



PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

FORTY-FOURTH REPORT TO PARLIAMENT

Report on the Review of the Auditor-General's Special Report No. 43 - Protecting Victoria's Children: The role of the Department of Human Services

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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE MEMBERSHIP - 54TH PARLIAMENT

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This Inquiry was undertaken by a Sub-Committee comprising the following Members:

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¹ Discharged as a Member of the Public Accounts and Estimates Committee on 25 September 2001

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DUTIES OF THE COMMITTEE

The Public Accounts and Estimates Committee is a joint parliamentary committee constituted under the *Parliamentary Committees Act 1968*, as amended.

The Committee comprises ten Members of Parliament drawn from both Houses of Parliament and all political parties and includes an Independent Member.

The Committee carries out investigations and reports to Parliament on matters associated with State financial management. Its functions under the Act are to inquire into, consider and report to the Parliament on:

- (a) any proposal, matter or thing connected with public administration or public sector finances;
- (b) the annual estimates or receipts and payments and other budget papers and supplementary estimates of receipts and payments presented to the Assembly and the Council.

The Committee also has a consultative role in determining the objectives of performance audits undertaken by the Auditor-General and in identifying any particular issues that need to be addressed during these audits.

CHAIRMAN'S INTRODUCTION

Child abuse and neglect and the child protection system are issues of significant public interest and concern in Victoria. Clients of the child protection system are amongst the most vulnerable children and young people in the State.

In 1996, the Victorian Auditor-General tabled Special Report No. 43 - *Protecting Victoria's children: The role of the Department of Human Services*. The performance audit undertaken by the Auditor-General identified many significant weaknesses in key elements of the Department of Human Services' protective services, which adversely impacted on its ability to effectively address the protective concerns of children.

It is the practice of this Committee to follow up issues raised in the Auditor-General's reports, both through the estimates process and by undertaking specific inquiries.

The Committee's review of developments since 1996 found that progress had been made on several issues including early intervention and prevention services, the Department of Human Services' relationship with Victoria Police and resourcing the child protection system. The Committee also found that there was further work for the Department of Human Services to undertake including in system abuse, the Department's response to child sexual assaults and the development of leaving care services.

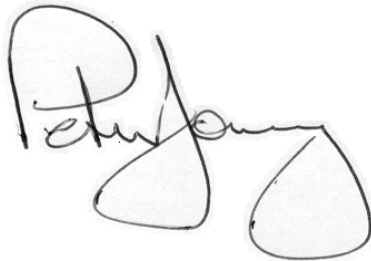
The Committee received evidence on two issues which arose during the course of its review that were not given detailed attention in the Auditor-General's report. As a result the Committee has made recommendations on Aboriginal children in care and examined the concept of a Children's Advocate.

The Committee has been assisted in its Inquiry by a range of departmental officers, individuals and organisations with an interest in child protection matters and I would like to thank those individuals and organisations that provided evidence and submissions to us.

I would also like to thank the staff of the Public Accounts and Estimates Committee secretariat, under the guidance of our Executive Officer Ms Michele Cornwell, for their professionalism, objectivity and hard work. I would particularly thank Dr Caroline Williams, research officer for this Inquiry for the quality of her research work.

The report contains a total of 39 recommendations that the Committee hopes will provide useful guidance to the Department of Human Services and other Departments in improving child protection services in Victoria.

I commend the recommendations and the report to Members.

A handwritten signature in black ink, appearing to read 'Peter Loney', with a large, stylized initial 'P'.

Peter Loney, MP
Chairman

EXECUTIVE SUMMARY

Chapter 1: Background to the Inquiry

The Auditor-General does not have the power to ensure Departments implement the recommendations contained in his reports. It is therefore an important accountability function of the Public Accounts and Estimates Committee to examine all reports of the Auditor-General and to follow-up outstanding or unresolved issues.

In 1996 the Auditor-General issued Special Report No. 43, *Protecting Victoria's children: the role of the Department of Human Services* - a performance audit of child protection services in Victoria. The report identified significant weaknesses in key elements of the Department of Human Services' protective services and the Auditor-General was unable to conclude that the Department was achieving maximum effectiveness in protecting and providing the necessary support for the children of Victoria. The audit found considerable scope for the Department to make cost-effective and efficient use of its existing resources.

In response to the audit report, the Secretary of the Department of Human Services indicated that a number of initiatives were planned or underway to improve services.

This report contains the findings of the Committee's follow-up review of the Auditor-General's Special Report No. 43.

Chapter 2: Early Intervention Services and the Prevention of Child Abuse

The Auditor-General's report established that:

- the development of direct prevention strategies by the Department of Human Services' Child Protection Services and linkage projects with the Department's Primary Care Services was at a formative stage;

- the effectiveness of Primary Care Services with regards to prevention and early intervention had not been fully articulated or evaluated; and
- the potential of other departmental preventative primary care services lacked guidance and direction through a common strategy.

The Department of Human Services advised that it has implemented several measures to divert children and families with welfare needs from the protective system. The Department also provided details of its primary and secondary prevention programs that include parenting services, maternal and child health services and the Strengthening Families program.

The Committee commends the Department for its Strengthening Families program, which the Committee believes could be expanded and modified to address some issues raised by community organisations. These issues include that:

- the Department's targets may be acting as an unintended incentive to refer families to Child Protection Services in order to facilitate their access to family support services; and
- the program is reducing the capacity of community organisations to deliver family support services to non-protection clients.

Community organisations emphasised that foster care placements are an effective means of preventing family breakdowns. The Committee therefore believes that there would be merit in the Department of Human Services examining the possibility of expanding preventative early intervention measures, including the use of the foster care system, in relation to child abuse cases.

Chapter 3: Mandatory Reporting

The Auditor-General raised three primary concerns regarding mandatory reporting, namely:

- that the Department of Human Services was not in a position to assess the extent to which mandated notifiers avoided their responsibilities, or whether corrective action was warranted;
- the quality of feedback by child protection workers to notifiers; and
- the development of specific objectives and performance measures for mandatory reporting.

The Department of Human Services advised the Committee that it does not consider under-reporting by mandated professionals to be a major concern. The Department also stated that it is addressing the weaknesses identified by the Auditor-General regarding mandatory reporting through its Child Protection Community and Professional Education Strategy. The Secretary of the Department of Human Services advised the Committee that the Department has not developed specific objectives and performance measures for mandatory reporting and that the reporting patterns of mandated and non-mandated professionals was evidence that the Government's stated objectives were being met.

It was unclear from the information provided to the Committee whether or not the Department of Human Services now maintains data on the incidence of mandated notifiers not meeting their responsibilities. Also it is unclear whether the Department of Human Services' education strategy regarding mandatory reporting provides feedback to notifiers on the outcomes of notifications. The Department has not developed specific objectives and performance measures for mandatory reporting.

The Auditor-General's report acknowledged that the investigation and substantiation of sexual abuse of children can be extremely difficult due to a variety of factors. Successful prosecutions are also relatively rare. The evidence of the Department of Human Services suggests that these matters are ongoing.

Chapter 4: Child Protection Legislation

The Auditor-General's report identified various problems with the *Children and Young Persons Act 1989*, which provides the statutory framework for child protection in Victoria.

Conflicting evidence was given from the Department of Human Services regarding a review of the Victorian child protection legislation. The Department advised that it had commenced a preliminary review of the Victorian legislation in light of developments in Queensland and New South Wales. The Minister for Community Services subsequently advised that the *Children and Young Persons Act 1989* is not the subject of review.

The Committee concluded that the Department of Human Services has not resolved key legislative issues raised by the Auditor-General relating to an over-emphasis on family reunification and the permanent care concept not being brought into effect.

The evidence provided indicates that the Act, despite numerous amendments, does not reflect legislative developments interstate and overseas or contemporary thinking regarding child protection.

Community organisations reported their concerns regarding the:

- adversarial nature of the deliberations in the Family Division of the Children's Court and the subsequent lengthy delays;
- lack of attention paid to the expansion of primary and secondary preventative services; and
- need for clearer specification of the delegation of authority, given that case management is contracted out by the Department of Human Services to the community sector.

Chapter 5: Resourcing the Child Protection System

The Auditor-General's report drew attention to the impact that past policies had on the resourcing of the child protection system. In particular, the Auditor-General considered that more effort

needed to be applied to determine the impact of cost cutting measures on the quality of placement and support services.

Although the Secretary of the Department of Human Services has statutory responsibilities for the protection of children, the Government relies on financial contributions from community organisations to assist with the provision of protective services in Victoria.

However, a number of community organisations raised concerns about the financial difficulties they were facing as a result of the Department not fully funding the cost of providing support and placement services for children in protective care. The Department has conducted a viability study of residential services for these children but the Committee is unaware of the details of the findings of the review.

The Government increased the prices paid for residential care services for statutory child protection clients in December 1999 and additional funds were allocated for protective services in the 2000-2001 State Budget.

The Committee commends the Government for providing additional funding in the 2001-2002 State Budget for improved child protection and care services, but believes that resourcing issues require regular review and extend beyond the funding of residential services.

Chapter 6: Human Resources Management in Child Protection Services

The Auditor-General's report found that there were significant problems with resourcing the protective services workforce and planning.

The Department has advised the Committee that it had adopted several measures to strengthen its human resources sector including the development of a child protection human resource strategy, an improved ratio of base-grade to experienced workers and increased staff retention.

The Committee was surprised to learn that there was a significant delay in the development of the human resources master plan/strategy for the Department of Human Services' Child Protection Services. It was difficult to establish the impact of the Department's strategy on the human resources management problems raised by the Auditor-General.

There is concern that some departmental staff do not fully understand their statutory responsibilities. The Committee is also concerned to learn of reports that community organisations have been conducting quasi-investigations of clients, where departmental staff have lacked the necessary expertise. The Committee regards this delegation of authority – effectively from an officer of the Secretary of the Department, to a community organisation – as inappropriate.

Chapter 7: System Abuse

Frequent transfers between placements have been described as the most damaging secondary danger for children or young people entering State care. Evidence received by the Committee shows that multiple placements and system abuse are significant and ongoing issues within the Victorian child protection system.

The Auditor-General recommended that the Department of Human Services make intensive efforts to stabilise the lives of those children who have already been disrupted by multiple placements. The Committee believes that further action to minimise system abuse is required.

After reviewing all the evidence, the Committee believes that there is a need for the Department to gather consolidated data on multiple placements and placement breakdowns. Further, a quality assurance and medium term strategic framework for protective services for children and young people should be developed by the Department in consultation with Non-Government Organisations.

Chapter 8: Foster Care

Non-Government Organisations describe foster placements as the most therapeutic environment that abused children will be offered in the current child protection system. The Auditor-General recommended that in order to maintain the level of home-based care givers and improve recruitment, that the Department of Human Services increase remuneration rates and introduce additional measures to financially support foster families. The Auditor-General also recommended that the Department develop programs to provide intensive support to foster families as well as natural families to reduce the incidence of placement breakdowns occurring within home-based care.

The Department of Human Services advised that it increased foster care payments by 6 per cent in July 2000 and that care givers also have access to funds for additional items such as clothing. However, the Committee found that the fortnightly payments made to foster carers do not cover the costs of raising a child.

The Committee believes that the Department of Human Services should examine the merits of expanding the foster care service to recognise the role the service could fulfil as a preventative early intervention measure.

Chapter 9: Relationship between the Department of Human Services; the Department of Education, Employment and Training; and Schools

The Auditor-General stated in 1996 that there was scope for an improved relationship between schools and the Department of Human Services through:

- revised protocol arrangements, whereby school visits by protection workers are accepted as necessary but are conducted in a discreet and unobtrusive manner by prior arrangement with schools;

- teachers, as mandated notifiers, becoming fully conversant with and accepting the difficult role protection workers must perform in acting on suspected child abuse quickly; and
- the Department's provision of a consultancy or advice service to mandated notifiers, whereby the merits of notifications could be discussed before the Department accepts a notification.

The evidence regarding the status of the protocol on how child protection workers operate in the school environment differed between the Department of Education, Employment and Training and the Department of Human Services.

The Committee was advised that teachers currently receive different advice from these two Departments when seeking expert advice and support on making notifications. The Committee believes that the Department of Human Services and the Department of Education, Employment and Training, in consultation with schools, should finalise a protocol on how child protection workers operate within a school environment and respective roles and responsibilities, as a matter of priority. The Committee also believes that the Department of Education, Employment and Training should have an expanded role in the child protection system.

Chapter 10: Relationship between the Department of Human Services and Victoria Police

The Committee is pleased to note implementation of most of the Auditor-General's recommendations regarding the relationship between the Department of Human Services and Victoria Police, for example, the formalisation of revised protocol arrangements between these two parties, the conduct of joint training exercises, and the amendment of the *Crimes Act 1958* regarding sexual offences against children.

However, the Committee remains concerned about the low level of substantiations of sexual abuse cases and proven protection applications. The Committee believes that the Department of

Human Services, in conjunction with Victoria Police and other relevant parties, should complete, as a matter of priority, a comprehensive strategy to improve substantiations and prosecutions rates for child sexual abuse.

Chapter 11: Education of Children in Care

The Auditor-General's report stated that the education of children in care must be a joint responsibility between the (then) Department of School Education and the Department of Human Services, with the former providing the schooling opportunities and the latter providing every support and encouragement necessary to assist the child with schooling.

A Department of Human Services' survey in 2000 reinforced that the educational experiences and achievements of child protection and juvenile justice clients is an issue of ongoing concern. However, the Committee was surprised to learn that the Department of Human Services and the Department of Education, Employment and Training have not resolved who is responsible, on a case by case basis, for managing the education of children in care. The Department of Human Services advised that a joint working group will develop a partnering agreement that will identify the respective departmental roles and responsibilities for maximising the educational outcomes of children and young people in residential care.

The Committee believes that a strategy should be developed to overcome the barriers to educational opportunities faced by children in care.

Chapter 12: Adolescents in Care

The Auditor-General recommended that the Department of Human Services develop a statewide strategy on the care of adolescents and devise a method to monitor the strategy's effectiveness, particularly in relation to the ability of departmental or non-government service providers to respond promptly and effectively to the needs of adolescents. The Auditor-General also recommended that the Department's Protection and Care Branch

develop a protocol with other branches, such as Primary Care, Public Health and Psychiatric Services, regarding services to adolescents and the delivery of such services.

The Department provided the Committee with details of its Working Together strategy and High-Risk Adolescents Service Quality Improvement Initiative. The evidence was not conclusive as to whether the Department of Human Services' measures equate with the comprehensive statewide strategy for adolescent services envisaged by the Auditor-General. Further, the Committee believes that the Department should conduct final evaluations of its initiatives to improve services to adolescents.

Community organisations indicated to the Committee that the delivery of timely, integrated services to adolescents, particularly across health (including mental health), drug and alcohol, housing, juvenile justice and education services remains an issue.

Community organisations also indicated that the premature lapse of Protection Orders for 16 to 17 year old adolescents was a particular problem.

The Committee believes that the Department of Human Services should review the adequacy and appropriateness of placement options and support services for high risk adolescents and report on the children who are discharged from guardianship or custody orders in its annual report, thereby publicly accounting for its legislative responsibilities, as recommended by the Auditor-General. Such a report should also contain information on lapsed guardianship and custody orders.

Chapter 13: Leaving Care

Under the *Children and Young Persons Act 1989*, the Secretary of the Department of Human Services, when assuming the guardianship of a child, exercises the same responsibilities as a natural parent would for the present and future wellbeing of that child. The report of the Auditor-General argues that such concern extends to how a child or young person adapts to independent living once discharged from State care.

The audit report found that the Department of Human Services does not formally provide any specific after-care programs once guardianship by the Secretary of the Department has been terminated. Audit recommended that the Department research the demand for after care arrangements that the State should provide to adolescents leaving care.

The Committee notes that the key research to inform policy development for young people leaving care was not completed by the Department of Human Services until May 2000, after the change of Government, and four years after the Auditor-General's report was tabled. The Committee also found that young people who have few life skills and poor educational outcomes are being discharged from State care in Victoria with little preparation and few after-care services to support them. Department of Human Services' funding for post-placement support is limited to three months. The Department of Human Services acknowledges that developing transitional and after care programs for young people is a priority area.

The Committee considers that the Department of Human Services should implement the recommendations of the Leaving Care study.

Chapter 14: Deaths of Children under Protection

The Auditor-General commended the establishment of a Victorian Child Death Review Committee (VCDRC) as a means of improving public accountability through its overview of child deaths within the protective system and provision of advice to the relevant Minister.

The Committee reviewed three annual reports of the Victorian Child Death Review Committee. The Committee believes that the VCDRC should provide greater detail in its annual reports to enable Parliament and the Victorian community to obtain a better understanding of the factors leading to the deaths of children who were involved with protective services.

Chapter 15: Appeals and Complaints

The Auditor-General stated that the extent of the Department of Human Services' powers under the *Children and Young Persons Act 1989*, the varying levels of intrusion into lives of families and the associated stress, combined with the significant impact on the lives of children resulting from statutory intervention, mean that adequate, independent and accessible appeal processes serving families and children are crucial.

Evidence confirms the need for checks in the child protection system.

The Committee believes that the Department of Human Services should centralise its complaints review mechanism for issues relating to children and young people in the protective care system. The Committee also believes that the Department should review its practices regarding who is invited to advocate for children in the protective system, including case planning meetings.

Chapter 16: Further Issues arising during the Inquiry

Two significant issues were widely canvassed during the course of the Inquiry and the Committee believes that it is of value to refer to them in this report, along with some of the evidence presented. The issues relate to:

- Aboriginal children in care; and
- a Children's Advocate.

Aboriginal children are over represented in the Victorian child protection system, with indigenous children approximately eight times more likely than non-indigenous children to be engaged in the system.

The Department of Human Services conducted a review of out-of-home care services for Aboriginal children and young people in 1998. The review found that few Aboriginal support agencies had performance targets and that all had been allowed to 'overperform' to the detriment of the quality of the placement and,

ultimately, to the detriment of the children and young people in out-of-home care.

The Committee understands that additional funding has been allocated to Aboriginal placement and support services and that strategies are being developed to improve compliance with Aboriginal child placement principles. The Department of Human Services is also in the process of developing an Aboriginal Services Plan.

The evidence received by the Committee identified the need for:

- the development of improved access to, and funding for, a diverse range of placement and support services for Aboriginal children, young people, especially adolescents, and their families;
- improved methods of identifying indigenous children in the State's protective system;
- the development and funding of an appropriate case management framework for agencies placing Aboriginal children in out-of-home care; and
- the implementation of measures to ensure compliance with Aboriginal child placement principles.

A number of organisations and individuals giving evidence to the Committee during the course of the review argued that there was a need for a Children's Advocate or Children's Commissioner. However, there were a wide variety of views on whether such a position was desirable and the appropriate model, functions and powers of such a position. While this was raised in the context of this review, the Committee believes that proposals for a Children's Advocate encompass far more than simply a role in the child protection system.

As the issue of a Children's Commission goes well beyond the Child Protection Services and hence the scope of this Inquiry, the Committee believes that a recommendation based on the evidence given to this Inquiry would necessarily rely on limited evidence and would therefore be inappropriate.

It does, however, believe that the issues raised are important ones and should be considered further by the Government.

RECOMMENDATIONS

Chapter 2: Early Intervention Services and the Prevention of Child Abuse

Recommendation 2.1:

The Victorian Government give consideration to increasing resources for statutory services provided by Non-Government Organisations involved in the Strengthening Families Program.

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Recommendation 2.2:

The Department of Human Services extend the Strengthening Families Program, similar to the program undertaken in the northern region, to encompass home-linked support services.

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Recommendation 2.3:

The Department of Human Services examine the possibility of expanding preventative early intervention measures, including the use of the foster care system, in relation to child abuse cases.

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Recommendation 2.4:

The Department of Human Services give child protection prevention programs a higher status and priority within the Department.

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Chapter 3: Mandatory Reporting

Recommendation 3.1:

The Department of Human Services:

- (a) develop a set of objectives and performance measures consistent with the Victorian Government's stated objectives for mandated reporting, in order to measure the efficiency and effectiveness of the implementation and management of mandatory reporting;**
- (b) in consultation with Non-Government Organisations and other relevant parties, review developments regarding mandatory reporting and assess mandatory reporting frameworks interstate;**
- (c) review the merits of expanding the number of professions required to report child abuse, including any implications for funding; and**
- (d) screen each incoming report before deciding whether it will be designated and counted as a notification.**

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Recommendation 3.2:

The Department of Human Services, the Department of Justice and Victoria Police identify and evaluate current barriers to the reporting and prosecution of serious cases of sexual and physical abuse.

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Recommendation 3.3:

The Department of Human Services investigate if it is possible to measure the extent to which mandated groups do not make notifications about suspected child abuse.

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Recommendation 3.4:

The Child Protection Community and Professional Education Strategy include provision for child protection workers to provide feedback to notifiers of outcomes, with due respect to the privacy of clients and their families.

