued through actions resulting from the Family Law Council report.

The Family Law Act contemplates the registration of state child orders in the Family Court.[44] Such action gives Youth Court orders the status of orders made 'by that court under this Part'.[45] Importantly, registration would thereby give the orders a force beyond state boundaries. This is another potential mechanism to improve the flexibility of orders to protect children who are mobile across state boundaries. In appropriate cases, funding should be available to kinship and foster carers to register orders with the Family Court.

THE CALL FOR A NATIONAL DATABASE

Recommendation 5 of the Family Law Council's interim report suggested that the federal Attorney-General raise the following matters at the COAG level:

(a) The development of a national database of court orders to include orders from the Family Court of Australia, the Family Court of Western Australia, the Federal Circuit Court of Australia, state and territory children's courts, state and territory magistrates courts, and state and territory mental health tribunals, so that each jurisdiction has access to the other's orders.

(b) The convening of regular meetings of relevant stakeholder organisations, including representatives from the children's courts, child protection departments, magistrates courts, family courts, legal aid commissions and attorney-general's departments, to explore ways of developing an integrated approach to the management of cases involving families with multiple and complex needs.

(c) Amending the prohibition of publication provisions in state and territory child protection legislation to make it clear that these provisions do not prevent the production of reports prepared for children's court proceedings in family law proceedings.

(d) The entry into memoranda of understanding by state and territory child protection agencies and the federal family courts to address the recommendations of Professor Chisholm's reports.[46]

(e) The co-location of state and territory child protection department practitioners in federal Family Court registries.

(f) The development of dual competencies for Independent Children's Lawyers to achieve continuity of representation for children, where appropriate.

Given the national focus of these recommendations, it is likely that reform will be driven by forces outside South Australia. However, it will be necessary for the state's child protection system to be mindful of the deficits that exist at this interface, and be open to changes that will increase connections.

While all the matters raised in recommendation 5 have merit, number 5(a) is especially significant. In Vol. 2, Case Study 1: James, serious issues are identified regarding the availability of interstate child protection information to inform assessment decisions made at Families SA. The case study's evidence supported the conclusion that obtaining information from interstate child protection agencies can be difficult, and is not always quickly provided. Information about previous child protection concerns, particularly the removal of other children, can be critical to properly assess new notifications.

A database of court orders from the child protection jurisdictions of each state and territory and the Family Court has the potential to be a powerful tool for child protection agencies. In many cases, a database search would quickly identify parents against whom formal care and protection orders and family court orders have been made. At the most fundamental level, such a search might identify the existence of other children in a family, which could open other avenues of enquiry to assess current levels of risk. Therefore, the Commission supports the development of a national database of the kind contemplated in the Family Law Council report.

The South Australian Coroner, in an inquest into the death of Ebony Simone Napier, an infant who died at the hands of her parents against the background of an inadequate child protection response, made recommendations about the relationship of Families SA to other interstate child protection agencies.[47] The Coroner advocated for the development of a national child protection database of all information collected by child protection agencies across the country. While such a database would significantly improve the sharing of intelligence across jurisdictional boundaries, in the short term there are likely to be considerable implementation barriers. A more realistic strategy in the short term would be to support recommendation 5(a) of the Family Law Council report as a starting point for the development of closer information links between jurisdictions.

LESSONS LEARNED FROM OTHER STATES AND TERRITORIES

In their approaches to child protection, each Australian state and territory has a slightly different model and legislative scheme.[48] South Australia's child protection system has lagged behind a number of other states in its attention to early intervention and other preventative programs and policies. Many of the changes that South Australia must consider as part of a comprehensive reform process will have been implemented in, or at least assessed by, other jurisdictions. The state's inactivity presents opportunities for it to draw on the best of what has been tried and tested by other jurisdictions. In particular, there are lessons to be learned from other jurisdictions' collaborations with the non-government sector and innovative funding mechanisms.

RECOMMENDATIONS

The Commission recommends that the South Australian Government:

1   Establish a protocol to govern eligibility for a grant of legal aid to carers, where the child's best interests would be better or more appropriately secured by obtaining Family Court orders, rather than by proceedings in the Youth Court. Further, that funding be provided to the Legal Services Commission and quarantined for this specific purpose.

2   Fund, subject to a protocol, any required filing costs where there is a need for Youth Court orders to be registered in the Family Court to improve the safety of the children to whom they relate.

3   Support and promote for action, recommendation 5(a) of the Family Law Council interim report (June 2015), which advocates for the development of a national database of child protection and Family Court orders.

4   Reinstitute the court liaison role as a strategic link between the Agency, the Family Court and the Youth Court, to improve system interface and to develop service responses in accordance with the requirements of each jurisdiction.

NOTES

1 Office of the United Nations High Commissioner for Human Rights (OHCHR), Convention on the Rights of the Child, entered into force 2 September 1990.

2 ibid., Articles 26–28.

3 United Nations (UN), Convention on the Rights of Persons with Disabilities, entered into force 3 May 2008.

4 UN, Declaration on the Rights of Indigenous Peoples, adopted 13 September 2007.

5 UN, Convention on the Rights of Persons with Disabilities, Article 35; UN, Convention on the Rights of the Child, Article 44.

6 Council of Australian Governments (COAG), *Protecting children is everyone's business: National framework for protecting Australia's children 2009–2020*, Canberra, 2009, pp. 5, 9.