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Chapter 4: Child Protection Legislation

Recommendation 4.1:

The Department of Human Services examine developments interstate and overseas in relation to areas such as:

- (a) family re-unification;**
- (b) permanent care concept;**
- (c) the rights of children, including the grounds on which a child is in need of protection and the principles for Court decision-making;**
- (d) how legislation may support the carer more effectively;**
- (e) how the interests of the child in care may be better protected;**
- (f) the adequacy of the regulatory regime supporting foster parents and standards of residential and foster care;**

- (g) whether or not to provide a framework for a process of mediation between parties;**
- (h) the appropriateness of the current definitions of child abuse; and**
- (i) the provisions of grievance and appeal mechanisms.**

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Recommendation 4.2:

The Department of Human Services, in consultation with the Family Division of the Children’s Court, look at ways of overcoming lengthy delays in decision-making.

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Chapter 5: Resourcing the Child Protection System

Recommendation 5.1:

The Department of Human Services review, on a regular basis, the total resources provided to the non-government sector for child protection services.

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Chapter 6: Human Resources Management in Child Protection Services

Recommendation 6.1:

The Department of Human Services review current training programs to ensure child protection staff are knowledgeable about their statutory responsibilities.

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Recommendation 6.2:

The Department of Human Services' annual report include performance indicators for Child Protection Services, for example, the ratio of base-grade workers to more experienced staff, the retention of staff and the number of vacancies, by region.

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Chapter 7: System Abuse

Recommendation 7.1:

As a matter of priority, the Department of Human Services, in consultation with Non-Government Organisations, develop a quality assurance framework for protective services for children and young people.

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Recommendation 7.2:

The Department of Human Services, in consultation with Non-Government Organisations, review its strategic planning framework for child protection services.

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Recommendation 7.3:

The Department of Human Services review the resourcing of specialist counselling services for children who have suffered abuse.

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Chapter 8: Foster Care

Recommendation 8.1:

The Department of Human Services give consideration to the development of a comprehensive package of resources across the whole-of-government to provide support to foster parents.

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Recommendation 8.2:

As a preventative and early intervention measure, the Department of Human Services extend the foster care program to clients requiring family support.

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Chapter 9: Relationship between the Department of Human Services; the Department of Education, Employment and Training; and Schools

Recommendation 9.1:

The Department of Human Services and the Department of Education, Employment and Training, in consultation with schools, finalise a protocol on how child protection workers operate within a school environment. The protocol be finalised as a matter of priority and incorporate an implementation strategy.

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Recommendation 9.2:

The protocol between the Department of Human Services and the Department of Education, Employment and Training define the roles and responsibilities of the different parties in the child protection system.

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Recommendation 9.3:

The Department of Human Services provide support for mandated notifiers throughout the notification process.

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Chapter 10: Relationship between the Department of Human Services and Victoria Police

Recommendation 10.1:

The Department of Human Services, in conjunction with Victoria Police and other relevant parties, complete as a matter of priority a comprehensive strategy to improve rates for child sexual abuse substantiations and prosecutions.

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Chapter 11: Education of Children in Care

Recommendation 11.1:

The Department of Human Services and the Department of Education, Employment and Training develop a strategy to overcome the barriers to educational opportunities faced by children in care.

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Chapter 12: Adolescents in Care

Recommendation 12.1:

The Department of Human Services review its Working Together Strategy with the aim of improving the delivery of integrated services to adolescents, particularly across health (including mental health), drug and alcohol, housing, juvenile justice and education services.

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Recommendation 12.2:

The Department of Human Services review the adequacy and appropriateness of placement options and support services for high risk adolescents.

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Recommendation 12.3:

The Department of Human Services report on the children who are discharged from guardianship or custody orders in its annual report, thereby publicly accounting for its legislative responsibilities, as recommended by the Auditor-General. The annual report also contain information on lapsed guardianship and custody orders.

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Chapter 13: Leaving Care

Recommendation 13.1:

The Department of Human Services implement the recommendations of the Leaving Care Study regarding case planning and review; case management; case work and direct care; the scope of the service; practice enhancement and service links; and further research, monitoring and evaluation.

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Recommendation 13.2:

The Department of Human Services ensure that adolescents leaving its care have an immediate post-care plan in place.

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Chapter 14: Deaths of Children under Protection

Recommendation 14.1:

The Victorian Child Death Review Committee provide greater detail in its annual reports to enable Parliament and the Victorian community to obtain a better understanding of the factors leading to the deaths of children who were involved with protective services.

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Chapter 15: Appeals and Complaints

Recommendation 15.1:

The Department of Human Services centralise its complaints review mechanism for issues relating to children and young people in the protective care system.

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Recommendation 15.2:

The Department of Human Services review its practices regarding who is invited to advocate for children and young people in the protective care system (including case planning meetings), to allow scope for a broader range of people, such as grandparents or professionals who have been treating the child or young person, to advocate on behalf of, and in the interests of, the child or young person.

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Chapter 16: Further Issues arising during the Inquiry

Recommendation 16.1:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop strategies to reduce the number of Aboriginal children placed in out-of-home care, with the aim of improving access to a diverse range of support services for Aboriginal children and young people and their families.

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Recommendation 16.2:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop appropriate performance information (including targets) to enable monitoring, and reporting in the Department's annual report, of its strategies to reduce the number of Aboriginal children in out-of-home care.

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Recommendation 16.3:

- (a) The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop and implement a case management framework appropriate for Aboriginal agencies placing Aboriginal children in out-of-home care; and**

- (b) The case management strategy should also aim to achieve appropriate educational outcomes for indigenous children in the care system.**

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Recommendation 16.4:

The Department of Human Services:

- (a) in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop procedures for agencies placing indigenous children in the care system;**
- (b) monitor compliance with these procedures; and**
- (c) report on these issues in the Department's annual report.**

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Recommendation 16.5:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, review the current procedures to identify and record indigenous children in the State's protection and care system, and ensure a uniform method is used across the State.

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Recommendation 16.6:

The Victorian Government allocate a high priority to preventative and early intervention programs for Aboriginal children at risk of abuse.

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Recommendation 16.7:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, consider the provision of community placement services for indigenous adolescents.

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Recommendation 16.8:

The Ombudsman Victoria continue to handle individual child protection complaints.

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CHAPTER 1: BACKGROUND TO THE INQUIRY

1.1 Introduction

The Auditor-General has no power to ensure Departments implement the recommendations contained in his reports. It is therefore an important function of the Public Accounts and Estimates Committee (PAEC) to follow up outstanding issues raised in the Auditor-General's reports.

The 1998 performance audit of the Victorian Auditor-General's Office, undertaken by Mr Stuart Alford, emphasised the importance of the Committee undertaking this work:

The extent to which audit findings are followed up and acted upon warrants further attention. There is a clear role for the PAEC working with the Auditor-General to become involved with facilitating and monitoring this important aspect of accountability.⁶

The former Committee agreed to follow up the reports of the Auditor-General on a systematic basis, believing that this would add value to the audit process. The approach adopted by this Committee and its predecessor is primarily to follow up unresolved issues or issues on which the Government has indicated some action will be taken.

1.2 Background to the Auditor-General's audit on child protection services in Victoria

In 1996, the Auditor-General undertook a performance audit that assessed:

- the effectiveness of the child protection services provided by the Government and by Government-funded private sector service providers; and
- the efficiency and economy of the management and delivery of those services.

⁶ Stuart Alford, *Performance Audit of the Victorian Auditor-General's Office*, September 1998, p. 2

The aim of the audit was to determine whether:

- the needs of Victorian children requiring protection were being satisfied;
- the service infrastructure and resourcing of child protection services enabled timely, efficient and equitable service provision; and
- the funding of child protection services was adequate.

The scope of the audit encompassed relevant activities of the Department of Human Services, the Victoria Police, the Children's Court and various non-government agencies.

1.3 Findings of the Auditor-General's audit

The audit report identified significant weaknesses in key elements of the Department of Human Services' protective services, and the Auditor-General was unable to conclude that the Department was achieving maximum effectiveness in protecting and providing the necessary support for the children of Victoria. The audit found considerable scope for the Department to make more cost-effective and efficient use of its existing resources.

The report acknowledged that the Department had been:

- progressively addressing the multiple problems facing it in relation to child protection services; and
- introducing many worthwhile initiatives and projects to improve its capacity to protect and care for children in Victoria.⁷

1.4 Responses to the Auditor-General's report

1.4.1 Secretary, Department of Human Services

The Department of Human Services accepted the audit findings that the dramatic increase in workload as a result of the introduction of mandatory reporting placed child protection

⁷ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 4

services under enormous pressure and that required standards of performance were not able to be met in all cases.⁸ Furthermore, the Secretary acknowledged that the audit's conclusions that the child protection service had stabilised since the latter part of 1995 accorded with the Department's assessment.

The Secretary outlined a number of key initiatives planned or underway by the Department for further action, including the enhancement of staff retention, reimbursement for foster carers, enhanced psychiatric services, improved interaction with Victoria Police and child-centred, family-focused case management approaches.⁹

1.4.2 Minister for Finance

The *1996 Response by the Minister for Finance to the Auditor-General's Report* commented on the following issues:¹⁰

- the impact of mandatory reporting;
- initiatives for improving regional investigations;
- the implementation of the Enhanced Outcomes Project and family group conferencing to provide community and agency integrated child protection;
- research and other measures undertaken to reduce the level of re-notifications of suspected abuse;
- staff development and training courses aimed at improving long-term case management practices;
- a revised purchasing framework and output based funding to obtain efficient and quality services; and
- the effect of initiatives taken aimed at:
 - improving cooperation with Victoria Police and the Department of Justice;
 - reducing the closure of residential units for child protection placements;

⁸ Ibid, p. 5

⁹ Ibid, p. 5

¹⁰ Department of Treasury and Finance, November 1996, *1996 Response by the Minister for Finance to the Auditor-General's Reports issued during 1995-96*, pp. 77-89

- improving services to children with behavioural difficulties; and
- improving strategic management of high risk clients.

1.5 Review undertaken by the Committee

On 3 May 1999, the former Public Accounts and Estimates Committee wrote to the Department of Human Services requesting a response to a number of questions regarding the action taken, and the progress made, with implementing the recommendations contained in the report of the Auditor-General on *Protecting Victoria's children: The role of the Department of Human Services*. The Department provided a detailed response on 25 May 1999, but that response did not address fully all of the issues raised by the former Committee.

On 12 April 2000, the PAEC of the 54th Parliament resolved to appoint a Sub-Committee consisting of the following Members to review all outstanding matters raised in the Auditor-General's reports:

Mr P Loney, MP (Chairman)
Ms A Barker, MP
Hon. D Davis, MLC ¹¹
Hon. W Forwood, MLC; ¹² and
Mrs J Maddigan, MP.

On 20 June 2000, the Committee sent correspondence to the Minister for Community Services seeking further information. It received a response to various issues from the then Acting Director of Community Care on 8 August 2000.

Four public hearings were held between October 2000 and March 2001. Peak non-government welfare organisations, academics, the Department of Education, Employment and Training, the Department of Human Services and other expert witnesses gave

¹¹ Appointed as Member of the Sub-Committee on 4 October 2000

¹² Discharged as a Member of the Public Accounts and Estimates Committee on 6 September 2000

evidence to the Committee. Appendix 1 contains details of the witnesses who gave evidence at the hearings.

During the course of this Inquiry, the Committee received submissions and correspondence from several organisations with an interest in child welfare matters (see Appendix 2).

The following chapters discuss the Committee's findings on key issues relating to the Victorian child protection system.

CHAPTER 2: EARLY INTERVENTION SERVICES AND THE PREVENTION OF CHILD ABUSE

Key Findings:

- 2.1 The Carter report and further evidence received by the Committee questions the effectiveness of the Department of Human Services' major initiatives aimed at diverting clients with welfare needs from Child Protection Services.**
- 2.2 There is an incentive to refer families to Child Protection Services as a means to access family support services. The Department of Human Services' targets for the Strengthening Families initiative reduces community organisations' capacity to deliver family support services to non-statutory clients.**
- 2.3 The Department of Human Services Strengthening Families program should be expanded and modified to address some issues raised by community organisations.**

2.1 Auditor-General's report and responses to the report

The Auditor-General's 1996 performance audit found that the Department of Human Services was strongly committed to strategies and programs aimed at preventing child abuse and neglect, including early intervention with families deemed to be at risk. However, the Auditor-General also established that:

- the development of direct prevention strategies by the Department's Child Protection Services and linkage projects with the Department's Primary Care Services was at a formative stage;

- the effectiveness of Primary Care Services in prevention and early intervention had not been fully articulated or evaluated; and
- the significant preventative potential of other departmental primary care services lacked guidance and direction through a common strategy.¹³

In response to the Auditor-General's report, the Secretary of the Department of Human Services advised that the Department used the National Prevention Strategy as the framework for its prevention initiatives and questioned how an overall primary services prevention strategy would progress the prevention and early intervention services. The Secretary advised that the processes of setting priorities and guidelines for specific activities, and building prevention objectives into existing and new programs was ongoing in the Department.¹⁴

2.2 Subsequent developments

In August 2000, the Department advised the Committee that:

In the past few years, the Department has undertaken several major initiatives with the aim of diverting from the Child Protection [Services] system those children and families whose needs are more strongly of a welfare nature. These initiatives reflect a greater emphasis on early intervention and prevention within the secondary service system ... Child Protection [Services] has now repositioned itself within the overall service continuum with a view to no longer being a gateway to child welfare services generally.¹⁵

The Department also provided the following details of its primary and secondary prevention programs:¹⁶

¹³ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 349

¹⁴ Ibid, p. 350

¹⁵ Letter received 8 August 2000 from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 1

¹⁶ The National Prevention Strategy defines 3 levels of prevention:

- primary prevention programs: targeted at the whole community with the aim of stopping abuse before it starts;

- parenting services, including Parentline, the Victorian Parenting Centre, Regional Parenting Resource Services, the Positive Parenting Program and Family Intervention Services;
- maternal and child health (MCH) initiatives, including an evaluation of the MCH New Initiatives and MCH Outreach Service projects, which will inform practice and assist the development of service delivery models that refine the universal MCH Service and the new Enhanced Home Visiting Service; and
- the *Strengthening Families* initiative.¹⁷

The Department advised that it is looking to develop a robust secondary system through its New Partnerships and Community Care initiative:¹⁸

*The whole tenor of the New Partnerships initiative is recognising the need to strengthen that secondary system, and that it will only be through having a strong secondary system assisting people in their communities and linking them with a range of mainstream services that we really will divert families in a long-term way from the child protection system.*¹⁹

The Department advised that its Strengthening Families initiative is aimed at linking families to social support and services to assist them, thereby reducing the need for more intrusive intervention such as child protection.

Strengthening Families is targeted at families with children and adolescents aged 0-18 years for whom welfare concerns have been identified, but the children are not considered to be at risk of significant harm. Strengthening Families is a case management

-
- secondary prevention programs: which target specific sections of the child population considered to be more prone to be “at risk” of abuse along with sections of the adult population also considered likely to be “at risk” of abusing; and
 - tertiary prevention programs: to help those who have already been abused.

Source: Victorian Auditor-General’s Office, 1996, *Protecting Victoria’s children: The role of the Department of Human Services*, Special Report No. 43, p. 351

¹⁷ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, pp. 45-47

¹⁸ Refer to Community Care Division, DHS, *New Partnerships in Community Care: Discussion Paper*, August 2000

¹⁹ Transcript of evidence, 11 October 2000, p. 40

service which incorporates assertive outreach to help engage hard-to-reach families, provides in-home support to give practical assistance and skills development, and uses 'flexi-funds' to allow an individualised response to families.²⁰

It is unclear from the information provided to the Committee how this initiative is linked with the Primary Care Services' programs that assist with reducing the risk of child abuse and neglect. The Committee sought advice about whether the initiatives of Primary Care Services have had an impact on preventing child abuse and, if so, how.²¹ The Department advised that:

*Formal evaluations are planned, in either the short or medium term, of three key primary care initiatives relating to Parenting Services, Maternal and Child Health, and Strengthening Families. Early indications are that these initiatives have had a positive impact on the level of risk of child abuse and neglect in recipient families.*²²

The Auditor-General also recommended the development of an overall primary services prevention strategy to guide, coordinate and harness the preventative potential of Government and community organisations, programs dealing with children and families. The Department indicated in its initial response to the audit that it was unclear as to how such a strategy would progress its prevention programs.²³

The Committee noted that the Carter report²⁴ (commissioned by the Department in 2000) contains information that brings into question the Department's view that Child Protection Services has repositioned itself within the overall service continuum through several major initiatives. Professor Carter observed that:

²⁰ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 47

²¹ Letter to Hon C Campbell MP, Minister for Community Services, 20 June 2000, p. 9

²² Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 45

²³ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 350

²⁴ Carter, J. September 2000, *Report of the Community Care Review*

... in 1999, only 7 [per cent] of child protection notifications were referred to family support services; the remainder received no service support despite indications in many cases of significant family (problems) ... Overall ... diversion from the child protection service is slow and rare.²⁵

Professor Carter indicated that there is substantial agreement between the Department's management, the child protection managers and the community services sector on the need for a reorientation of the child protection service.²⁶ All parties agreed that:

- many children and families could (and should) be diverted from the child protection system;
- there has to be a comprehensive, separate family support service that is capable of strengthening families, to prevent entry to the child protection system and to continue to work with families once the risk to the child's safety is adequately low; and
- investment in prevention and early intervention is essential for reducing pressure on the child protection service.²⁷

The Children's Welfare Association of Victoria (CWAV) advised the Carter Review that the child protection system acts as the gateway to community services and that distorted pathways to support have developed.²⁸ Further, the CWAV advised that community organisations have traditionally delivered preventative services. However:

In contracting with family support agencies the Department increasingly wants higher proportions of referrals from the child protection service to be worked with, so it might be that 75 or 100 per cent of the work in the family support service is contracted to be the workload, so that agency's resources are deployed in that

²⁵ Ibid, p. 134. This percentage is set to increase with the establishment of the Strengthening Families program which includes a requirement that 75% of the target group be referrals from the child protection service

²⁶ Ibid, p. 134

²⁷ Ibid, pp. 134-135

²⁸ Children's Welfare Association of Victoria, March 2000, Submission to the Community Care Review, p. 11

direction, there is nothing there that covers the gap that was previously focused on. Therefore that earlier diversionary potential has been substantially eroded ...

Along with that, the matter of resources has meant that where community services organisations had their own financial resources to put into family strengthening and support programs, that money has increasingly been needed to sustain targeted programs. So it is no longer the case as it was back in 1991 when the Government used to fully support the service delivery of what they contracted for statutory clients.²⁹

The CWAV believes that the depth of the service system is important and must be maintained because community organisations need to draw on a range of services. The CWAV is also of the view that the service network beyond the Strengthening Families initiative is not strong enough in many cases.³⁰ To move toward a balanced service system, the CWAV suggested increased investment at both ends of the continuum, but a proportionally greater increase at the prevention end.³¹

The Children's Protection Society described Strengthening Families as a splendid initiative based on the notion that welfare issues are better handled within the community than within the child protection system.³² However, it also identified three shortcomings with the program:

- that the service is limited in most regions to a case management service. The case management service involves referrals to other services, but such services are not available.

The Department has funded three programs in the northern metropolitan region to provide an additional service to case management home-linked support. Workers are funded to go into homes to provide

²⁹ Transcript of evidence, 11 October 2000, p. 6

³⁰ Children's Welfare Association of Victoria, March 2000, Submission to the Community Care Review, p. 11

³¹ Ibid, p. 12

³² Transcript of evidence, 11 October 2000, p. 16

counselling and practical support. The Children's Protection Society supports this extended service;

- that the Government has set an unrealistic target of 75 per cent of referrals to the program to come through Child Protection Services:

*It is supposed to be a preventative service, but we cannot accept referrals from the community because we are struggling to meet the Government's target. Quite a lot of programs are advising communities to notify Child Protection [Services] so a family can be serviced ...;*³³

- that child protection workers sometimes prematurely close a case after a referral, before establishing the necessary links between the client and a support service. Such closures contribute to the re-notification rate.³⁴

In addition, the Children's Protection Society advised the Committee:

*... that foster care placements were always a great preventative measure for the breakdown of families and for families getting into real strife, but we cannot access foster care placements except through the child protection system. We could be working with a family but then say, 'We have to notify so we can get you into a foster care system'. How appropriate is that, when families are simply saying, 'We need a break'?*³⁵

The Society suggested that foster care be expanded to encompass clients that require family support services and/or child protection services.

2.3 Issues of concern

The Committee commends the Department for its Strengthening Families program, which the Committee believes could be expanded and modified to address some issues raised by community organisations. These issues include that:

³³ Ibid, p. 17

³⁴ Ibid, pp. 16-17

³⁵ Ibid

- the Department's targets may be acting as an unintended incentive to refer families to Child Protection Services in order to facilitate their access to family support services; and
- the program is reducing the capacity of community organisations to deliver family support services to non-protection clients.

Accordingly, the Committee recommends that:

Recommendation 2.1:

The Victorian Government give consideration to increasing resources for statutory services provided by Non-Government Organisations involved in the Strengthening Families Program.

Recommendation 2.2:

The Department of Human Services extend the Strengthening Families Program, similar to the program undertaken in the northern region, to encompass home-linked support services.

The Children's Protection Society believes that foster care placements are an effective means of preventing family breakdown.³⁶ Similarly, Australians Against Child Abuse advised the Committee that foster care placements are the most therapeutic environments that the current child protection system offers abused children.³⁷

Accordingly, the Committee recommends that:

³⁶ Transcript of evidence, 11 October 2000, p. 16

³⁷ Transcript of evidence, 8 November 2000, p. 64

Recommendation 2.3:

The Department of Human Services examine the possibility of expanding preventative early intervention measures, including the use of the foster care system, in relation to child abuse cases.

Recommendation 2.4:

The Department of Human Services give child protection prevention programs a higher status and priority within the Department.

CHAPTER 3: MANDATORY REPORTING

Key Findings:

- 3.1 The Department of Human Services education strategy in relation to mandatory reporting promotes referrals to family support services, rather than child protection services where appropriate. However, early intervention and preventative services are currently limited.**
- 3.2 The education strategy for mandatory reporting focuses on improving the quality of feedback by child protection workers to notifiers at the point of notification. However, it is unclear whether feedback will be provided to notifiers on the outcomes of notifications (with due regard to the privacy of the families involved) as recommended by the Auditor-General.**
- 3.3 The Department of Human Services has yet to develop specific objectives and performance measures for mandatory reporting.**
- 3.4 According to the Auditor-General, investigation and substantiation of sexual abuse of children can be extremely difficult due to a variety of factors. Successful prosecutions are also relatively few. The Department of Human Services' evidence to the Committee suggests this is an ongoing problem.**

3.1 Auditor-General's report and responses to the report

The Auditor-General advised that one of the most significant influences on child protection activities was the introduction of mandatory reporting in November 1993, whereby legislation requires medical practitioners, nurses, police and, more recently,

teachers (from July 1994) to report suspected serious physical or sexual abuse of children.³⁸

The 1996 Auditor-General's audit found weaknesses in the operation of mandatory reporting and in the effectiveness of the Department of Human Services' management of this function. The audit findings included:

- that the Department was not in a position to assess the extent to which mandated notifiers avoided their responsibilities, or whether corrective action was warranted;
- that the ongoing effectiveness of the mandatory reporting system depends on maintaining the confidence of mandated notifiers and other professionals in the system. It is therefore important that the Department of Human Services reinforces to workers the importance of promptly advising notifiers, wherever practical, of the outcomes of notifications, with due regard to the privacy of families involved, and institutes suitable risk management procedures for the provision of feedback; and
- that the Department and the State needed to develop objectives and performance measures consistent with the Government's stated objectives for mandatory reporting, so as to measure the efficiency and effectiveness of the implementation and management of mandatory reporting.³⁹

In response to the Auditor-General's report, the Secretary of the Department of Human Services advised in 1996:

- that Child Protection Services provides a consultancy service⁴⁰ regarding notifications;⁴¹

³⁸ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 33

³⁹ Ibid, pp. 42-47

⁴⁰ Refer to Chapter 9 on the relationship between DHS, DEET and schools for further discussion on this point

⁴¹ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 44

- that a significant number of notifications that do not proceed to an investigation are managed within the community, and people seek advice from protective services; and
- that the Department had already issued a practice instruction in relation to providing feedback to notifiers.

In the 1996 response from the Minister for Finance, it was stated:

- that numbers of notifications, investigations, substantiations and court orders were being monitored and reported on each month; and
- that the Department of Human Services had undertaken an extensive research project to consider the impact of mandatory reporting. The findings of the project will be used to refine practice regarding feedback to notifiers.⁴²

3.2 Subsequent developments

In May 1999, the Department of Human Services advised the Committee that it did not consider under-reporting by mandated professionals to be a major concern:

*... the Department is not of the belief that under reporting by mandated professionals is a major concern.*⁴³

The Department stated that it is addressing the weaknesses identified by the Auditor-General through its Child Protection Community and Professional Education Strategy. The three main objectives of this strategy are:

- to extend the responsibility for training and professional development to all key professional groups and training institutions;

⁴² Department of Treasury and Finance, November 1996, *1996 Response by the Minister for Finance to the Auditor-General's Reports issued during 1995-96*, pp. 77-78

⁴³ Letter, dated 21 May 1999, from Mr W. McCann, Secretary, and letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 2

- to promote an understanding of Child Protection Services as only one part of the child and family welfare continuum, so vulnerable families are referred, where appropriate, to other services that can provide assistance and support before any harm occurs; and
- in cases where children remain at risk or experience abuse, to ensure professionals are well informed to make a notification.⁴⁴

It was unclear from the information provided to the Committee whether or not the Department of Human Services now maintains data on the incidence of mandated notifiers not meeting their responsibilities. The Committee believes that this should be done. The Committee was surprised to learn that the education strategy promotes referrals to family support services, where appropriate, rather than child protection services when early intervention and preventative services are currently limited.

The education strategy focuses on improving the quality of feedback by Child Protection Services workers to notifiers at the point of notification. However, it is unclear to the Committee whether feedback will include information to notifiers of the outcomes of notifications (with due regard to the privacy of the families involved) as the Auditor-General recommended.

According to the Department of Human Services, the objectives of mandatory reporting are:

- to increase the rate of reporting of child sexual abuse and physical abuse;
- to uncover serious but hidden abuse and underline the criminal nature of sexual abuse and severe physical abuse;
- to protect children from serious crimes committed against them by family members or others from whom the family is unwilling or unable to provide protection; and

⁴⁴ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 1

- to offer training and education to the community to ensure appropriate reporting practice is maintained.⁴⁵

In May 1999, the Secretary advised that the Department had not developed specific objectives and performance measures for mandatory reporting, and referred the Committee to the Key Performance Indicators established for the Child Protection Program.⁴⁶ The Secretary also stated that:

*The Department is of the view that the Government's stated objective for mandatory reporting has been achieved, as evidenced by the reporting patterns of mandated and non-mandated professionals.*⁴⁷

Further:

*While review of the data related to numbers of professionals trained would indicate success, data related to the uncovering of serious cases of physical and sexual abuse, would suggest only partial success, and the need to review the strategy for engaging with professionals around responding to child abuse.*⁴⁸

The Department has also suggested that the quality of the reporting received is another indicator of the effectiveness of its management of mandatory reporting.

The Department of Education, Employment and Training (DEET) advised that mandatory reporting training is offered to teachers across the State, and that a component of the training has been designed to help both teachers and schools understand the investigation process and their responsibilities:

⁴⁵ Department of Treasury and Finance, November 1996, *1996 Response by the Minister for Finance to the Auditor-General's Reports issued during 1995-96*, p. 77

⁴⁶ Letter, dated 21 May 1999, from Mr W. McCann, Secretary, Department of Human Services
⁴⁷ Ibid

⁴⁸ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 2

We have had excellent cooperation with [the Department of Human Services] in the regions to provide mandatory reporting professional development and looking at what will happen next (after the notification).⁴⁹

Both refresher courses and training courses for new teachers are conducted. Further, DEET indicated that it used to focus on the teachers' responsibilities rather than on what occurred after a notification. DEET now believes that:

Once they [teachers] form the belief they seem comfortable with reporting it, but the critical factor for them is, 'What happens after I make a report?'. Often teachers have a level of frustration because they do not see action or the child disappears or the Department of Human Services suddenly appears at the school to interview the child. In a new round of training the teachers need to have those before and afters built in.

DEET advised the Committee that it is developing a set of protocols and a revised training program that will describe the type of feedback teachers can expect to receive. DEET also advised that it wants to develop a website:

... that gives teachers real strategies around how to deal with each step of the way. Protocols have their uses and they will provide a framework, but they are meaningless at the local level. As a teacher I want to know about the practical strategies on how to tell if I have a belief; how to protect myself; about what happens if I ring a case worker and make a report; and what are the options.⁵⁰

The Children's Welfare Association of Victoria (CWAV) believes that mandatory reporting is a vexed question and that the strengths and weaknesses of the legislation and its implementation should be fully evaluated by the Department of Human Services. Further, the CWAV pointed out to the Committee:

49 Transcript of evidence, 11 October 2000, p. 33

50 Transcript of evidence, 8 November 2000, p. 72

- that resources are sometimes diverted away from prevention and family support services to assist clients who are the subject of a notification;
- that inadequate resources and funding have accompanied the introduction of mandatory reporting, and:

*We want to be sure when we talk about mandatory reporting that initial investigations are sufficiently resourced to be thorough. We find from working on the ground with daily interface with the Department of Human Services that there are times when cases are referred to us before we believe good and thorough investigations have taken place ...;*⁵¹ and

- that mandatory reporting should be fully implemented for example, social workers have not been proclaimed as mandated notifiers despite being key professionals in identifying child abuse.

Professor Carter advised that the workload placed on the Department of Human Services as a result of the introduction of mandatory reporting has placed the Department in a difficult position:

*The 'just tell us and we'll deal with it' message of mandatory reporting has been unsustainable. Within Child Protection [Services] an informal filtering system for prioritising the workload has been poorly received by other service providers (including schools), who often feel that their concerns have been ignored.*⁵²

The Carter Report recommended a review of mandatory reporting and its impact on all service systems.⁵³

51 Transcript of evidence, 11 October 2000, p. 5
In 1999/2000, 36 808 notifications were made to the Department of Human Services, 12 894 cases of child abuse were investigated and 7 444 substantiated. Source: Monitoring and Review Unit, Child Protection and Juvenile Justice Branch, Department of Human Services, Victoria – November 2000

52 Carter, J. September 2000, Report of the Community Care Review, p. 135

53 Ibid, p. 135

Australians Against Child Abuse, in its evidence to the Committee, argued that mandatory reporting could be targeted and more effective if:

- the Department gives community professionals a clear brief about what kinds of cases should be reported:
*A large number of professionals do not know their obligations under the legislation ... one of the reasons we have so many children referred to the statutory services now is that the Department is not clear enough (about what constitutes abuse);*⁵⁴ and
- discussions are held about the standards of parenting in which it is appropriate for a statutory protection service to become involved.

3.3 Issues of concern

The Productivity Commission has described the Victorian notification system as 'mainly caller defined', that is where a caller believes a child is in need of protection, the Department designates a notification.⁵⁵ However, the Committee is aware that the appropriate Departments in New South Wales, Queensland and the Australia Capital Territory screen each incoming report before deciding whether it will be designated and counted as a notification.

Western Australia and Tasmania also undertake a screening process with incoming reports, but their policies incorporate a narrower definition of child protection than that used by other jurisdictions. These States define only reports of suspected maltreatment as notifications; reports of concern that would also be counted as notifications in other States are classified as child and family concern reports, and the response is different from that to notifications of abuse and neglect.

⁵⁴ Transcript of evidence, 8 November 2000, p. 65

⁵⁵ The information on notification systems operating interstate has been taken from Productivity Commission (2000), *Report on Government Services 2000*, Chapter 14: Protection and support services, p. 1227

The Department also advised the Committee that in 2000-2001, 37 per cent of notifications were made by mandated notifiers.⁵⁶ Members of the wider community accounted for just under one-half of notifications in 1998-1999.

Accordingly, the Committee recommends that:

Recommendation 3.1:

The Department of Human Services:

- (a) develop a set of objectives and performance measures consistent with the Victorian Government's stated objectives for mandated reporting, in order to measure the efficiency and effectiveness of the implementation and management of mandatory reporting;**
- (b) in consultation with Non-Government Organisations and other relevant parties, review developments regarding mandatory reporting and assess mandatory reporting frameworks interstate;**
- (c) review the merits of expanding the number of professions required to report child abuse, including any implications for funding; and**
- (d) screen each incoming report before deciding whether it will be designated and counted as a notification.**

According to the Auditor-General, a variety of factors mean that investigation and substantiation of sexual abuse of children can be extremely difficult.⁵⁷ Successful prosecutions are also relatively

⁵⁶ Letter, received 20 September 2001, from Ms P White, Director, Community Care Division, Department of Human Services

⁵⁷ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, pp. 183-184

few. The evidence provided to the Committee by the Department of Human Services suggests that this is an ongoing problem.

Exhibit 10.1 (on page 120) illustrates this point, which is discussed in further detail in chapter 10.

Accordingly, the Committee recommends that:

Recommendation 3.2:

The Department of Human Services, the Department of Justice and Victoria Police identify and evaluate current barriers to the reporting and prosecution of serious cases of sexual and physical abuse.

Recommendation 3.3:

The Department of Human Services investigate if it is possible to measure the extent to which mandated groups do not make notifications about suspected child abuse.

Recommendation 3.4:

The Child Protection Community and Professional Education Strategy include provision for child protection workers to provide feedback to notifiers of outcomes, with due respect to the privacy of clients and their families.

CHAPTER 4: CHILD PROTECTION LEGISLATION

Key Finding:

4.1 Evidence to the Committee indicates that the *Children and Young Persons Act 1989*, despite numerous amendments, does not reflect legislative developments interstate and overseas or contemporary thinking regarding child protection.

4.1 Auditor-General's report and responses to the report

The Auditor-General identified shortcomings with the *Children and Young Persons Act 1989*, which provides the statutory framework for child protection in Victoria.

According to the Auditor-General, *permanent care* describes a situation where a child is cared for on a permanent basis by care-givers other than their birth parents.⁵⁸ The notion of permanent care is based on the concept, as acknowledged in the United Nations *Convention On The Rights Of The Child*, that a child's development is promoted by stability, security and continuity of relationships with nurturing parents or care givers.

The *Children and Young Persons Act 1989* emphasises the importance of reunifying the child with the birth parents, as the best interests of the child are deemed to be served when the child is placed safely within the family unit. This Act specifically requires that attempts to return the child to the birth parents must be pursued whenever possible. Only when this is not possible, or has been attempted and failed, should consideration be given to permanent placement in an alternative family or other permanent

⁵⁸ Ibid, p. 235

arrangement, where stability and long-term nurturing and support can be provided.

According to the Auditor-General, the Department's Protective Services Practice Manual requires that a permanent care arrangement must be considered when it is not in the best interests of the child to be reunited with his/her birth family, or where there is no other family member able or willing to care for the child.⁵⁹

The Auditor-General was especially concerned:

- that there was an over-emphasis on family re-unification:

Due to the emphasis in the legislation on re-uniting a child with their parents, case plans are directed at providing support to parents and encouraging a commitment from them as to removal of protective concerns. Case studies examined by audit disclosed that even where the chances of re-unification were remote, persistent efforts were made to facilitate the return of children. As a consequence, minimal consideration was given in early years to finding an alternative permanent placement for children;⁶⁰ and

- that the permanent care concept incorporated into the Act was not being brought into effect:

The Children and Young Persons Act 1989 recognised that too many children in State care were in a perpetual state of limbo and introduced the concept of permanency planning, designed to assist children in achieving stable and secure living arrangements. Judging by the incidence of multiple placements and the large number of children still in short term placements after 3 years (around 26 per cent), this legislative intention is largely not being achieved.⁶¹

In response to the Auditor-General's report, the Department of Human Services rejected the assertion that it over-emphasised

⁵⁹ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 235

⁶⁰ Ibid, p. 237

⁶¹ Ibid, p. 227

family re-unification.⁶² The Secretary of the Department stated that the legislative principles were framed to reflect prevailing societal expectations and values.⁶³ The Secretary suggested that the audit advocated 'pre-emptive decision-making' that is, placing a child permanently away from parents in the interests of preventing the possibility of further harm to the child and future parenting dysfunction.⁶⁴

The 1996 response by the Minister for Finance, in commenting on the issue about promoting permanent care arrangements, advised that:

*The Department of Justice has primary carriage of these issues.*⁶⁵

4.2 Subsequent developments

The former Director of the Department's Community Care Division advised that amendments to the Victorian legislation have been made nearly every year since the Act was proclaimed:

*Certainly it is time to compare how our legislation now stacks up against other legislation, but the amount of time, effort and cost that would be involved in a thorough legislative review would not be expended without doing a deal of preparatory work about what other States are doing and what benefits they are getting from their system that Victoria does not now gain ...;*⁶⁶

The Department of Human Services advised the Committee that since Victoria's legislation was proclaimed in the early 1990s, both New South Wales and Queensland have developed new legislation that has recently been proclaimed. The Department is therefore:

*... now comparing the sorts of measures being introduced in Queensland and New South Wales with Victoria's legislation and starting to look at what that says about potential shortcomings in our legislation.*⁶⁷

⁶² Ibid, p. 241

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Department of Treasury and Finance, November 1996, *1996 Response by the Minister for Finance to the Auditor-General's Reports issued during 1995-96*, p. 86

⁶⁶ Transcript of evidence, 11 October 2000, p. 37

⁶⁷ Ibid

However, no details were provided to the Committee about who is involved in the preparatory legislative review, the scope of the review, the timeframe to which the review is working, and the findings of the review to date.

The Children's Welfare Association of Victoria (CWAV) advised the Committee that:

... there needs to be a thorough review of the Children and Young Persons Act. It is a 1989 act and we contend it is well overdue for review. We need to develop a legislative base for the community care role that is more relevant to contemporary society, not one that is nearly 12 years old. Our understanding of social issues has evolved substantially in the intervening period.

We acknowledge that at that time Victoria was a leader and an innovator in such legislation, but that is no longer the case. Now, sadly, Victoria lags behind most other Australian states: Queensland, Tasmania, New South Wales and New Zealand have all reviewed their principal Acts and preventative legislation. It is time Victoria embarked on a review process to ensure that our legislative base reflects contemporary thinking and promotes positive outcomes for the most disadvantaged in our community; and that it looks particularly at the rights of children – something that is lacking in that original Act.⁶⁹

The CWAV has also raised concerns about:

- the adversarial nature of the deliberations in the Family Division of the Children's Court, which frequently result in lengthy delays in critical decisions being made and support services being provided. The CWAV notes that alternative legislative models exist in other States and overseas, and that any review of Victoria's legislation should include these models;

⁶⁸ Ibid

⁶⁹ Transcript of evidence, 11 October 2000, p. 2

- the impact of mandatory reporting, the lack of attention paid to the expansion of primary and secondary preventative services and the increase in less serious matters being brought before the Children's Court (matters that previously would have been dealt with by community organisations);
- the Children's Court being able, under the Act, to make a permanent care order if the child's parent has not had care of the child for at least two years or for periods that total at least two of the last three years.⁷⁰ The CWAV is of the view that this section of the Act is especially problematic for infants because the first three years of a child's life form the critical developmental stage. Section 112 of the Act requires that the decision-making process must be deferred for two years for the courts to seek other planning options when it can be clear at an early stage that alternatives need to be pursued; and
- a need for clearer specification of the delegation of authority, given that case management is contracted out to the community sector. Only Department of Human Services' employees can, for example, present written reports on juvenile justice clients to the court or the parole board.⁷¹

The Committee heard further evidence that the *Children and Young Persons Act 1989* no longer reflects contemporary thinking on child protection and that there is an over-emphasis on family re-unification. Australians Against Child Abuse stated that:

*... it has been 11 years since [the Act] was introduced and the set of social circumstances that were around back then have changed. I do not think it has been reviewed and there is not enough research into understanding its impact on children. It is as simple as that ... We think the legislation is being interpreted to overemphasise parent's rights and that children are being returned to their parents and into their care to be re-abused.*⁷²

⁷⁰ *Children and Young Persons Act 1989*, Version 062 as of 22 November 2000, Section 112 (1) (a). Source: <http://www.dms.dpc.vic.gov.au/12d/C/ACT00797/index.html>. Accessed on 23 November 2000

⁷¹ Transcript of evidence, 11 October 2000, pp. 4-5

⁷² Transcript of evidence, 11 October 2000, p. 64

Australians Against Child Abuse have also emphasised that child protection services should target the problems created by drugs, but:

When the Act was introduced, drugs were not the major social problem they are today. That is having a major impact on children at the moment. We would be better off targeting parents who have a drug and alcohol problem and parents who clearly physically and sexually abuse their children and also situations where children's emotional development is clearly impaired as judged by a set of professional peers.⁷³

The Carter Review compared Victoria's legislation with developments in Queensland and New South Wales, and identified some significant issues, for example:⁷⁴

- how should the International Covenant on the Rights of the Child, to which Australia is a signatory, underpin legislation that provides for children's and young people's legal, social and moral rights? Queensland, for example, has incorporated a charter of rights for children in care, in addition to standards of care, into its legislation;
- how can legislation support the carer more effectively; and
- how can the interests of a child in care be protected? The UK system of having a guardian *ad litem* is worthy of consideration.⁷⁵

The Carter Review also suggested that the Department of Human Services consider the following legislative issues:

- whether to license providers, register foster parents and legislate for standards of residential and foster care;

⁷³ Ibid, p. 65

⁷⁴ Carter, J. September 2000, *Report of the Community Care Review*, pp. 163-170

⁷⁵ The Auditor-General recommended consideration be given to the appointment of Guardians Ad Litem to independently assess and advise Magistrates on what are considered to be the best interests of the child. Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 241

- whether to bring together the legislation on child protection and domestic violence;
- whether to provide a framework for a process of mediation between parties;
- whether to support involvement of the immediate and extended family;
- whether to review the definitions of child abuse and set out a work plan for effective deployment of child protection resources; and
- whether to provide a mechanism for appealing decisions and hearing grievances.

The Carter Review recommended that the Minister for Community Services consult with the Attorney-General about conducting a review of the *Children and Young Persons Act 1989* and other relevant legislation.

However, the Minister for Community Services subsequently advised the Committee that the *Children and Young Persons Act 1989* is not the subject of review.⁷⁶

4.3 Issues of concern

The Committee is concerned that the Department of Human Services has not resolved key legislative issues raised by the Auditor-General in his report. The evidence received by the Committee indicates that the *Children and Young Persons Act 1989*, despite its numerous amendments, does not reflect legislative developments interstate and overseas or contemporary thinking regarding child protection.