7 ibid., p. 7.

8 Australian Research Alliance for Children and Youth, *Inverting the pyramid: Enhancing systems for protecting children*, 2008, p. 5; Australian Institute of Family Studies, *Defining the public health model for the child welfare services context*, CFCA Resource Sheet, 2014; COAG, *National framework for protecting Australia's children.*

9 Oral evidence: F Arney.

10 Submissions: Anglicare; name withheld (S84). L Bromfield et al., *Issues for the safety and wellbeing of children in families with multiple and complex problems: The co-occurrence of domestic violence, parental substance misuse and mental health problems*, National Child Protection Clearinghouse, no. 33, 2010, p. 1.

11 M Marmot (Chair), *Fair society, healthy lives (The Marmot Review): Strategic review of health inequalities in England post-2010*, The Marmot Review, 2010, p. 9.

12 Better Start Child Health and Development Research Group, *Five by five: A supporting systems framework for child health and development,* University of Adelaide, 2014, pp. 22–23*;* Human Early Learning Partnership, *Policy brief: Proportionate universality,* University of British Columbia, 2015*,* p. 3; S Fox et al., *Better systems, better chances: A review of research and practice for prevention and early intervention,* Australian Research Alliance for Children and Youth (ARACY), Canberra, 2015, pp. 13–14.

13 Department of Families, Housing, Community Services and Indigenous Affairs with the National Framework Implementation Working Group, *An outline of national standards for out-of-home care—A priority project under the national framework for protecting Australia's children 2009–2020*, Australian Government, Canberra, 2011.

14 COAG, *National framework for protecting Australia's children 2009–2020, Second three-year action plan 2012–2015*, Canberra, 2012, pp. 26–28.

15 COAG, *National framework for protecting Australia's children 2009–2020, Third three-year action plan 2015–2018,* Canberra, 2012, pp. 4, 8.

16 ibid., p. 8.

17 COAG, *National framework for protecting Australia's children 2009–2020*, p. 28.

18 Secretariat of National Aboriginal and Islander Child Care (SNAICC), *Pathways to safety and wellbeing for Aboriginal and Torres Strait Islander children*, 2015, www.snaicc.org.au/pathways-safety-wellbeing-aboriginal-torres-strait-islander-children/

19 Submission: Uniting Communities.

20 Royal Commission into Institutional Responses to Child Sexual Abuse, website, www.childabuseroyalcommission.gov.au/about-us/our-reports, accessed May 2016.

21 ibid., *Working with children checks report*, Australian Government, 2015, pp. 54–55.

22 D Higgins & R Kaspiew, '"Mind the gap …": Protecting children in family law cases', *Australian Journal of Family Law* 22, no. 3, 2008, p. 240.

23 Submission: S Holmes.

24 ibid.

25 *Family Law Act 1975* (Cth), ss. 67Z–67ZA.

26 Family Law Council (FLC), *Interim report to the Attorney-General into the first two terms of reference on families with complex needs and the intersection of the family law and child protection systems,* Attorney-General's Department, Australian Government, June 2015.

27 *Family Law Act 1975* (Cth), s. 91B.

28 *Secretary of the Department of Health & Human Services and Ray & Ors* [2010] FamCAFC 258, Family Court of Australia.

29 *Family Law Act 1975* (Cth), s. 69ZW(2).

30 Oral evidence: R Palachicky.

31 FLC, *Interim report to the Attorney-General,* p. 32.

32 ibid.

33 Oral evidence: R Palachicky. Submission: R Palachicky.

34 D Higgins & R Kaspiew, *Child protection and family law … Joining the dots*, National Child Protection Clearinghouse, no. 34, 2011, pp. 6–7.

35 In a 2002 study, researchers identified a practice by ACT and Victorian child protection authorities to decline to take action when one parent appeared to be acting in a proactive way to secure the child's safety, even if they ultimately did not have Family Court orders made in their favour: F Kelly & B Fehlberg, 'Australian fragmented family law system: Jurisdictional overlap in the area of child protection', *International Journal of Law, Policy and the Family* 16, no. 1, 2002, p. 38.

36 Oral evidence: Name withheld (W29).

37 FLC, *Interim report to the Attorney-General,* p. 33.

38 Submission: Name withheld (S95).

39 FLC, *Interim report to the Attorney-General*, p. 35.

40 ibid.

41 Oral evidence: Name withheld (W35).

42 ibid.

43 Submission: Name withheld (S95).

44 *Family Law Act 1975* (Cth), s. 4.

45 ibid., s. 70E.

46 The FLC's interim report refers extensively to two reports written by Professor Richard Chisholm AM for the Attorney-General's Department, Canberra: *Information-sharing in family law and child protection: Enhancing collaboration* (March 2013) and *The sharing of experts' reports between the child protection system and the family law system* (March 2014). His recommendations concerned information sharing between the child protection and family law systems.

47 Coroners Court of South Australia, Finding of the inquest into the death of Napier, Ebony Simone, Inquest number 16 of 2015, p. 131.

48 L Bromfield & D Higgins, National comparison of child protection systems, National Child Protection Clearinghouse, no. 22, 2005, p. 1.

Some oral evidence, witness statements and submissions were received on a confidential basis.
The source is known to the Commission, and is identified by a number in the endnotes.