⁷⁶ Letter, received 4 September 2001, from the Minister for Community Services, p. 13

Accordingly, the Committee recommends that:

Recommendation 4.1:

The Department of Human Services examine developments interstate and overseas in relation to areas such as:

- (a) family re-unification;**
- (b) permanent care concept;**
- (c) the rights of children, including the grounds on which a child is in need of protection and the principles for Court decision-making;**
- (d) how legislation may support the carer more effectively;**
- (e) how the interests of the child in care may be better protected;**
- (f) the adequacy of the regulatory regime supporting foster parents and standards of residential and foster care;**
- (g) whether or not to provide a framework for a process of mediation between parties;**
- (h) the appropriateness of the current definitions of child abuse; and**
- (i) the provisions of grievance and appeal mechanisms.**

Recommendation 4.2:

The Department of Human Services, in consultation with the Family Division of the Children's Court, look at ways of overcoming lengthy delays in decision-making.

CHAPTER 5: RESOURCING THE CHILD PROTECTION SYSTEM

Key Findings:

- 5.1 Non-Government Organisations are not fully funded by Government to provide protective services and rely on a mix of revenue raised by their own activities and Government funding.**
- 5.2 The Department of Human Services has conducted a viability study of residential placement and support services for children and young people in care. However, the Committee believes that resourcing issues in the child protection system extend beyond the funding of residential services.**

5.1 Auditor-General's report and responses to the report

A major strategic goal of the previous Government, following the October 1992 election, was to reduce the budget deficit as at 30 June 1993 through spending cuts across the public sector.⁷⁷ As part of the Department of Human Services' contribution to this goal, the Department reduced the overall placement and support budget and redirected resources to less expensive home-based care option and placement diversion services.⁷⁸

However, mandatory reporting was introduced in November 1993 and the number of notifications rose by 38 per cent in the first year, in contrast to the Department's estimate of an 8 per cent increase.⁷⁹ Shortly after the introduction of mandatory reporting, the Department calculated that the translation of increased

⁷⁷ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 120

⁷⁸ Ibid

⁷⁹ Ibid, p. 33

notifications into greater placement demands meant the system needed to expand capacity by around 855 extra placements.⁸⁰ The Department subsequently sought additional funding from the Victorian Government. The Auditor-General reported that additional funding of \$9.4 million per year was allocated from mid-1994, enabling Child Protection Services to stabilise by the latter part of 1995.⁸¹

The Auditor-General acknowledged the difficulties for Departments that must implement budget directives at short notice, and the audit report fully supported efforts of the Department of Human Services to make the placement and support system more efficient and cost effective.⁸² Nevertheless, the Auditor-General:

*... considers that more effort needs to be applied to determine the impact of cost cutting measures on the quality of placement and support services, because if this [cost cutting] component is not given first priority, ultimately the community will bear the social cost in later years in terms of the adverse effects on children in care.*⁸³

The Auditor-General also found that the audit did not provide a position from which:

*... to form an opinion on the merits or otherwise of the benefits of moving to home-based care (from residential care). However, [the Department of Human Services] did not provide [the] audit with any documented information to demonstrate that the move to home-based care would lead to an improvement in the quality of outcomes for children. In addition, there was no evidence available to audit from [the Department of Human Services] that it has taken into account any potential deficiencies in home-based care, such as the incidence of multiple placement breakdowns, in the redevelopment.*⁸⁴

⁸⁰ Ibid, p. 120

⁸¹ Ibid, p. 33

⁸² Ibid, p. 123

⁸³ Ibid

⁸⁴ Ibid, p. 114

In 1996, the Secretary of the Department of Human Services responded by rejecting the notion that saving requirements motivated the shift in focus for service redevelopment:

*The move towards home-based care has been based primarily on the achievement of positive client outcomes.*⁸⁵

5.2 Subsequent developments

In August 2000, the Department of Human Services advised the Committee that a funding project had commenced, addressing critical resourcing issues. The initial phase of the project was focused on residential care services, with subsequent phases examining home-based care and support services provided to children in care. The new funding framework for residential care services was to be developed by January 2001 for implementation by July 2001.⁸⁶

In October 2000, the Committee received a copy of a project brief for a Community Care Services – Viability Methodology Study. According to the brief, the study under the auspices of the Community Care Division, commenced in October 2000 and was due to report in mid-November 2000.

The study was designed to provide high-level advice about the sustainability of non-government sector agency services and identify subsequent options for Government. The study was to achieve this by examining the finances, workforce and client characteristics of agencies providing residential placement and support services for which funding is received from the Department of Human Services. An improved framework for assessing service viability, for application to a wider number of human services, was to be formulated as part of the study.

The Minister for Community Services confirmed in November 2000 that she had initiated a financial viability study of the foster and residential care of State wards:

⁸⁵ Ibid, p. 122

⁸⁶ Submission from Department of Human Services to Public Accounts and Estimates Committee's Inquiry into Department of Human Services service agreements, submission no. 156, August 2000, pp. 54-55

*... because we weren't satisfied with the services kids were getting and we intend to follow it through.*⁸⁷

The Department's Community Care policy document *Stronger Citizens, Stronger Families, Stronger Communities: Partnerships in Community Care*, released in February 2001, reaffirms that the Government has agreed to a financial viability study of Victorian placement and support services.⁸⁸

A recent media article on the preliminary report on the financial viability study, presented to the Victorian Government on 22 February 2001, identified that:

- up to half the welfare agencies that care for Victoria's State wards are prepared to hand back the responsibility for abused children to the State Government;
- between one-third and half of the 22 key welfare agencies running Victoria's foster and residential care services are struggling to stay financially viable; and
- at least four agencies are in danger of closing immediately and another seven may be forced to withdraw their services from the child protection system.⁸⁹

The Department of Human Services also advised the Committee that voluntary sector agencies delivering placement and support services had recently raised concerns that such services are significantly under-funded:

*The Government has responded to these concerns by increasing prices paid for residential care services for statutory child protection clients by 46.9 [per cent] for general residential care services and 24.6 [per cent] for complex residential care since December 1999.*⁹⁰

⁸⁷ Davies, J. *Children in care at risk of abuse, drugs*, *The Age* newspaper, 13 November 2000, p. 1

⁸⁸ Department of Human Services, Community Care Division, 2000, *Stronger Citizens, Stronger Families, Stronger Communities – Partnerships in Community Care*, p. 6

⁸⁹ Davies, J. *Agencies threaten to return state wards*, *The Age* newspaper, 23 February 2001, p. 1

⁹⁰ Submission from Department of Human Services to Public Accounts and Estimates Committee's Inquiry into Department of Human Services service agreements, submission no. 156, August 2000, p. 54

A report in *The Age* newspaper has also claimed that two agencies have already returned to the Victorian Government the responsibility of operating residential units.⁹¹

The Carter Review found that the viability of the sector remained uncertain despite the improvement in funding from the 2000-2001 State Budget.⁹² Professor Carter made the following recommendations regarding the funding of residential services:

- that the Department of Human Services finance the full cost of delivering residential services, as per the agreement made with the Government in 1991;
- that a formula be devised to assist providers in deficit as a result of providing residential services;
- that financing residential services be a priority in the forthcoming 2001-2002 State Budget;
- that a broad based viability study be independently undertaken to:
 - assess the actual and future age-based costs of residential care;
 - estimate the actual and future additional costs of meeting special needs external costs (for example, costs for rural locality); and
 - assess residential care within a broad service context of out-of-home care and family support.⁹³

The CWAV advised the Committee that it undertook some research into child protection in 1996 for the then Minister:

*That information paint[ed] a picture of a grave lack of resources and insufficient services ... we are in much the same situation today as we were when we undertook that study in 1996.*⁹⁴

⁹¹ Davies, J. *Children in care at risk of abuse, drugs*, *The Age* newspaper, 13 November 2000, p. 2. For example, Orana Family Services used to operate residential units for young people but decided a year ago to only run homes for children under 12 years of age.

⁹² Carter, J. September 2000, *Report of the Community Care Review*, p. 142

⁹³ *Ibid*, p. 142

⁹⁴ Transcript of evidence, 11 October 2000, p. 2

The CWAV advised the Carter Review that the community sector is chronically underfunded, in substantial deficit and unviable in the medium-term. In March 2000, the CWAV told the Committee of its concern about the financial viability of the community sector led it to commission a study of eleven member organisations.⁹⁶

The study found:

- that Department of Human Services funding covered only around 85 per cent of total operating expenditure of youth and family services;
- that residential services in 1998-1999 recorded a deficit of \$3.6 million, which equated to around 17 per cent of the operating expenditure;
- that the WorkCover costs of residential services, are anticipated to increase by around 47 per cent over the 1999-2000 year's costs; and
- that the financial viability of five of the eleven agencies is at real risk in the short to medium term, with two of the agencies unable to sustain current operating deficits.⁹⁷

The Association advised that the 2000-2001 State Budget's injection of \$14.8 million has pulled the sector from crisis, but the sector remains chronically underfunded.⁹⁸ In January 2001, the CWAV maintained that additional funding of \$17 million was required.⁹⁹

5.3 Issues of concern

Evidence given to the Committee highlighted the following points:

- the Secretary of the Department of Human Services has statutory responsibilities for the protection of children, as set out in the *Children and Young Persons Act 1989*;
- the Victorian Government has been sued for failing to fulfil its duty of care in the protection of children; and

⁹⁵ Carter, J. September 2000, *Report of the Community Care Review*, pp. 141-142

⁹⁶ Children's Welfare Association Victoria, March 2000, *Youth and Family Services Community Services Organisations Industry Viability Project*

⁹⁷ Ibid

⁹⁸ Carter, J. September 2000, *Report of the Community Care Review*, pp. 141-142

⁹⁹ Davies, J. *Extra \$17m needed for state wards*, *The Age* newspaper, 24 January 2001, p. 5

- the Government does not fully fund non-government agencies to provide protective services.

The Department is conducting a viability study of residential placement and support services for children and young people in care. However, resourcing issues in the child protection system extend beyond the funding of residential services.

The Committee commends the Government for providing additional funding in the 2001-2002 State Budget for improved child protection and care services. The Department stated in its budget information kit that:

Over a number of years, there has been a steady increase in the number of ... notifications, and new protection orders made by the Victorian Children's Court. Of significance has been the increase in the complexity and severity of adolescent client behaviours linked particularly to increased substance abuse that have placed particular pressures on residential care services. These residential services, which are provided by the non-government sector, have experienced major client and funding pressures in recent years.¹⁰⁰

The following extra funding has been allocated in 2001-2002:

- \$7.5 million to improve service provision to young people in residential care;
- \$200,000 to cater for service demands in kinship and permanent care by providing 25 places. Further, the rate of caregiver payments will be indexed to reflect the impact of consumer price increases;
- \$1 million to child protection services in rural regions for expansion of after hours services; and

¹⁰⁰ Department of Human Services, May 2001, *State Government Budget 2001-2002 Information Kit*, <http://www.dhs.vic.gov.au/budget/budget02.pdf>

- \$600,000 for family support services. A plan for support services for Aboriginal families where children may be in need of protection will be developed in conjunction with the Victorian Aboriginal Child Care Agency and other Aboriginal services by September 2001. The allocated funds will then be directed accordingly.¹⁰¹

An additional \$12 million of capital funds has also been allocated over three years to upgrade placement and support residential care facilities.¹⁰²

The Committee welcomes this increased funding as an encouraging development. However, the Committee believes that the way in which the non-government sector is resourced to provide child protection services needs to be constantly reviewed.

Accordingly, the Committee recommends that:

Recommendation 5.1:

The Department of Human Services review, on a regular basis, the total resources provided to the non-government sector for child protection services.

¹⁰¹ Letter, received 4 September 2001, from the Minister for Community Services relating to the 2001-2002 budget estimates process, p. 12

¹⁰² Press release, Hon. C Campbell, MP, Minister for Community Services, 15 May 2001, Better support for children and families at risk

CHAPTER 6: HUMAN RESOURCES MANAGEMENT IN CHILD PROTECTION SERVICES

Key Findings:

- 6.1 There was a delay in the development of a human resources master plan/strategy for the Department of Human Services' Child Protection Services, following the Auditor-General's report in 1996.**
- 6.2 The Committee acknowledges that the Department of Human Services has adopted several initiatives to strengthen its human resources sector, since 1999. However, the impact of the Department's human resources strategy on the problems raised by the Auditor-General, is not yet able to be fully established.**
- 6.3 The Ombudsman advised that some Department of Human Services' staff lack detailed understanding of their statutory responsibilities in relation to child protection.**

6.1 Auditor-General's report and responses to the report

The Auditor-General acknowledged that child protection is an inherently difficult and unglamorous profession, with staff having to work in sensitive and sometimes violent client environments.¹⁰³ The Auditor-General also noted that the substantial increase in workload - a result of increased community awareness of child abuse and the introduction of mandatory reporting - had tested the protective services workforce almost to crisis point.¹⁰⁴

¹⁰³ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 293

¹⁰⁴ Ibid

However, the audit also found that many of the human resources problems of the Department of Human Services were exacerbated by poor planning and under resourcing when mandatory reporting was introduced, forcing the Department to rapidly increase staffing numbers, almost entirely through base-grade recruitment.

The Auditor-General identified the following characteristics of the Department's workforce:

- low experience levels among a large proportion of the workforce, as a result of recent intensive base-grade recruitment. This was illustrated at the time of the audit by a clear imbalance between base-grade field workers and advanced workers (which was inconsistent with the policy of equal numbers of base-grade and experienced workers) and a shortage of experienced supervisors;
- significant staff turnover and instability; and
- a need for greater flexibility in working arrangements.¹⁰⁵

The Auditor-General stated that the major challenge for the Department was to implement appropriate workforce planning to achieve a higher professional status for protection workers and increased experience levels, accompanied by greater stability, within the workforce.¹⁰⁶

In response to the Auditor-General's report, the Secretary of the Department of Human Services advised that the Department was proposing to develop a human resources 'blueprint' for Child Protection Services.¹⁰⁷

6.2 Subsequent developments

The Committee initially sought advice on whether the plan had been developed and what initiatives had been introduced to address the problems raised by the Auditor-General.¹⁰⁸ It was not until 1998, two and a half years after the release of the Auditor-

¹⁰⁵ Ibid, p. 297

¹⁰⁶ Ibid

¹⁰⁷ Ibid, p. 295

¹⁰⁸ Letter, dated 3 May 1999, to Mr W McCann, Secretary, Department of Human Services

General's report, that the Department of Human Services engaged consultants to further its human resources strategy.¹⁰⁹

The Department advised that the delay in hiring the consultants was caused by two earlier tender processes having failed to attract suitable candidates. The consultants were to fulfil four tasks, including the development of a human resources strategy to incorporate competencies into human resources practices.

The findings of the consultancy were used to develop *Building Professional Practice – A Child Protection Human Resource Strategy* to address problems faced by the workforce.¹¹⁰ Two of the four key objectives of this strategy are: to develop strategies to address recruitment and retention difficulties and to develop human resources strategies that incorporate best practice. The Department also advised the Committee that its Building Professional Practice strategy was its main means of addressing the concerns raised by the Auditor-General.

In response to the Committee's request for information on the impact of the *Building Professional Practice – A Child Protection Human Resource Strategy* on the issues raised by the Auditor-General and on the shortage of skilled staff in regional centres, the Committee received the following advice from the Department of Human Services:¹¹¹

- **concerning the imbalance between base-grade field workers and advanced workers and the shortage of experienced supervisors**, the data for 1998-1999 showed that the ratio of base-grade to experienced workers had improved to 1:1.2.¹¹² The Department expected similar data for 1999-2000. It advised the Committee during its 2001-2002 budget estimates process that it sometimes

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Letter to Hon C Campbell MP, Minister for Community Services, dated 20 June 2000

¹¹² Letter, received 8 August 2000, from Mr A Hall, Acting Director, Community Care, Department of Human Services

experiences difficulties in attracting experienced Social Workers (Child Protection Workers);¹¹³

- **concerning the significant staff turnover and instability**, the former Director of the Community Care Division advised that staff retention had increased significantly with the more senior staff working for an average of ten years and the most junior staff averaging more than two years.¹¹⁴

A recent comparison on the average years of experience by classification of child protection workers is set out in the exhibit below.

Exhibit 6.1: The average years of experience by classification of Child, Adolescent and Family Workers in 1997 and 2000 ¹¹⁵

	August 1997	August 2000
CAFW 2	2.1 years	4.7 years
CAFW 3	4.4 years	8.6 years
CAFW 4	7.2 years	9.1 years
CAFW 5	9.1 years	9.5 years

The turnover rates of Child Protection Workers is illustrated in the next exhibit.

¹¹³ Response from Department of Human Services to Public Accounts and Estimates Committee 2001-2002 Budget Estimates Questionnaire, p. 41

¹¹⁴ Transcript of evidence, 11 October 2000, p. 41

¹¹⁵ Letter, received 20 September 2001, from Ms P White, Director, Community Care Division, Department of Human Services. CAFW stands for Child, Adolescent and Family Worker. The figures are for Child Protection, Juvenile Justice and Placement and Support workers

Exhibit 6.2: Turnover rate of Child, Adolescent and Family Workers in 1998 and 2000 ¹¹⁶

	June 1998	June 2000
CAFW 2	21.9 per cent	13.3 per cent
CAFW 3	13.1 per cent	15.9 per cent
CAFW 4	9.9 per cent	3.6 per cent
CAFW 5	7.7 per cent	8.8 per cent

The Director also stated that:

*There is still a strong feeling that [staff retention and turnover] is a major issue, possibly because although people are staying in child protection they may not stay with a particular client. They may move between ... the intake phase of work and the longer term phase of work – they may perhaps do the after-hours roster in the country for a time. Therefore the way in which we organise our work probably does encourage people to have a mix of experience. People see it in terms of people staying with a single case, and how we do that is an issue.*¹¹⁷

- concerning the shortage of skilled staff in regional centres**, the Department advised that recruitment in rural regions continues to be an issue and that work is underway to engage universities and colleges to maximise the opportunity for student placements.¹¹⁸ In addition, the Department stated that it is addressing specific issues that have a negative impact on the workload and morale of workers and subsequently on their retention in rural areas, by reviewing the requirement for rural child protection workers to be rostered for after-hours service.¹¹⁹

Nevertheless, the Minister for Community Services advised that:

¹¹⁶ Ibid. The turnover rate has been calculated as the number of staff members who terminated employment within the financial year divided by the number of ongoing staff at the end of the financial year

¹¹⁷ Transcript of evidence, 11 October 2000, p. 41

¹¹⁸ Letter, received 8 August 2000, from Mr A Hall, Acting Director, Community Care, Department of Human Services

¹¹⁹ Ibid

*At the moment there are no significantly understaffed regions.*¹²⁰

The Minister has also advised the Committee that:

*We are looking after our child protection workers, who in the past, unfortunately, had to work day and night. We are now ensuring that it is not necessary for our rural services to have to operate in that way.*¹²¹

- **concerning the need for a higher professional status for protection workers**, the Committee understands that one objective of the Building Professional Practice Strategy is to raise the professional standing and profile of work within the child protection system.

In March 2001, the Ombudsman expressed concern about the following shortcomings of departmental human resources in child protection services:¹²²

- the high turnover of staff which causes a lack of continuity and breakdowns in communication;
- there is a lack of communication between the ‘front end’ of the Department and the ‘back end’:

*... the front end being those that receive notification and are required immediately to investigate and decide what, if anything, needs to be done immediately in respect of the children; and the back end is that those children who are taken into the custody of the Secretary [of the Department], with the backing of the Children’s Court, have appropriate placement made for them and that the care that is the responsibility of the Department is met ...;*¹²³

- the quality of investigations is sometimes ‘patchy’; and
- workers sometimes lack understanding of the legislation:

¹²⁰ Transcript of evidence, 9 August 2000, p. 295

¹²¹ Transcript of evidence, 2001-2002 Budget Estimates, 22 June 2001, p. 166

¹²² Transcript of evidence, 5 March 2001, pp. 111-114

¹²³ Ibid, p. 111

*They have some idea ... of the Department's practices, but occasionally I come across situations with case planning matters involving important decisions affecting children – one is, at times parents are not invited to those case planning meetings, when the legislation provides for that; and at times, in the absence of the parents, decisions are not communicated to them.*¹²⁴

The Victorian Child Death Review Committee (VCDRC) noted in 1999 that inquiry reports raised a number of familiar structural issues, including:

- the availability of education and training for protective workers;
- the management and support of staff;
- staff morale; and
- staff retention and recruitment, particularly in rural regions.

The VCDRC stated that previous reports had raised the same concerns and that the Department of Human Services had assured that action was being taken to address them. The VCDRC expressed disappointment at the recurring nature of the issues but accepted that some issues - particularly the recruitment of appropriately qualified personnel to rural regions - were difficult to resolve.¹²⁵

Ms Judith Gibbs, Chair of the VCDRC, appointed in February 2001, believes that:

*There's a high turnover of workers at the front line and this impacts on the child protection program. We have people coming in who are often newly qualified and leaving after 12 months. Inexperienced people are then promoted to supervisor too quickly. It's a chronic, systemic problem that's hard to break into. Working in child protection is difficult. It's not good for families to have continuously changing [case] workers.*¹²⁶

¹²⁴ Ibid, pp. 111-112

¹²⁵ Victorian Child Death Review Committee, 1999, *Annual Report of Inquiries into Child Deaths: Protection and Care 1999*, p. 43

¹²⁶ Szego, J. *Staff crisis fear in child protection*, *The Age* newspaper, 19 April 2001, p. 9

The Children's Welfare Association of Victoria (CWAV) acknowledged the Department's recent work to improve staff retention and training in the child protection system, but identified ongoing shortcomings. The CWAV was concerned that departmental workers lack the necessary skills and management and support, which has ramifications for whether notifications are investigated and the quality of investigations:

To some extent there is a bit of hit and miss about (whether notifications are investigated) and it depends on the skills of the child protection staff. However, a major issue is the management and support which child protection staff do or do not receive – unfortunately, it is more a case of do not receive ... We find from working on the ground with daily interface with the Department of Human Services that there are times when cases are referred to us before we believe good and thorough investigations have taken place. By our then having to move out into the field to do an assessment we are doing almost a quasi-investigation, which is a most inappropriate delegation of authority under the Act.¹²⁷

The CWAV recommended that further attention be paid to the tertiary education of workers and that the professional standing of child protection staff be promoted to attract the people with the necessary qualities and skills. The CWAV also recommended that the pay disparity between the Department and community sector organisations be resolved.¹²⁸

The Australian Education Union described the difficulties that teachers encounter in making notifications:

When you ring Human Services, you have the problem of them being over worked and under resourced, so when you ring, you get questions like, 'Can't you monitor the kid for a bit longer? Do you really believe this happened? Have you got firm proof that this happened?'. So after a while it is very difficult to report because you know that unless you have absolute proof, which the legislation does not require, not much is going to happen.¹²⁹

¹²⁷ Transcript of evidence, 11 October 2000, p. 5

¹²⁸ Ibid, p. 10

¹²⁹ Transcript of evidence, 8 November 2000, p. 48

6.3 Issues of concern

The Committee is disappointed that there was a delay in the development of a human resources plan/strategy for the Department's Child Protection Services, given the nature of the shortcomings identified by the Auditor-General. The Committee acknowledges, nevertheless, that the Department has adopted several initiatives to strengthen its human resources sector since 1999. However, the impact of the Department's human resources strategy on the problems raised by the Auditor-General, is not yet able to be fully established.

The Committee is concerned that some departmental staff do not fully understand their legislative responsibilities, as noted by the Ombudsman. It is also concerned to learn of reports that community organisations have been conducting quasi-investigations of clients, where departmental staff have lacked the necessary expertise. The Committee regards this delegation of authority - effectively from an officer designated by the Secretary of the Department, to a community sector organisation - as inappropriate.

Accordingly, the Committee recommends that:

Recommendation 6.1:

The Department of Human Services review current training programs to ensure child protection staff are knowledgeable about their statutory responsibilities.

Recommendation 6.2:

The Department of Human Services' annual report include performance indicators for Child Protection Services, for example, the ratio of base-grade workers to more experienced staff, the retention of staff and the number of vacancies, by region.

CHAPTER 7: SYSTEM ABUSE

Key Findings:

- 7.1 There is a need for the Department of Human Services to gather consolidated data on multiple placements and placement breakdowns.**
- 7.2 Multiple placements and system abuse are reportedly significant and ongoing problems within the Victorian child protection system.**
- 7.3 The Department of Human Services has introduced four new performance measures regarding protection and placement output. However, the Committee believes that the quality of performance information could be further improved.**

7.1 Auditor-General's report and responses to the report

The Auditor-General reported that:

The consequences [of inadequate system capacity on quality of care to children] is that preventable harm has been done to children as an indirect result of policies or programs designed to provide care and protection. In other words, what the welfare industry generally refers to as 'system abuse' of children has in fact occurred in Victoria.¹³⁰

The NSW Community Services Commission has identified the following elements of systemic failure that can exacerbate the vulnerability of children and young people in care:

¹³⁰ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 129

- lack of capacity within the system to consider an individual child's needs – a system which is not child focused;
- cases of abuse and neglect not being dealt with in a timely way or at all;
- lack of meaningful early intervention and prevention measures;
- lack of required services to meet individual need, or services that are inappropriate or inaccessible due to entry, cultural, linguistic or geographic constraints;
- inadequate training and support for carers; and
- services which are not properly organised and/or coordinated.¹³¹

Such systematic failure is generally referred to as 'system abuse'.

The 1996 audit report found evidence of:

- unsuitable placements;
- instability for children, through placement breakdowns and multiple placements;
- the separation of sibling groups;
- excessive reliance on contingency placements;
- the dislocation of children from family, friends and other services due to cross- and intra-regional placements; and
- increased lengths of time for which children were in reception care.

The Secretary of the Department of Human Services' response to the Auditor-General's report acknowledged that system abuse can occur, but that the Department had undertaken major initiatives, such as service redevelopment, that had established new programs that were client focused and able to better provide individualised support and services to children and young people.¹³²

¹³¹ Community Services Commission (NSW), 2000, *Inquiry into the practice and provision of substitute care in NSW: new directions – from substitute to supported care*, pp. 6-7

¹³² Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 129

The Department also undertook a project to examine the reasons for multiple placements and placement breakdown. The Secretary advised the Auditor-General that the results of the project were being collated and would inform future service redevelopment.¹³³

7.2 Subsequent developments

During this Inquiry, the Committee has reviewed four reports prepared by, or on behalf of the Department of Human Services, which discuss the shortcomings of the placement and support system. All the reports indicate that system abuse continues to be a significant challenge within the current child protection system:

- *Enhanced Outcomes: the Placement Changes Project* (1997);
- *When care is not enough* (1999 - a review of intensive therapeutic and residential service options for young people in out-of-home care);¹³⁴
- the report of the Community Care Review (2000); and
- the report of an audit of young people living in residential group homes in Victoria (2001).¹³⁵

The primary focus of the placement changes project was to determine which children and young people in care change placements frequently, why and what action could be taken to address the issue. The project studied 93 clients who changed placement more than once during a two-week data collection period in December 1995. The clients represented 2.7 per cent of all clients in out of home care at the time. Key findings included:

- unacceptable levels of placement changes were experienced by a small group within the children and young people studied. This was most apparent among adolescents (average of 7.5 placements) and the youngest children in care (those under 5 years of age, with an average of four placements). Sixty-eight per cent of the

¹³³ Ibid, p. 131

¹³⁴ Morton, J. et al. December 1999, *When care is not enough*, Consultants' report on behalf of the Department of Human Services

¹³⁵ Davies, J. *State wards at risk: report*, *The Age* newspaper, 23 January 2001, p. 1 and Davies, J. *Extra \$17m needed for state wards*, *The Age* newspaper, 24 January 2001, p. 5

sample had a history of unstable placements (defined as three or more placements). Ten per cent of the clients had experienced more than 10 placements;

- 33 per cent of placement changes were system related, that is, they were predominantly moves to a more appropriate placement, from overnight, emergency or cross-regional placements;
- a picture emerged of a stretched service system, attempting to provide stability for a group of children in very difficult circumstances;
- placement coordinators often saw themselves as limited in their capacity to match the child or young person to a placement most able to meet the child's needs; and
- the case planning framework appears to operate better for children who are relatively stable in the placement system or most unstable, although:

*... there is a point at which the system 'loses control' and does not regain it until the child or young person's circumstances have become so extreme that intensive support and planning is provided.*¹³⁶

In 1999, the report entitled *When care is not enough* also noted that system abuse is an ongoing issue.¹³⁷ The consultants found:

- that paedophile rings systematically target young people in residential care; and
- that some pre-adolescents aged 10-11 years have been placed with very violent or drug-abusing adolescents aged 14-16 years:

*... in many cases contagion of behavioural disturbance in these settings was reported by staff to contribute markedly to dropping out of school at an early age, and behavioural disturbance such as escalating drug use, prostitution and crime.*¹³⁸

¹³⁶ Residential and Home Based Care Unit, Protection and Care Branch, DHS, March 1997, *Enhanced Outcomes: the Placement Changes Project*, p. 41

¹³⁷ Morton, J. et al. December 1999, *When care is not enough*, Consultants' report on behalf of the Department of Human Services

¹³⁸ *Ibid*, p. 14

The report stated that the service was often not equipped to address the level of disturbance of the sample group, and that the group's level of functioning worsened during their out-of-home care. Most of the target group had been through periods of frequent placement changes.¹³⁹

The review of community care services undertaken by Professor Carter found that consecutive revolving door placements are not considered untoward.¹⁴⁰ The report states that placement breakdowns occur as a result of:

- the inadequacy of the matching process between client and foster care provider;
- a shrinking pool of foster carers;
- assumptions that there will always be a home-based carer who can fit in with agency timetables;
- the lack of availability of respite care for foster parents; and
- an inadequate appreciation of child development issues in the placement process.¹⁴¹

The most recent departmental audit of young people living in residential group homes suggests that there is an ongoing problem of placement change. The audit of 387 young people found that over half had been in their placement for less than six months and, on average, had had at least four homes during their involvement with the child protection system.¹⁴²

The Committee was interested in whether the Department had addressed the impacts of placement changes and reduced the incidence of placement breakdowns.¹⁴³ In response, the Secretary of the Department provided a description of the outsourcing of the internally delivered placement and support services to the non-

¹³⁹ Ibid, p. 28

¹⁴⁰ Carter, J. September 2000, *Report of the Community Care Review*, p. 144

¹⁴¹ Ibid, pp. 143-144

¹⁴² Davies, J. *State wards at risk: report*, *The Age* newspaper, 23 January 2001, p. 1

¹⁴³ Letter, 3 May 1999, to Mr W McCann, Secretary, Department of Human Services

government sector.¹⁴⁴ The Committee then sought advice from the Department on whether it had measured/quantified the extent to which such outsourcing had addressed the impacts of placement changes and reduced the incidence of placement breakdowns. The Department advised the Committee that it had not undertaken a formal study on how outsourcing had affected placement changes and that:

*Anecdotal information suggests that placement stability is determined more by the level of resources provided to a placement, and the expertise of staff, rather than who actually provides the service and whether the service is internally or externally delivered.*¹⁴⁵

Although the Department's research initiatives are commendable, it would appear that more needs to be done to address the Auditor-General's recommendation that the Department make intensive efforts to stabilise the lives of those children who have already been disrupted by multiple placements.¹⁴⁶

The Auditor-General recommended that the Department develop its management information system so information on placement movements can be provided for monitoring purposes. The Committee raised this issue with the Secretary of the Department who advised that the Funded Agency Client Transaction System (FACTS) has been established to support out-of-home care services. However, FACTS does not maintain data on unsuitable placements due to a lack of capacity in placement facilities. The Department also advised that its data and monitoring systems are under review to enable reliable data to be provided in the future.¹⁴⁷ The Committee was surprised to learn that the Department does not gather consolidated data on multiple placements and placement breakdowns.

In June 2001, the Minister for Community Services advised that:

¹⁴⁴ Letter, 21 May 1999, from Mr W McCann, Secretary, Department of Human Services

¹⁴⁵ Letter, received 8 August 2000, from Mr A Hall, Acting Director, Community Care, Department of Human Services, p. 17

¹⁴⁶ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 131

¹⁴⁷ Letter, 22 September 2000, from Hon C Campbell, MP, Minister for Community Services

*We have begun work with MHSKY, the Mental Health Services for Kids and Youths, and that work is being jointly sponsored by the community care and mental health divisions. We are doing both a study and a program with young people in out-of-home care to identify what might be the precursors to placement breakdown, because they primarily relate to mental health and behaviour issues. That project is beginning, and we will be informed by what works and why, and how placements break down and why, and following on from that we will determine what we need to do to ensure those placement breakdowns do not occur.*¹⁴⁸

A final report and recommendations will be available in December 2002.¹⁴⁹

The Committee received evidence that indicates system abuse is an ongoing problem in the Victorian child protection system. Hon. J. Fogarty, Board Member of the Children's Protection Society and former Family Court judge stated that abuse by the child protection system had not improved since the Auditor-General's report.¹⁵⁰ The Children's Welfare Association of Victoria (CWAV) also expressed concern about the inadequacy of the present system:

*... system abuse within the care facilities in Victoria – in the non-government and Government sectors – is a very serious matter, and the number of placement breakdowns is worrying. A number of the placements of children are made because there are inadequate placements at the time and ad hoc placements are arranged.*¹⁵¹

Further, the CWAV informed the Committee:

- that the CWAV had received referrals of children who had experienced fifteen or so placements;
- that children were being inappropriately placed in residential facilities; and

¹⁴⁸ Transcript of evidence, 2001-2002 Budget Estimates, Hon. C Campbell, MP, Minister for Community Services, 22 June 2001, p. 181

¹⁴⁹ Letter, received 4 September 2001, from the Minister for Community Services, p. 16

¹⁵⁰ Transcript of evidence, 8 November 2000, p. 54

¹⁵¹ Transcript of evidence, 11 October 2000, p. 9

- that large sibling groups are often separated.¹⁵²

Similarly, the Chief Executive of Kildonen Family Services expressed concern that a lack of adolescent foster places has meant an increasing number of children, sometimes as young as 10 years old, are being inappropriately placed in the units:

*Do we have kids coming in with no substance abuse problem and leaving with a drug problem? Yes. Do we have girls coming in who are not sexually active and leaving a year later working on the streets? Yes. You have to say that is systemic abuse, something is clearly not working.*¹⁵³

The CWAV offered two reasons for system abuse. First, key performance indicators for child protection services are predominantly geared towards meeting certain quantity targets, but often those targets conflict with quality care. For example, a key performance indicator for child protection services is speed of response regarding placements made. However, there is no corresponding key performance indicator regarding the appropriateness of the placement. Such quantitative indicators may mask potential system deficiencies such as the shortage of care givers.¹⁵⁴

Second, the CWAV stated that:

*... part of the problem is that the economics have become the key driver in the way the system operates. In order to get flexibility and a range of individualised options for kids there has to be a gap between system capacity and system demand. Over recent years that gap has been screwed down so tightly that often kids are ending up in inappropriate placements – the system simply does not have the capacity to provide the flexibility for that option to be available for them at the time they need the system.*¹⁵⁵

¹⁵² Ibid, p. 9

¹⁵³ Davies, J. 13 November 2000, *Children in care at risk of abuse, drugs*, *The Age* newspaper, pp. 1-2

¹⁵⁴ Personal communication, Mr K Patterson, Children's Welfare Association of Victoria, 26 September 2001

¹⁵⁵ Transcript of evidence, 11 October 2000, p. 9

Australians Against Child Abuse advised that placement breakdowns also occur as a result of lack of timely specialist counselling for children:

*We are one of probably only two or three other organisations in the state that provide counselling services to children who have been abused. We are asking children to be referred through the generalist mental health services or family support services when they have suffered abuse. We do not expect that of adult women who have been raped or of adults who have suffered violence, yet we do so for children. It is a different philosophy and a different focus that is required.*¹⁵⁶

The Minister for Community Services has subsequently advised that:

*Most of the young people, particularly the adolescents in our out-of-home care system, have been the victims of sexual abuse. I have instructed the non-government providers to access CASAs [Centres Against Sexual Assault] or similar services for the young people. Apparently the NGOs were unaware that community care provided additional funding for the CASAs to ensure that those young people were not put on waiting lists. So we are progressively and systematically working with the agencies on a safety and wellbeing strategy.*¹⁵⁷

The Committee is concerned that non-government agencies were not aware of support services, such as CASAs, available to them.

The Ombudsman also expressed concern that the Department of Human Services has sometimes failed to carry out its responsibilities to children in its care.¹⁵⁸ The Ombudsman highlighted in his 1999-2000 annual report two cases where the Department has shown a lack of quality assurance and enforcement in the care of children for whom the Minister and Secretary have a statutory responsibility. The Ombudsman stated that:

¹⁵⁶ Transcript of evidence, 8 November 2000, p. 64

¹⁵⁷ Transcript of evidence, 2001-2001 Budget Estimates, Hon. C Campbell, MP, Minister for Community Services, 22 June 2001, p. 179

¹⁵⁸ The Ombudsman Victoria, *Annual Report 27*, June 2000, p. 24

If you want to contract out services, it is not good enough to contract out and then forget about it ... the Department has a legal responsibility when they take children into care and they are not fulfilling their legal responsibility by simply contracting out to (an approved community service).¹⁵⁹

7.3 Issues of concern

Frequent transfers between placements were described in 1997 as the most damaging secondary danger for children or young people coming into care.¹⁶⁰ Evidence received by the Committee shows that multiple placements and system abuse are significant and an ongoing issue within the Victorian child protection system. The Department of Human Services has conducted an audit of placement changes. However, the Committee believes that action to minimise system abuse is required.

In 1996, the Auditor-General advised that there would be merit in establishing a joint working party, involving the Department of Human Services and representatives from the non-government sector, to examine the feasibility of an accreditation system for service providers in Victoria's child welfare industry. Similarly, the Ombudsman identified the need for a systematic regime of quality assurance and enforcement within the child protection system.

The Committee understands that, in 1995, the Victorian Government endorsed, in principle, the National Baseline Standards for Out-of-Home Care, but that it has not developed a Statewide implementation strategy.¹⁶¹

The Committee acknowledged in its Report on the 2000-2001 Budget Estimates that the Department has introduced four new measures regarding protection and placement output.¹⁶²

¹⁵⁹ Rollins, A. 30 November 2000, *Children in care 'failed by state'*, *The Age* newspaper, p. 1

¹⁶⁰ Milham et al, as cited in Residential and Home Based Care Unit, Protection and Care Branch, Department of Human Services, March 1997, *Enhanced Outcomes: the Placement Changes Project*, p. 10

¹⁶¹ Green, S. and Jones, A., 1999, *Improving outcomes for young people leaving care in Victoria*, p. 34

¹⁶² Public Accounts and Estimates Committee, Report No. 38, *Report on the 2000-2001 Budget Estimates*, November 2000, p. 284

However, it believes that the Department could further improve the quality of performance information by using additional measures, including:

- the number of cases that are subsequently substantiated after the initial notification is not substantiated;
- the continuity of case workers over a given period;
- the incidence of multiple placements;
- the percentage of investigations commenced within seven days of allocation of a case;
- the percentage of protection applications settled at the Children's Court within one month;
- the percentage of re-notifications that are substantiated;
- the percentage of cases allocated to a protection worker within two weeks of notification;
- the percentage of families actually receiving support services compared with the percentage of families identified as needing support services; and
- the average length of time that children spend in reception care before a placement is found.

The Department also advised that new Minimum Service Standards have been developed in conjunction with community organisations and that these will be implemented throughout 2001-2002.¹⁶³

Accordingly, the Committee recommends that:

Recommendation 7.1:

As a matter of priority, the Department of Human Services, in consultation with Non-Government Organisations, develop a quality assurance framework for protective services for children and young people.

¹⁶³ Letter, received 4 September 2001, from the Minister for Community Services, p. 9

The Department has committed to developing a State DisAbility Services Plan which has a ten-year outlook. The Committee believes that a similar initiative for child protection services in Victoria needs to be developed.

Accordingly, the Committee recommends that:

Recommendation 7.2:

The Department of Human Services, in consultation with Non-Government Organisations, review its strategic planning framework for child protection services.

Recommendation 7.3:

The Department of Human Services review the resourcing of specialist counselling services for children who have suffered abuse.

CHAPTER 8: FOSTER CARE

Key Findings:

- 8.1 Information provided by the Department of Human Services showed that fortnightly payments made to foster carers do not cover the costs of raising a child. Care givers can access funds for additional items – such as clothing, educational expenses and specific items of furniture.**
- 8.2 The Victorian Government increased foster care payments by 6 per cent in June 2000, the first such increase since 1996.**
- 8.3 Non-Government Organisations describe foster placements as the most therapeutic environment that abused children will be offered in the current child protection system.**

8.1 Auditor-General's report and responses to the report

Foster care refers to a range of accommodation and support services for children and families, whereby children are accommodated away from their natural parents in the caregivers' own homes for varying periods, ranging from overnight stays until they can be appropriately returned to their parents or found a permanent placement.¹⁶⁴

A number of home-based care givers, in discussions for the audit, advised that a major reason that the Department of Human Services failed to recruit sufficient foster families was the inadequacy of remuneration. They indicated that it was not economically viable, for most families, to perform this role,

¹⁶⁴ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 217

particularly not for low-income families who represent most of the care givers.¹⁶⁵ Accordingly, the Auditor-General recommended, as a matter of priority, that in order to maintain the level of home-based care givers and enhance recruitment, that the Department increase remuneration rates and introduce additional measures to financially support foster families.

The Auditor-General also found:

- that foster care agencies needed support as well as monitoring by the Department, and that there was considerable scope for better liaison between the parties; and
- that the Department needed to acknowledge, further research and resolve concerns expressed by foster parents and agencies.¹⁶⁶

The Auditor-General recommended that the Department develop programs to provide intensive support to caregiver families as well as natural families, in order to reduce the high incidence of placement breakdowns occurring with home-based care.¹⁶⁷

In response to the 1996 audit report, the Secretary of the Department advised that the Victorian Government made allowance in the 1996 Budget for increasing the base rate of care giver payments and providing additional enhancements for children with additional needs.¹⁶⁸ The Department rejected the conclusion that care giver payments were the essential barrier to recruitment.

The Department acknowledged the need for increased liaison and support between protection and care workers, agencies and care givers, and outlined its initiatives. However, the Department did not accept that the statements in the Auditor-General's audit report were representative of care givers and agency staff across the State.¹⁶⁹

¹⁶⁵ Ibid, p. 139

¹⁶⁶ Ibid, p. 219

¹⁶⁷ Ibid

¹⁶⁸ Ibid, p. 141

¹⁶⁹ Ibid, p. 220

8.2 Subsequent developments

The Department of Human Services advised the Committee that foster care payments increased by 6 per cent from July 2000, the first such increase since 1996.¹⁷⁰ The Department also provided information on the costs of raising children (1997 being the most recent year for which cost data are available to the Department) compared with the level of remuneration paid to foster families in 2000. The fortnightly figures in exhibit 8.1 demonstrate that current payments do not appear to be meeting real costs.

Exhibit 8.1: A comparison of the estimated fortnightly costs of raising a child (as determined by the Lee expenditure survey and Budget Standards approaches 1997) in contrast to 2000 Department of Human Services' foster care payments¹⁷¹

Age of child (years)	DHS foster care payments (2000) (\$ per fortnight)	Lee expenditure survey approach (1997) (\$ per fortnight)	Budget Standards approach (1997) (\$ per fortnight)
0	170		
1	170		
2	153	324	
3	153	324	328 (girl)
4	153	324	
5	153	368	
6	153	368	278 (girl)
7	153	368	
8	185		
9	185		
10	185		
11	223	484	
12	223	484	
13	315-335	484	
14	315-335		310 (boy)

¹⁷⁰ Hon. C Campbell, MP, Minister for Community Services, Press Release *\$1.2 million boost to foster care*, dated 1 August 2000

¹⁷¹ Letter, received 8 August 2000, from Mr A Hall, Acting Director of Community Care, Department of Human Services

The Department advised that care givers have access to:

*... funds for additional items - such as clothing, educational expenses, specific items of furniture and the like.*¹⁷²

The Minister for Community Services advised the Committee in September 2001 that the rate of caregiver payments will be indexed to reflect the impact of consumer price increases.¹⁷³ The Committee understands that the indexation applies to all caregiver payments, (for example permanent, kinship and foster caregiver payments), and in 2001-2002 the net indexation will equate to 2.4 per cent.¹⁷⁴ The indexed payment is a one-off increase and is currently not scheduled for regular indexing.¹⁷⁵

In addition, the Minister advised that:

... we need to look also at whether we are attracting the right foster and permanent carers. What was needed in a foster carer 2, 3, 5 or 10 years ago is not necessarily what is going to be required by way of skills and time commitment for foster carers in the next decade. That work has begun within the Department of Human Services.

I will give the example of something which would not have been entertained five years ago. This is not being party political, it is just the nature of the abuse of children. We might be at the stage where we need to entertain employing a full-time professional who might be willing to be a foster or permanent carer, and having the most significantly disadvantaged children in that person's home, if they were prepared to entertain that in terms of professional employment as opposed to foster care payments. This is just one example. We have to change our horizons because the nature of the abuse experienced by young children now is significantly different to what it was 10 years ago.

¹⁷² Ibid, p. 22

¹⁷³ Letter, received 4 September 2001, from the Minister for Community Services, in response to the 2001-2002 budget estimates process, p. 11

¹⁷⁴ Prosser, B., Department of Human Services, personal communication, 19 September 2001

¹⁷⁵ Letter, received 20 September 2001, from Ms P White, Director, Community Care Division, Department of Human Services

Given the level of physical abuse to people going to the [residential] houses ... we might even need to entertain that one-on-one care from a professional taking place in a state house for a period of time until that young person trusts the carer and the relationship develops. I am not saying that any concepts are necessarily in or out at this point but we have to look at different ways of meeting their needs.

With the change in emphasis away from tendering to looking at what better meets people's needs, a number of service providers have said that they have not been able to do anything innovative for a number of years because under the old system everything had to be totally prescriptive. A few of the long-established organisations are really keen to look at innovative ways of delivering better outcomes for young people. We have given them permission to go away and think, brainstorm and come up with proposals. It does not need to necessarily be seen as going to cost more. In the long term it might cost less.¹⁷⁶

Non-Government Organisations advised that remuneration and support services for foster carers remains an issue. In October 2000 the Children's Protection Society stated that:

Foster carers need more financial support. I read in the [Auditor-General's] report that there is an expectation that foster carers [are] willing to take on the financial burdens. I question that expectation. Maybe we should resource them better and pay them. I do not say people will not go into it for the pay, but we need to resource them better, to have training and backup for those foster carers.¹⁷⁷

Similarly, Australians Against Child Abuse noted in November 2000 that:

... there is not enough specialist support for foster care agencies and foster care parents. Foster care workers do an admirable job in supporting placements as much as they can but these children have specific needs. We do not do enough and we do not provide enough resources to support placements and support children in

¹⁷⁶ Transcript of evidence, 2001-2002 Budget Estimates, Hon. C Campbell, MP, Minister for Community Services, 22 June 2001, pp. 181-182

¹⁷⁷ Transcript of evidence, 11 October 2000, p. 17

*those placements. Those placements are the most therapeutic environment that abused kids will be offered in the system currently.*¹⁷⁸

Oz Child has the largest foster care program in Victoria. According to Oz Child, the following are significant barriers to achieving outcomes that would be in the best interests of the children concerned:¹⁷⁹

- almost all children placed in foster care have some statutory involvement and thus have experienced significant levels of family dysfunction and emotional abuse. Almost all are experiencing a significant degree of attachment disorder which has implications for behaviour management and the child's capacity to develop a relationship with carers. There is increasing difficulty in recruiting carers who are able to respond to the needs of children with the level of emotional damage present in almost all of the children who require placements;
- the foster care system is in crisis in terms of the demand for quality therapeutic or reparative placements and the inability of the system to continue relying on volunteers to meet this demand. Funding needs to be made available for a system of paid care in order to attract suitable carers to this demanding work.

Reparative placements require close to a full-time commitment. To enable such placements for young children, carers need to be paid in order to stay home rather than have carers use the child care system while they go out to work. Child care is unsatisfactory when young children are emotionally damaged and have attachment disorders;

¹⁷⁸ Transcript of evidence, 8 November 2000, p. 64

¹⁷⁹ Letter, dated 7 December 2000, from Mr T Pitman, Chief Executive Officer, Oz Child

- a review of reception and short-term placements in the Oz Child foster care program over 13 months to October 1999 found evidence of children remaining within reception and short-term/transitional foster care for unacceptably long times, particularly given that a significant percentage of children were under 3 years of age. Further, two children had been in reception care for 298 days, well in excess of the ninety day benchmark;¹⁸⁰
- greater resourcing is needed for reunification programs for those parents who have the potential capacity to parent appropriately;
- lack of direction and certainty in case planning means carers frequently do not know, for example, how long placements will be. The uncertainty creates difficulties for carers who are being asked to make themselves emotionally available to a child but who are powerless in relation to the case plan outcomes. Also, when an original placement request is extended well beyond the original time to which the carer agreed, it can lessen the carer's willingness to be available for future placements; and
- an unacceptable number of children in the system have futures that have not been decided in a timely fashion. Permanency planning occurs too late in the cycle of cases. There needs to be a re-orientation of the foster care system to ensure the safety of the child while the assessment is taking place, followed by clear, firm decision-making.

¹⁸⁰ The Committee requested information from the Department on the length of time children were spending in formal reception care. The Department advised that:
No formal statistics are available, although the length of time in 'reception care' is dependent on the length of time that a case takes to be resolved in the Children's Court.
Source: Letter received 8 August 2000, undated, from Mr A. Hall, Acting Director of Community Care, Department of Human Services.

In reviewing Victorian foster care services, the Carter Review found:

- that resources and support designated in case plans are not always available to the child, and that there are frequent breakdowns in communication between the Department of Human Services and agency staff;
- that placement breakdowns occur as a result of the inadequate matching process, a shrinking pool of foster carers, assumptions that there will always be a home based carer who can fit in with agency timetables, the lack of availability of respite care for foster parents, and inadequate appreciation of child-development issues in the placement process; and
- that the Department and agencies frequently do not respect the reason for continuity in a placement. Consecutive revolving door placements are not considered untoward.¹⁸¹

The Carter Review concluded that there is a lack of commonly accepted standards of practice in foster care.

8.3 Issues of concern

The Children's Protection Society stated that foster care placements are an important preventative measure of family breakdown. Australians Against Child Abuse noted that foster placements are the most therapeutic environment that abused children will be offered in the current system. The Committee makes the following recommendations:

Recommendation 8.1:

The Department of Human Services give consideration to the development of a comprehensive package of resources across the whole-of-government to provide support to foster parents.

¹⁸¹ Carter, J. September 2000, *Report of the Community Care Review*, pp. 143-144

Recommendation 8.2:

As a preventative and early intervention measure, the Department of Human Services extend the foster care program to clients requiring family support.

CHAPTER 9: RELATIONSHIP BETWEEN THE DEPARTMENT OF HUMAN SERVICES; THE DEPARTMENT OF EDUCATION, EMPLOYMENT AND TRAINING; AND SCHOOLS

Key Findings:

- 9.1 There needs to be an integrated approach adopted by all Government Departments and community organisations involved in the child protection system.**
- 9.2 The Department of Education, Employment and Training and the Department of Human Services are developing a protocol on how child protection workers operate in the school environment. Completion of this should be a high priority.**
- 9.3 While the Department of Human Services should be the lead agency in child protection, the Department of Education, Employment and Training should play an expanded role in the child protection system, because of the need to provide appropriate advice and support to teachers who make notifications.**

9.1 Auditor-General's report and responses to the report

The Auditor-General suggested in 1996 that there was scope for an improved relationship between schools and the Department of Human Services through:

- revised protocol arrangements whereby school visits by protection workers are accepted as necessary but are conducted in a discreet and unobtrusive manner by prior arrangement with schools;

- teachers, as mandated notifiers, becoming fully conversant with and accepting the difficult role protection workers must perform in acting on suspected child abuse quickly; and
- the Department's provision of a consultancy or advice service to mandated notifiers, whereby the merits of notifications could be discussed before the Department accepts a notification.¹⁸²

However, neither the Secretary of the Department of Human Services¹⁸³ nor the Minister for Finance commented on these recommendations in their responses to the audit report.¹⁸⁴

9.2 Subsequent developments

The Committee discussed the issues raised by the Auditor-General with officers from the Department of Education, Employment and Training (DEET) on two occasions. DEET advised:

*What we wanted to do with the School Focussed Youth Service was formalise all sorts of contacts and clarify expectations and processes for both sides ... we still have a bit of work to do on the professional development of both schools and child protection workers on how they may better work together.*¹⁸⁵

In relation to the recommendation that teachers become fully conversant with the difficult role that protection workers perform, the Director of Schools in November 2000 advised that a set of protocols is being developed that:

*... will describe the expectation that teachers can have of the Department of Human Services visit (to the school) and following the visit, in what timeframe they can expect what type of feedback.*¹⁸⁶

¹⁸² Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 43

¹⁸³ Ibid

¹⁸⁴ Department of Treasury and Finance, November 1996, *1996 Response by the Minister for Finance to the Auditor-General's Reports issued during 1995-96*, pp. 77-89

¹⁸⁵ Transcript of evidence, 11 October 2000, p. 32

¹⁸⁶ Transcript of evidence, 8 November 2000, p. 70

The Committee is concerned that the protocols have not been implemented, given that four years have elapsed since the Auditor-General's report was released in June 1996. Although there has been work on the development of a protocol since 1999, DEET did not give a firm date as to when all the protocols would be completed.

DEET advised the Committee that an advice service for mandated notifiers had not been established and was not a priority of the Department of Human Services. DEET was:

... aware of the recommendation that ... [a] hotline ... be established, and I think that would be something teachers would find very useful, but having a nominated person in each region to do that has not been a priority of the Department of Human Services.¹⁸⁷

Currently, when teachers contact DEET seeking advice on child protection matters, the Manager of Student Welfare informs teachers and schools that they must rely on their own resources and the expertise within the school. The Committee suggested, as an alternative option, that the Department of Human Services should provide an advice service to DEET rather than DEET provide advice to teachers. The DEET officer confirmed the merit of such a service, however:

... because [such a service] is not available we need to give teachers another option within the school and nominate people who can give that advice. It is difficult when you are put in that position.¹⁸⁸

DEET advised the Committee that it has not surveyed teachers about whether they would support the establishment of a hotline or whether having a nominated regional Department of Human Services' officer would be preferable.

The Committee sought advice from the Minister for Community Services about how the Department of Human Services had acted

¹⁸⁷ Ibid

¹⁸⁸ Ibid, p. 74

to address liaison problems with DEET.¹⁸⁹ The Department advised that:

*A number of liaison meetings occurred during 1999 between [the Department of Human Services] and the then Department of Education ... to discuss a range of issues of mutual concern.*¹⁹⁰

On 6 July 2000, the former Director of the Community Care Division met with the new Director of Schools to commence discussion about improving liaison between the two Departments.¹⁹¹ The Committee was informed that regional liaison processes between the two Departments have also been established.¹⁹²

The Director of the Community Care Division advised that a detailed manual sets out the protocol between the Department of Human Services and DEET:

*... we are redoing that now and at about the end of the year we will have a revised manual out which will look at those issues of concern.*¹⁹³

The Department of Human Services confirmed that a consultancy or advisory service to mandated notifiers was not in place. The Department advised the Committee that it would rather encourage teachers to discuss the matter with a regional Department office, and focus on the education of teachers than establish an intermediary mechanism.¹⁹⁴ However, the Assistant Director of Child Protection and Juvenile Justice advised the Committee that:

... the reintroduction for teachers, or for anyone, of the capacity to undertake a consultation so that everything does not have to become a notification, as we have had in the past – and if that was not part of the legislation – would answer the issue that has

¹⁸⁹ Letter, dated 20 June 2000, to Hon. C Campbell, MP, Minister for Community Services

¹⁹⁰ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 35

¹⁹¹ Ibid, p. 36

¹⁹² Ibid

¹⁹³ Transcript of evidence, 11 October 2000, p. 38

¹⁹⁴ Ibid, p. 37

*been raised by teachers. That is something we want to look at seriously.*¹⁹⁵

The Australian Education Union also highlighted to the Committee the lack of consultation between the two Departments:

*... there is not really a protocol between the two; ... schools have procedures that they operate under and the Department of Human Services has procedures it operates under, but they often do not meet anywhere.*¹⁹⁶

The Australian Education Union also stated that:

*Any support for the teacher doing the reporting comes from within the school; none ... comes from outside. In fact, there is no link to the Department of Education. There is no communication between the school and the Department or between [the Department of Human Services] and the school. Parents do get quite abusive ... Some schools have protocols where the principal does the reporting, or the principal will take the calls from the parents. The teacher has done the reporting and they set up that barrier. That is basically all there is. The Department itself does nothing.*¹⁹⁷

Whittington Primary School advised that:

It would appear that the legislation that determines the powers of both the [Department of Human Services] and Police is so ineffective that we wonder why these Departments are in service. For example - although schools are mandated to make notification of concerns to [the Department of Human Services], in reality, the [Department] is powerless to ensure the issue is resolved unless it is a 'Life and Death' situation.

Consequently, our concern is that there are many children in need of support who are not receiving it because the adult (parent/guardian) can simply refuse to speak to [the Department of Human Services] or the Police. The matter or issue continues

¹⁹⁵ Ibid, p. 38

¹⁹⁶ Transcript of evidence, 8 November 2000, p. 44

¹⁹⁷ Ibid, pp. 46-47

to be unresolved and the children are at continued risk of abuse from the adult.

We know that other school communities are also experiencing the same disenchantment with the 'system'.¹⁹⁸

The Children's Protection Society also identified the lack of support as a major problem:

... we have teachers in the primary sector, in schools and the community, and they are telling us that because of the onus placed on them by mandatory reporting, when they have concerns about a family the only place they feel they can or must go is straight down to the tertiary end, to the Department. Some schools and some communities have well-developed networks with their secondary family support agencies, but I have been quite surprised and disappointed that that is nowhere near as well developed as I would have thought ...¹⁹⁹

The Children's Protection Society advised that some teachers would prefer to consult with a secondary agency regarding their child protection concerns than to go directly to the Department of Human Services. Such a mechanism would mean that teachers could preserve their relationship with the relevant family and would also provide a means of resolving differences of opinion within a school, for example, between a teacher and principal.²⁰⁰ The Children's Protection Society advised that the Department used to be able to fulfil this filtering function, but that the emphasis is now on the notification stage.²⁰¹

9.3 Issues of concern

The Committee is concerned that a Department of Education, Employment and Training and Department of Human Services protocol for how child protection workers would operate in the school environment is not in effective operation. The Australian

¹⁹⁸ Letter, dated 24 November 2000, from the Secretary, Whittington Primary School Council

¹⁹⁹ Transcript of evidence, 11 October 2000, p. 15

²⁰⁰ Ibid, pp. 15-16

²⁰¹ Ibid, p. 15

Education Union, representing school teachers, has indicated that it is unaware of the existence of the protocol.

The Committee believes it is essential that an effective protocol be put into operation as a high priority.

Accordingly, the Committee recommends that:

Recommendation 9.1:

The Department of Human Services and the Department of Education, Employment and Training, in consultation with schools, finalise a protocol on how child protection workers operate within a school environment. The protocol be finalised as a matter of priority and incorporate an implementation strategy.

According to the *Children and Young Persons Act* 1989, the Minister is responsible under section 65 (1) (d) for:

*... the promotion of the development of a clear definition of the respective responsibilities, in relation to children at risk of harm, of protective interveners, community services and other persons and bodies working with children and their families in a professional capacity.*²⁰²

The Committee was told that teachers receive conflicting advice from the two Departments when seeking expert advice and support on making a notification. DEET advises teachers to use the resources of the relevant school, whereas the Department of Human Services suggested that teachers draw on their own training or seek advice from a regional departmental officer, rather than have to establish an intermediary agency to provide advice.²⁰³ (The issue of an intermediary agency is discussed below in more detail).

²⁰² Victorian Law Today, <http://www/dms.dpc.vic.gov.au/12d/C/ACT007/index.html> downloaded on 23 December 2000

²⁰³ Transcript of evidence, 11 October 2000, p. 37

The Committee believes that there is scope for the protocol being developed to formalise the roles and responsibilities of different parties in the Victorian child protection system. This issue is discussed further in chapter 11 of this report on the education of children in care. It supports the proposal that DEET play an expanded role in the child protection system.

Accordingly, the Committee recommends that:

Recommendation 9.2:

The protocol between the Department of Human Services and the Department of Education, Employment and Training define the roles and responsibilities of the different parties in the child protection system.

The Committee also supports the establishment of a consultancy or advice service, whereby the merits of notifications could be discussed before the Department of Human Services accepts a notification. The Committee understands that in New South Wales, Queensland and the Australia Capital Territory, Departments screen each incoming report before deciding whether it will be designated and counted as a notification.

Western Australia and Tasmania also undertake a screening process with incoming reports, but their policies incorporate a narrower definition of child protection than that used by other jurisdictions. These States define only reports of suspected maltreatment as notifications; other reports of concern that would be counted as notifications in other States are classified as child and family concern reports, and the response is different from that to notifications of abuse and neglect.

According to the *Children and Young Persons Act 1989*, the Minister is responsible under section 65 (1)(c) for:

*... the provision of a consultation and advice service and of information to community services and other persons and bodies working with children and their families in a professional capacity regarding measures to be taken to ensure that children are protected from harm.*²⁰⁴

The Committee believes that teachers and other mandated notifiers should not have to rely solely on their own training and peer support in determining whether to make a notification to the Department of Human Services. Mandated notifiers should be able to access one-on-one expert advice on the circumstances of individual cases. The Committee believes that mandated notifiers should be consulted in the development of such a service. The Committee also believes that the establishment of such a service may serve to reduce the number of unwarranted notifications to the Department of Human Services.

Accordingly, the Committee recommends that:

Recommendation 9.3:

The Department of Human Services provide support for mandated notifiers throughout the notification process.

²⁰⁴ Victorian Law Today <http://www.dms.dpc.vic.gov.au/12d/C/ACT007/index.html> downloaded on 23 December 2000

CHAPTER 10: RELATIONSHIP BETWEEN THE DEPARTMENT OF HUMAN SERVICES AND VICTORIA POLICE

Key Findings:

- 10.1 Most recommendations of the Auditor-General regarding the relationship between the Department of Human Services and Victoria Police have been implemented.**
- 10.2 The *Crimes Act* 1958 has been amended with regard to sexual offences against children to address shortcomings identified by the Auditor-General.**
- 10.3 In response to a continuing low level of substantiations of sexual abuse cases, the Department of Human Services is working with Victoria Police to develop and improve joint investigative responses and to improve performance in the Children's Court.**

10.1 Auditor-General's report and responses to the report

The Auditor-General identified that since the introduction of the single-track system²⁰⁵ and mandatory reporting of alleged child abuse, it is essential that the Department of Human Services (as the lead agency responsible for child protection) foster a close working relationship with Victoria Police where suspected criminal

²⁰⁵ In February 1989, Mr Justice Fogarty, in a report on Victoria's child protection system entitled *Protective Services for Children in Victoria* recommended that the then existing dual track system, whereby child protection investigations were conducted by both Victoria Police and DHS, be terminated and that over a three year period commencing from 1989 the prime responsibility for child protection services be transferred to a welfare-based system within DHS. This recommendation was accepted by the Government and the transfer of responsibility was completed in March 1992.

Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 38

offences involving sexual abuse or serious physical assaults on children have been notified.²⁰⁶ The 1996 audit established that this relationship had been unsatisfactory at times, with numerous breaches of protocol having an impact on child abuse investigations by both agencies.

The Auditor-General considered that there was considerable scope for further addressing the incidence of sexual assaults on children within the community. The audit report recommended measures such as specialist multi-disciplinary teams comprising staff from both Victoria Police and the Department of Human Services, better evidence gathering, the development of a computerised intelligence network to supplement existing systems, and the use of specialist solicitors to brief barristers within the Family Division of the Children's Court and in criminal courts.

The Secretary of the Department of Human Services responded that the Department, while accepting a number of the Auditor-General's findings, was disappointed by the audit's lack of objectivity and poor research effort.²⁰⁷ The Secretary also provided details of the procedure it had initiated to reconcile differences between the Department and Victoria Police, and of the protocol between the two parties. The Secretary stated that the dual-track approach still existed because it was difficult to separate protection and criminality in many instances. Finally, the Secretary acknowledged that the recommendation of combining resources in a multi-disciplinary team had merit but needed exploration.

10.2 Subsequent developments

The Committee is pleased to note implementation of most of the Auditor-General's recommendations regarding the relationship between the Department of Human Services and Victoria Police; for example, revised protocol arrangements were formalised in August 1998 through *Protecting Children: Protocol between DHS and Victoria Police*.²⁰⁸ The Department and Victoria Police have undertaken joint training exercises, although the Committee did

²⁰⁶ Ibid, p. 167

²⁰⁷ Ibid, pp. 167-168

²⁰⁸ Letter, dated 21 May 1999, from Mr W. McCann, Secretary, Department of Human Services

not determine the extent to which the strategic approach recommended by the Auditor-General has been adopted.²⁰⁹ Finally, the *Crimes Act* 1958 has been amended with regard to sexual offences against children, to address the shortcomings identified by the Auditor-General.²¹⁰

However, the Committee remains concerned about the low level of substantiations of sexual abuse cases and proven protection applications.

10.2.1 Low level of substantiations of sexual abuse cases and proven protection applications

The Auditor-General reported in 1996 that 4036 notifications of sexual abuse were made during 1994-1995. Of those notifications, 51 per cent (2054 cases) were investigated, 16 per cent (655 cases) were substantiated and 3 per cent (121 cases) of case protection applications were proven before the Children's Court (refer to Exhibit 10.1, page 120). The Auditor-General reported:

*[The Department of Human Services] maintained that this low level of substantiation could be attributed to the difficulty in proving sexual abuse applications before the Children's Court and [that the Department] was advised in many cases by their lawyers not to proceed with such applications. Magistrates at the Children's Court also advised audit that it is not unusual for [the Department] to fail to prove cases through reasons such as the poor quality of investigations and omission of key evidence.*²¹¹

The Department of Human Services strongly supported the Auditor-General's comments on the need to improve its performance on substantiation of child sexual assault matters within its jurisdiction, and to improve investigations where responsibility is shared with Victoria Police.²¹² The Department indicated that it was working with the Police to develop and

²⁰⁹ Ibid

²¹⁰ Ibid

²¹¹ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 186

²¹² Ibid, p. 191

improve the joint investigative response and to improve performance in the Children's Court.²¹³

The Committee sought advice in May 1999 on whether its initiatives had increased the rate of substantiations and proven protection applications of child sexual assaults.²¹⁴ The Secretary of the Department of Human Services advised, for sexual abuse in 1997-1998, that 191 cases were brought before the Children's Court and 162 were proven (representing a success rate of 85 per cent), suggesting that the investigations had been conducted to the satisfaction of the Magistrates.²¹⁵ The Committee notes that the level of substantiations represents a small percentage of the total number of sexual abuse notifications.

The data provided by the Department suggests that the low level of substantiations and proven protection applications of child sexual assault is an ongoing problem, as illustrated in Exhibit 10.1.²¹⁶

Exhibit 10.1: The number and percentage of sexual abuse notifications, investigations, substantiations and proven protection applications for 1994-1995, 1999-2000 and 2000-2001

Sexual abuse	1994-1995	% of 1994-1995 total	1999-2000	% of 1999-2000 total	2000-2001	% of 2000-2001 total
Notifications	4,036	100	4,128	100	4,264	100
Investigations	2,054	51	1,621	39	1,695	40
Substantiations	655	16	614	15	591	14
Proven protection applications	121	3	138	3	151	3.5

²¹³ Ibid

²¹⁴ Letter, dated 3 May 1999, to Mr W. McCann, Secretary, Department of Human Services

²¹⁵ Letter, dated 21 May 1999, from Mr W. McCann, Secretary, Department of Human Services

²¹⁶ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 185; Letter, received 8 August 2000, from Mr A. Hall, Acting Director, Community Care Division, Department of Human Services; and Letter, received 20 September 2001, from Ms P White, Director, Community Care Division, Department of Human Services

10.2.2 Department of Human Services' response to child sexual assaults

In 1996, the Secretary of the Department of Human Services advised the Auditor-General, in response to his report, that the Department was already involved in a range of initiatives to fund and develop an enhanced child sexual assault response, including:²¹⁷

- the funding of sexual assault forensic assessment and counselling services;
- research into factors affecting child protection court performance in sexual abuse matters;
- the development of a system of assessment review for all jointly investigated cases;
- joint investigation training of child protection staff and police; and
- community and professional education to raise awareness of sexual abuse of children in the community.

The Committee received advice from the Department about the effectiveness of these initiatives.

In 1999, the Department advised that the effectiveness of the pediatric forensic medical services was being reviewed by the Department, Victoria Police and the Department of Justice.²¹⁸

In 2000, the Department advised that:²¹⁹

- the Department's research did not proceed on its capacity to prove protection applications regarding sexual abuse cases in the Children's Court. Instead, the Committee was advised that the Victorian Risk Framework has improved child protection workers' ability to make court presentations. However, the Committee did not receive evidence from the Department to support this finding;

²¹⁷ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 195

²¹⁸ Letter, dated 21 May 1999, from Mr W. McCann, Secretary, Department of Human Services

²¹⁹ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services

- concerning the development of a system of assessment review for all jointly investigated cases, the Department stated that there is no formal review process for such cases;
- a curriculum for joint investigation training between the Department and Victoria Police has been developed and run centrally with excellent feedback from both agencies; and
- a formal evaluation of community and professional education to raise awareness of sexual abuse of children in the community has not occurred.

Finally, the Auditor-General recommended that the Department consider the use of specialist multi-disciplinary teams, specialist focus teams and specialist investigators in conjunction with expert legal advice, in its response to child sexual abuse. The Department advised that the Health Services for Abused Victorian Children Committee had been established to discuss the most effective therapeutic response to children and families who have experienced abuse. The Department also stated that a sub-committee was reviewing the efficacy of specialist investigative teams of child sexual abuse, with a pilot to be considered in 2000-2001.²²⁰

Accordingly, the Committee recommends that:

Recommendation 10.1:

The Department of Human Services, in conjunction with Victoria Police and other relevant parties, complete as a matter of priority a comprehensive strategy to improve rates for child sexual abuse substantiations and prosecutions.²²¹

²²⁰ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services

²²¹ The Auditor-General stated that the rates of successful prosecution of alleged perpetrators of child sexual assault by Victoria Police has been “very low”. Source: Auditor-General’s Report No. 43, p. 167

CHAPTER 11: EDUCATION OF CHILDREN IN CARE

Key Findings:

- 11.1 A joint Department of Human Services and Department of Education, Employment and Training working group has been proposed to address the educational needs and outcomes of children in Child Protection Services.**
- 11.2 The Department of Human Services and the Department of Education, Employment and Training have not fully resolved, on a case by case basis, where care management rests and which Department is responsible for managing educational outcomes of children in care.**

11.1 Auditor-General's report and responses to the report

The Auditor-General emphasised in his 1996 report the importance of education to children in care:

For many seriously disturbed children in long-term care, education can be the catalyst to generation of self-respect and confidence. With support and the assistance of teachers, absorbing an education can make the difference between future employment and opportunities for tertiary education, compared with homelessness, reliance on social security and crime.²²²

However, the audit discovered that:

... despite the legislative responsibility of the Secretary of [the Department of Human Services] to ensure that each child in care is provided with educational opportunities in the same way as a good parent would, the role delegated to the case managers rarely

²²² Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 248

*extended beyond encouraging a child to attend school or calling case conferences where disciplinary issues emerged, such as non attendance.*²²³

The Auditor-General also stated that the education of children in care must be a joint responsibility between the (then) Department of School Education (DSE) and the Department of Human Services, with the former providing the schooling opportunities and the latter providing every support and encouragement necessary to assist the child with schooling.²²⁴ The audit identified issues that indicated that the Department of Human Services was paying insufficient attention to this aspect of children in its care, including:

- the absence of a protocol between the two Departments as to the respective responsibilities and duties of each agency in relation to the education of children in care;
- a lack of coordinated research between both agencies on measures designed to address problems common to educating children in care;
- the fact that the Policy Advice and Practice Manual (provided to all protection workers) provides no guidance as to a case worker's responsibility as a de facto parent for the education of children assigned to their care;
- the fact that no consolidated data are maintained on educational outcomes of children under the guardianship of the Secretary of the Department of Human Services, and that the regular progress reports issued by schools for each child are not retained on case files; and
- the absence of documentary evidence to suggest that case managers evaluate the success or otherwise of any special support provided by schools to children with learning difficulties.²²⁵

²²³ Ibid, p. 254

²²⁴ Ibid

²²⁵ Ibid

The Auditor-General stated that considerable scope existed for the (then) Department of School Education and the Department of Human Services to develop a coordinated, statewide approach to addressing the specific problems with children in care obtaining an education. The audit also indicated that the Department of Human Services has a major role in identifying, at the earliest possible stage, emerging problems with children and actively seeking to work with schools to develop constructive solutions where possible.

Finally, the Auditor-General noted that children in care, particularly adolescents, have special needs compared with those of other children, and that it should be accepted that some of these children may respond only to an alternative style of education to that provided in mainstream schools. The audit report noted that, if other alternatives are not appropriate or available within the State school system, it is the responsibility of the two Departments to work in conjunction to ensure a child's educational needs are met.

The Department of Human Services, in its initial response to the report, acknowledged the issues raised by the Auditor-General and stated that it had undertaken with the (then) Department of School Education to increase access to and continuity of education for children in care. At meetings held in 1995, the two Departments and the non-government sector discussed issues of concern, and the (then) Department of School Education undertook to develop regional strategies to address such issues. The non-government sector was also funded to produce a study of the educational levels of all children in out-of-home care.

11.2 Subsequent developments

In August 2000, the Department of Human Services advised the Committee that it collects information about each child's educational history and retains the data on file. When overview information has been required, various survey methods have been used. The Department also advised that a joint Department of Human Services/Department of Education, Employment and Training (DEET) working group has been proposed to identify and

address the educational needs of child protection and juvenile justice clients.²²⁶ The Department stated that it had recently conducted a survey of the educational experiences and achievements of child protection and juvenile justice clients, which will inform the proposed working group.²²⁷

The findings of the Department's July 2000 survey – *Report of Census Results of Educational Experiences and Achievement of School Aged Child Protection and Juvenile Justice Clients* - were discussed with the Committee. The former Director of the Community Care Division advised that the survey found that 87 per cent of children in the child protection system regularly attended school and achieved at an acceptable level.²²⁸ The survey defined irregular attendance as a child attending school two or fewer days per week, which suggests that regular attendance was defined as more than two days per week.²²⁹ The Director noted that adolescents in the residential care system had significant problems with school attendance:

*... those young people are in the residential care system because they are the most problematic people anyhow.*²³⁰

The survey showed that approximately 27 per cent of children and young people in residential care attended school irregularly or not at all. However, the proportion for high-risk adolescents was 84 per cent and the proportion for the lead tenant program²³¹ was 85 per cent. Further, the survey indicated that approximately 56 per cent of children of primary school age and 57 per cent of

²²⁶ Letter, received 8 August 2000, from Mr A. Hall, Acting Director of Community Care, Department of Human Services, p. 36

²²⁷ Ibid

²²⁸ Transcript of evidence, 11 October 2000, p. 39

²²⁹ Department of Human Services, Child Protection and Juvenile Justice Branch, July 2000, *Report of Census Results of Educational Experiences and Achievement of School Aged Child Protection and Juvenile Justice Clients*, p. 4

²³⁰ Transcript of evidence, 11 October 2000, p. 39

²³¹ The Auditor-General describes lead tenant accommodation as follows:

Certain children flourish better with individual support where they can build a trusting relationship with one continuous care-giver, or who require closer supervision because of their self-destructive tendencies or challenging behaviour which can be disruptive to other residents. Under this type of placement the young person is provided accommodation in a home or flat with support from a "lead tenant" who is a live-in volunteer and who resides rent-free in the unit, in exchange for support given to a sole tenant or small group of tenants.

Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services, Special Report No. 43*, p. 222

adolescents of secondary school age were judged as being below age-appropriate levels, based on the case manager's understanding of school performance.²³²

Other survey findings of concern to the Committee are:

- that approximately 11 per cent of school aged children and young people who were clients of the child protection service were not enrolled in school; and
- that approximately 42 per cent of the total number of clients not enrolled in school, had no organised daytime activity.²³³ The report did not provide details on how these clients occupied themselves during the day.

The survey concluded that:

*The educational experiences and achievements of child protection and juvenile justice clients have been an issue of considerable concern for some time. Several inquiries into this issue have identified the poor educational outcomes for these clients, however, to date few improvements have been achieved for this client group ... Considerable efforts will be required in a coordinated strategy between the Department of Human Services and the Department of Education, Employment and Training, if the educational experiences and outcomes for child protection and juvenile justice clients are to improve in the future.*²³⁴

The Committee considers that the development of such a strategy should be given high priority.

The Minister for Community Services has subsequently advised that:

The Department of Education, Employment and Training is working actively with us to ensure that the people in residential care are receiving education — not just being enrolled, but actually attending for education or further training.

²³² Department of Human Services, Child Protection and Juvenile Justice Branch, July 2000, *Report of Census Results of Educational Experiences and Achievement of School Aged Child Protection and Juvenile Justice Clients*, p. 5

²³³ Ibid, p. 10. The report states that the Department of Human Services funds several education and training day programs for approximately 75 young people who are not attending school.

²³⁴ Ibid, pp. 11-12

*So with education we are looking actively at not only having young people enrolled but, where it would clearly provide little benefit for them, having more tailored packages, particularly for adolescents. That is really quite heartening.*²³⁵

The Minister stated that with respect to children and young people in residential care, at the State level, the Department of Human Services will work with DEET to develop a partnering agreement that will identify the respective departmental roles and responsibilities for maximising educational outcomes. The partnering agreement will address issues such as school enrolment for young people in residential care, maximising school attendance, disciplinary issues and DEET involvement in case planning.²³⁶ The Committee has been advised that the Department of Human Services and Department of Education, Employment and Training partnering agreement will be made operational before the end of the 2001 school year.²³⁷

In addition, the Minister for Community Services advised that the following support services for children and young people in out-of-home care services are funded:²³⁸

- **Children in Residential Care Program**, which provides specialist educational assessment and tutoring for children and young people in out-of-home care;
- **Alternative School Fees**, which, provides funds for Department of Human Services clients to attend alternative and special schools;
- **School Focussed Youth Service**, which provides community based, early intervention services to prevent the escalation of problems that can lead to disengagement from school and escalation of problem behaviours;

²³⁵ Transcript of evidence, 2001-2002 Budget Estimates, Hon. C Campbell, MP, Minister for Community Services, 22 June 2001, p. 179

²³⁶ Letter, received 4 September 2001, from the Minister for Community Services, p. 14

²³⁷ Prosser, B., Department of Human Services, personal communication, 19 September 2001

²³⁸ Ibid

- **Flexible funding**, which is provided to maintain Department of Human Services clients in schools through the provision of integration aides and other tutoring services; and
- **Transitional Integrated Education Residential Service**, to which \$250,000 is contributed towards maintaining a school within the intensive residential service for high-risk young people.

Officers from DEET advised the Committee of three key issues:

- regarding the Department of Human Services survey conducted in 2000 discussed above, the Director of Schools stated that the report raised issues for DEET:
*... but the point that struck me most was that while we are talking about a substantial number of children – namely 4300 – only 13 per cent of those have irregular attendance ... we also need to be aware that the majority of those children are performing well in schools, at least in that measure of attendance ...;*²³⁹
- DEET is planning a shift towards implementing generic rather than specialist services to meet the needs of children in care:

*We are trying to put in place a whole range of programs that recognise the social disengagement that can occur for those young people (children in care), but equally it can be a feature of children who are not in care. Rather than say, 'Let's have a program for kids in care', we think it is our responsibility to have a program that is of generic value. Then our question is 'Are we picking up the kids in care within the program?'. The issue is not really about targeted programs for kids in care but whether the generic programs are reaching that group ...;*²⁴⁰ and

²³⁹ Transcript of evidence, 8 November 2000, pp. 70-72

²⁴⁰ Ibid, p. 72. See also pp. 75-76

- the Department of Human Services and DEET are yet to determine who is responsible for the educational outcomes of children in care. The Director of Schools noted that:

*... one of the things we have to work out between human services and education is on a case-by-case basis where care management rests and who is responsible for managing educational outcomes.*²⁴¹

The Children's Welfare Association of Victoria (CWAV) recently claimed that deplorable outcomes²⁴² are being achieved by children in care. The Chief Executive Officer of the CWAV advised the Committee that:

*We know from our own research and the research of others that the children and young people who are under Government responsibility and care are failing in our education system. Many of them are not literate. Many, if not most, of them leave care without sufficient educational qualifications to ensure their access to study and/or employment.*²⁴³

Further, the CWAV believes that the State education system has abandoned many of the children that go through protective services. The children in care are:

*... falling in between the gaps of the Department of Human Services, which is not interested in developing educational services for these young people, and the Department of Education, Employment and Training, which is also disinterested about providing specialised services for them. They are on their own, abandoned, and there is a very serious problem.*²⁴⁴

The CWAV provided the Committee with extracts from surveys that supported this view. A report on young people leaving care (a report prepared for the CWAV in 1999) found that only 10-15 per cent of young people leaving care complete high school

²⁴¹ Ibid, p. 75. See also Transcript of evidence, 11 October 2000, p. 34

²⁴² Children's Welfare Association Victoria, March 2000, *Submission to the Community Care Review*, p. 14

²⁴³ Transcript of evidence, 11 October 2000, p. 7

²⁴⁴ Ibid, p. 8

compared with an estimated national rate of retention to year 12 of 80 per cent of young people in the general community.²⁴⁵ The CWAV recommended that a high-level meeting of officers of both Departments be convened to discuss several recommendations, including:

- that the Children in Residential Care program²⁴⁶ be expanded to children and young people in home-based care, and that the effectiveness of supplementary educational support in schools be regularly reviewed;
- that individual education plans be developed for all children and young people in out-of-home care, and that their progress be tracked;
- that the Department of Education, Employment and Training and the CWAV jointly develop protocols to be used by schools and service providers where children in out-of-home care are, or are at risk of, being suspended or excluded from school;
- that the Department of Education, Employment and Training, the Department of Human Services and the CWAV identify:
 - the barriers to educational achievement of children in care with a disability; and
 - identify examples of best practice educational programs for children at risk of ‘dropping out’ of schools; and
- that alternative education programs be made available.²⁴⁷

²⁴⁵ Green, S. and Jones, A., 1999, *Improving outcomes for young people leaving care in Victoria*, p. 16

²⁴⁶ The CIRC program provides education related support i.e. tutoring to children and young people who are placed in DHS residential services by Protective Services. These support services are primarily addressed by Educational Support Workers who provide comprehensive assessment of educational performance and all other factors impinging or adversely affecting a client’s capacity to achieve an education. This includes identification of barriers that must be overcome in order to participate in school or vocational settings including relationship and behavioural barriers. Source: Department of Human Services, Child Protection and Juvenile Justice Branch, July 2000, *Report of Census Results of Educational Experiences and Achievement of School Aged Child Protection and Juvenile Justice Clients*, p. 9

²⁴⁷ Transcript of evidence, 11 October 2000, p. 7; and Written submission from CWAV, October 2000, pp. 10-11.

11.3 Issues of concern

The Committee noted that a high-level taskforce has not yet been established between the Department of Human Services and the Department of Education, Employment and Training to monitor and promote the educational outcomes of children in care. The Committee is concerned that the Department of Human Services' overall assessment of the situation is that educational outcomes are not an issue for the majority of young people in the child protection system. However, the Department's survey shows that over half of children in care were not achieving appropriate levels of education for their age group. The Department's survey also recognises that the consequences of failing to obtain a minimum level of education can contribute to significant social disadvantage and dependence on Government resources, including social security, mental health and correctional services.²⁴⁸

The Committee is concerned that the Department of Human Services has taken limited action in addressing the issues identified by the Auditor-General in 1996. The Committee believes that the Government should address this situation as a high priority. The Committee looks forward to monitoring the implementation and impact of the partnering agreement on the education of children and young people in care.

Accordingly, the Committee recommends that:

Recommendation 11.1:

The Department of Human Services and the Department of Education, Employment and Training develop a strategy to overcome the barriers to educational opportunities faced by children in care.

²⁴⁸ Department of Human Services, Child Protection and Juvenile Justice Branch, July 2000, *Report of Census Results of Educational Experiences and Achievement of School Aged Child Protection and Juvenile Justice Clients*, p. 3

CHAPTER 12: ADOLESCENTS IN CARE

Key Findings:

- 12.1 In March 1999, the Department of Human Services commenced a range of initiatives for adolescent services under the *Working Together* strategy.**
- 12.2 The Department of Human Services has yet to conduct final evaluations of these initiatives.**
- 12.3 The Victorian Child Death Review Committee identified the following common themes in cases of adolescent deaths:**
- **difficulty in accessing appropriate accommodation options;**
 - **young people not engaged with education or training programs;**
 - **drug and alcohol use, combined with client reluctance to engage with drug and alcohol services; and**
 - **early intervention opportunities missed by the Department of Human Services' Child Protection Services.**

12.1 Auditor-General's report and responses to the report

The Auditor-General stated that past protective decision-making exhibited a tendency to give priority to younger children because it was generally acknowledged that very young children were more vulnerable and required a more immediate response in the investigation phase.²⁴⁹ At the time, the Department of Human Services acknowledged, because over 40 per cent of children in the

²⁴⁹ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 156

placement and support system are adolescents, that a higher priority needs to be given to addressing the needs of adolescents at risk.²⁵⁰

The Auditor-General recommended that the Department develop a statewide strategy on the care of adolescents and devise a method to monitor the strategy's effectiveness, particularly in relation to the ability of departmental or non-government service providers to respond promptly and effectively to the needs of adolescents.²⁵¹ The Auditor-General also recommended that the Department's Protection and Care Branch develop a protocol with other branches (such as Primary Care, Public Health and Psychiatric Services) regarding services provided to adolescents and the delivery of such services.²⁵²

In response to the Auditor-General's report, the Secretary of the Department of Human Services advised in 1996 that it was developing protocols to improve cross-service provision to adolescents with psychiatric, intellectual disability and substance abuse needs.²⁵³ However, the Secretary did not respond to the two recommendations regarding the development of a statewide strategy for the treatment of adolescents and a method to assess its effectiveness.

12.2 Subsequent developments

The Committee sought advice in May 1999 on how the Department of Human Services had acted to address the Auditor-General's recommendations regarding adolescents.²⁵⁴ The Secretary reported that the Department implemented the High-Risk Adolescents Service Quality Improvement Initiative in 1998-1999, providing a targeted and intensive service response for high-risk adolescents.²⁵⁵ Further, the Department had developed the Working Together strategy to integrate the delivery of intensive tertiary services to adolescents at risk of disturbance and harm.

²⁵⁰ Ibid

²⁵¹ Ibid, p. 157

²⁵² Ibid

²⁵³ Ibid

²⁵⁴ Letter, dated 3 May 1999, to Mr W McCann, Secretary, Department of Human Services

²⁵⁵ Letter, dated 21 May 1999, from Mr W McCann, Secretary, Department of Human Services

The Secretary reported that an evaluation of the high-risk adolescent initiative had commenced and that the first evaluation of the Working Together strategy would occur in early 2000.²⁵⁶ The Committee followed up on these issues with the Department in June 2000.²⁵⁷ The Committee requested information on the outcomes of the aforementioned reviews and on how the Department's initiatives had addressed the concerns of the Auditor-General. The Department advised that the evaluation of the high-risk adolescent initiative had not been finalised,²⁵⁸ but that initial anecdotal findings:

*... point to interventions that have achieved an improved quality of life for [the] majority of young people. Positive outcomes appear to have increased in each of the seven areas accepted as imperative for a holistic, therapeutic approach: health, education, identity, family and social relationships, social presentation, emotional and behavioral development, and self-care skills.*²⁵⁹

Further, the Department advised that no overall evaluation of the Working Together strategy had been conducted, because the strategy's management group:

*... determined that it would be difficult and of limited use to undertake an evaluation of the strategy at such an early stage.*²⁶⁰

The Department advised that the strategy was initially launched in March 1999,²⁶¹ and provided details of the development of baselines and performance measures against which the success of the strategy can be measured over the next two years. The Department did not assess the extent to which its initiatives have addressed the concerns of the Auditor-General.

²⁵⁶ Ibid

²⁵⁷ Letter, dated 20 June 2000, to Hon. C Campbell, MP, Minister for Community Services

²⁵⁸ Letter, received 8 August 2000, from Mr A Hall, Acting Director, Community Care, Department of Human Services

²⁵⁹ Ibid

²⁶⁰ Ibid

²⁶¹ Yet according to the Victorian Child Death Review Committee *Annual report of inquiries into child deaths: protection and care 2000* (page 16), the Working Together strategy was launched in May 1998

Finally the Committee sought advice on how the Department had acted to address the deficit in appropriate accommodation for high-risk young people.²⁶² The Department advised that it was examining the development of intensive residential and treatment services for the most challenging and troubled adolescents in the protection and care system.²⁶³ The Department had engaged consultants to examine service delivery and identify gaps in services for this group, and they delivered a report with recommendations to address these issues. The Department's response to the Committee did not contain details of the recommendations or of the Department's actions to implement the recommendations.

The Children's Welfare Association of Victoria (CWAV) raised the following three concerns with the Committee regarding the provision of services to adolescents:

- there is a lack of service integration and timely access to services:

*In reference to high-risk adolescents, one of the concerns we have ... is the lack of integration of mental health services, drug and alcohol services, the education system and housing for young people, to the degree that you can have a young person who has assaulted the police and is drunk or substance affected ... and it is the residential worker who is left dealing with that young person. You cannot get a mental health assessment and you cannot get a drug and alcohol placement or assessment because of the condition the young person is in ... it needs to be the standard that young people ... can access the specialist assessments that they require at the time they require them.*²⁶⁴

- it is difficult to set appropriate boundaries for adolescents, given the current legislation:

²⁶² The Victorian Child Death Review Committee noted in its *Annual Report of Inquiries into Child Deaths: Protection and Care 2000* (page 24) that there were serious deficits in the availability of appropriate accommodation for high risk young people

²⁶³ Letter, received 8 August 2000, from Mr A Hall, Acting Director of Community Care, Department of Human Services

²⁶⁴ Transcript of evidence, 11 October 2000, p. 11

*According to the legislation the Secretary of [the Department of Human Services] has the power to detain a child under a guardianship or custody order without a warrant. However, in practice this provision is ineffective if the child refuses to return to their placement as [the Department] cannot use physical force to apprehend a child and does not have the power to forcefully enter any premises where it believes a child is residing.*²⁶⁵

The CWAV indicated that the tension between the legislation that emphasises child's rights and the agencies setting boundaries for children, as parents do, creates problems in the field, particularly in residential units:

*... we have serious problems because of this rights approach and because of our inadequate staffing and training and support of these units to manage really serious problems with young people who come and go without restraint ... I would say that (young people) have an inappropriate role allocated to them to make decisions about their own lives where it is beyond their maturity to do that.*²⁶⁶

- premature lapse of Protection Orders for 16 to 17 year old adolescents:

*There is a lack of appropriate placements and resources to support them. I think there is a tendency ... for orders to lapse or not to be renewed and for young people to be returned to environments and situations where they are simply not safe. Because they are 16 or 17 and getting towards 18 they then disappear and perhaps resurrect themselves in some other system ... We lose the capacity to offer them leaving care support.*²⁶⁷

The Department of Human Services commissioned a consultant in 1998 to conduct, in conjunction with senior departmental management, an analysis of adolescent child protection client

²⁶⁵ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 180

²⁶⁶ Transcript of evidence, 11 October 2000, p. 11

²⁶⁷ Ibid, p. 10

deaths. The findings were reproduced in the Victorian Child Death Review Committee's 1999 report. The review found that all sixteen young people were clients of at least two sectors of the Department: Protection and Care, Juvenile Justice, Mental Health or Drug Treatment Services. The review also found that deficits in intersectoral communication and coordination were a theme:²⁶⁸

*At their most fundamental, these deficits related to sharing vital client information, advising other involved agencies of significant changes in the young person's circumstances and undertaking joint planning regarding key interventions. In some cases it was apparent that practitioners in one sector had a poor understanding of the mandate, purpose and functioning of other sectors. Role confusion and/or conflict was not uncommon.*²⁶⁹

In 2000, the Victorian Child Death Review Committee reported its concern about the lack of appropriate accommodation for high risk adolescents:

*Committee deliberations have again disclosed that quality placement options for those at greatest risk to themselves and the community are at best hard to access and at worst scarce. Many residential placement options appear unable to contain or hold the young person, and experience shows that when residential security is problematic, so too [is] education and emotional/physical support.*²⁷⁰

The VCDRC noted in its 2001 report that it has reviewed a number of adolescent inquiry reports and has initiated a multiple case analysis of adolescent deaths, which will commence in 2001.²⁷¹

The VCDRC identified the following common themes in cases of adolescent deaths:

²⁶⁸ Victorian Child Death Review Committee, *Annual Report of Inquiries into Child Deaths: Protection and Care, 1999*, p. 72

²⁶⁹ Ibid

²⁷⁰ Victorian Child Death Review Committee, *Annual Report of Inquiries into Child Deaths: Protection and Care 2000*, p. 31

²⁷¹ Victorian Child Death Review Committee, *Annual Report of Inquiries into Child Deaths: Protection and Care 2001*, p. 25

- difficulty in accessing appropriate accommodation options;
- young people not engaged with education or training programs;
- drug and alcohol use, combined with client reluctance to engage with drug and alcohol services; and
- early intervention opportunities missed by the Department's Child Protection Services.

12.3 Issues of concern

The Committee cannot determine, based on the evidence it has received, whether the Department of Human Services' initiatives equates with the comprehensive statewide strategy for adolescent services envisaged by the Auditor-General. The Committee believes that the Department should conduct final evaluations of its initiatives to improve services to adolescents.

Accordingly, the Committee recommends that:

Recommendation 12.1:

The Department of Human Services review its Working Together Strategy with the aim of improving the delivery of integrated services to adolescents, particularly across health (including mental health), drug and alcohol, housing, juvenile justice and education services.

Recommendation 12.2:

The Department of Human Services review the adequacy and appropriateness of placement options and support services for high risk adolescents.

The Auditor-General noted that the Department of Human Services makes no reference in its annual report to the number of

children who were discharged from guardianship or custody orders during the year, or to:

- aggregated data on outcomes such as educational standards attained and reasons for leaving care (such as age, independent living arrangements or alternative orders);
- the ability of children discharged from guardianship or custody orders to enter employment or advance to further studies, and whether they received AUSTUDY; or
- any other factors reflecting on care, including entry into the juvenile justice system.²⁷²

The Department of Human Services advised the Committee that it does not publicly report on the outcomes of children discharged on guardianship or custody orders, as it is something that traditionally has not been done.²⁷³

Accordingly, the Committee recommends that:

Recommendation 12.3:

The Department of Human Services report on the children who are discharged from guardianship or custody orders in its annual report, thereby publicly accounting for its legislative responsibilities, as recommended by the Auditor-General. The annual report also contain information on lapsed guardianship and custody orders.

²⁷² Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 272

²⁷³ Transcript of evidence, 11 October 2000, p. 41

CHAPTER 13: LEAVING CARE

Key Findings:

13.1 In May 2000, the Department of Human Services completed key research to assist with policy development for young people leaving care.

13.2 The May 2000 study conducted by LaTrobe University found that the issues to be addressed to enhance the outcomes for young people leaving care were:

- **continuity of placement, during and after care;**
- **early exit from school;**
- **high unemployment;**
- **the insecure or short-term nature of some young people's accommodation at the point of discharge;**
- **the lack of family involvement at the point of discharge when young people move to independent living;**
- **a considerable overlap with the juvenile justice system;**
- **during decisions on discharge of orders, an apparent lack of assessment of the preparation received and/or the level of independent living skills attained by a young person;**
- **little evidence of comprehensive and timely exit or discharge planning;**
- **the discharge of a number of young people despite their involvement in significant risk-taking behaviour in the previous twelve months; and**
- **the apparent delayed involvement of Disability Services in planning for young people in care who are registered clients.**

Key Findings (continued):

13.3 The Department of Human Services recognises its responsibility to develop appropriate transitional and after-care programs for young people, being discharged from State care.

13.1 Auditor-General's report and responses to the report

The Auditor-General noted that the Secretary of the Department of Human Services, under the *Children and Young Persons Act 1989*, when assuming guardianship of a child exercises the same responsibilities as a natural parent would for the present and future wellbeing of that child.²⁷⁴ These responsibilities include the obligation to provide financial and material support and advice, and concern for the needs and long-term wellbeing of a child. The 1996 audit report argued that such concerns extend to how a child adapts to independent living once discharged from State care, given that the capacity to adapt will be significantly influenced by the child's experience in the care of the Department.

The Auditor-General found that the Department, while it endeavours to provide support services to adolescents who are to be discharged from care, does not formally provide any specific after-care programs once guardianship by the Secretary of the Department has been terminated. Consequently, the audit report recommended that the Department research the demand for, and types of, after-care arrangements and support (including financial support) that the State should provide to adolescents leaving care. The Auditor-General considered this to be a high priority, given that some reports have found that a high percentage of homeless youth have spent time in State care.

The Secretary of the Department accepted the Auditor-General's recommendation of further research and improved practice

²⁷⁴ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 270

regarding the type of after-care arrangements and support required to ensure appropriate placement for young people leaving care.²⁷⁵ Further, the Minister for Finance advised that the Protection and Care work plan for 1996-1997 had identified a Leaving Care project to draw on overseas and national frameworks to ensure young people are prepared and supported when discharged from State care.²⁷⁶

The Auditor-General also observed that the Department did not make reference in its annual report to the number of children who were discharged from guardianship or custody orders during the year. This issue is discussed in chapter 12 on adolescents in care.

13.2 Subsequent developments

The Committee sought information from the Department of Human Services on the status of the Leaving Care project both in May 1999 and June 2000.²⁷⁷ The Committee notes that the key research to inform policy development in this area was not completed until May 2000, after the change of Government, and four years after the Auditor-General's report was tabled.²⁷⁸ The Secretary of the Department reported that the delay was due to difficulties in finalising the selection of a preferred provider.²⁷⁹

The study that was commissioned is entitled *Pathways to Interdependence and Independence: the Leaving Care Initiative*.²⁸⁰ The purpose of the research was to examine existing service provision in Victoria; analyse leaving care service models interstate and overseas; identify an appropriate service delivery model for Victoria; recommend an implementation strategy for the model; and identify a tool for best practice in case management for young

²⁷⁵ Ibid, p. 272

²⁷⁶ Department of Treasury and Finance, November 1996, *1996 Response by the Minister for Finance to the Auditor-General's Reports issued during 1995-96*, p. 85

²⁷⁷ Letter, 3 May 1999, to Mr W McCann, Secretary, Department of Human Services and letter, dated 20 June 2000, to Hon. C Campbell, MP, Minister for Community Services

²⁷⁸ Department of Social Work and Social Policy, La Trobe University, May 2000, *Pathways to Interdependence and Independence: the Leaving Care Initiative*, Commissioned by the Department of Human Services

²⁷⁹ Letter, dated 21 May 1999, from Mr W. McCann, Secretary, Department of Human Services

²⁸⁰ Department of Social Work and Social Policy, La Trobe University, May 2000, *Pathways to Interdependence and Independence: the Leaving Care Initiative*, Commissioned by the Department of Human Services

people leaving care. Concern has been expressed that the study's terms of reference were limited to support during the three-month post-discharge period, and not looking at the provision of support services beyond this time.²⁸¹ The study found that the issues to be addressed to enhance the outcomes for young people leaving care were:

- continuity of placement, during and after care;
- early exit from school;
- high unemployment;
- the insecure or short-term nature of some young people's accommodation at the point of discharge;
- the lack of family involvement at the point of discharge when young people move to independent living;
- a considerable overlap with the juvenile justice system;
- during decisions on discharge of orders, an apparent lack of assessment of the preparation received and/or the level of independent living skills attained by a young person;
- little evidence of comprehensive and timely exit or discharge planning;
- the discharge of a number of young people despite their involvement in significant risk-taking behaviour in the previous twelve months; and
- the apparent delayed involvement of Disability Services in planning for young people in care who are registered clients.

²⁸¹ VCOSS, as cited in Mendes, P. & Goddard, C., 2000, 'Leaving care programs locally and internationally: towards better outcomes', *Children Australia*, Vol. 25, No. 3, p. 14

The Department advised, further to the Leaving Care project report, that:

A number of critical aspects, which will inform practice and service planning, remain outstanding. These will be addressed through the planning processes now being undertaken by the Leaving Care project team. A reference group, which was established to guide the (Leaving Care) project, continues to have an active role in assisting the project toward the design of service improvement initiatives and planning for implementation ... The primary task for the Leaving Care project in 2000 is to shape the findings of related research reports and consultations into practice and service development initiatives and to develop an implementation strategy ... The planning process which will produce a position paper and forward plan will be completed in October 2000.²⁸²

The Department reiterated in October 2000 that:

At the moment, we have no formal role with young people at the time the order is completed, so it would mean that we would take responsibility in that time of transition. We would see that area as being one of priority for new resources in the child protection system, because we do have a clear responsibility to assist young people in that transition. We do in fact assist numbers of young people, because they informally stay with workers with whom they have built up a relationship, but we would consider that should be a formal responsibility of the Department.²⁸³

13.3 Issues of concern

A study by the Children's Welfare Association of Victoria (CWAV) in 1997-1998 showed that it is not uncommon in Western countries for young people to stay at home for increasingly longer durations, often into their 20s.²⁸⁴ In Australia, 90 per cent of 15-19 year olds and about half of 20-24 year olds live with one or both parents. For most young people, becoming independent takes about two to

²⁸² Transcript of evidence, 11 October 2000, p. 41

²⁸³ Ibid

²⁸⁴ Children's Welfare Association of Victoria and Salvation Army Crossroads Network, 1998, *Improving outcomes for young people leaving care in Victoria*, p. 12

three years.²⁸⁵ According to the study of the Department of Human Services, around 24 per cent of young people were discharged at age 16, 34 per cent were discharged at age 17, and 23 per cent were discharged at age 18.²⁸⁶ The Committee understands that current departmental policy and practice provides for ongoing post-placement support for up to three months. The studies by both the CWAV and the Department suggest that any support beyond the three months largely depends on the capacity and goodwill of the individual workers and services to provide this support within their own time and resources.

The Committee was interested to learn that other jurisdictions in Australia have developed programs to support young people after they have left State care. New South Wales has developed a comprehensive system of support (incorporating legislation) for young people leaving care, including the establishment of a Statewide Leaving Care/After Care Resource Centre with an advocacy role.²⁸⁷ The Queensland Government is piloting a program to assist young persons aged 15-17 years with education, accommodation and other expenses when they leave care. The Western Australian Government has initiated a Transitional Support Service for young people aged 16-25 years who are leaving care or who have been in care.

According to some academic research,²⁸⁸ the UK experience suggests that the following factors contribute to the success of leaving-care schemes:

- young people need to be involved in defining needs and developing services. Peer support groups should play a central role in the provision and evaluation of policies and programs;

²⁸⁵ Ibid

²⁸⁶ Department of Social Work and Social Policy, La Trobe University, May 2000, *Pathways to Interdependence and Independence: the Leaving Care Initiative*, Commissioned by the Department of Human Services, p. 67

²⁸⁷ Ibid, pp. 60-62

²⁸⁸ Mendes, P. and Goddard, C., 2000, 'Leaving care programs locally and internationally: towards better outcomes', *Children Australia*, Vol. 25, No. 3, p. 14

- accessible guides and information about services should be made available to young people and other scheme users;
- formal and informal links should be established with residential homes and foster care; and
- special attention should be paid to young people with learning or physical disabilities, young parents, young Aboriginal people and other young people with special needs.

The Committee understands that the UK Government has developed new arrangements for young people living in and leaving care, aimed at developing life skills and clarifying responsibility for financial support so young people are looked after until they are demonstrably ready and willing to leave care. The *Children (Leaving Care) Act 2000* provides for:

- a new duty of local authorities to assess and meet the needs of eligible 16-17 year olds who are in care or care leavers. Wherever the young person lives, the duty will rest with the local authorities to maintain contact until the care leaver is at least 21 years old;
- every eligible young person in care to have, when they turn 16 years old, a comprehensive plan mapping out a route to independence;
- local authorities to provide all eligible 16-17 year olds who are in care or care leavers with personal and practical support to meet the objectives identified in their pathway plans;
- each young person to have a young person's advisor who will coordinate support and assistance to meet the needs of the young person. Particular emphasis will be placed on helping the young person into education, training or employment;
- a new financial regime for care leavers to end the confusing present system and ensure they have comprehensive financial support; and

- continuing assistance for care leavers aged 18-21 years, especially with education and employment. Assistance with education or training continues to the end of the agreed program, even if it takes someone past the age of 21 years.

The Committee is concerned that there are young people who have few life skills and poor educational outcomes being discharged from State care in Victoria with little preparation and after-care services to support them through a significant transition. Of particular concern is:

- the apparent lack of resources committed to developing leaving care and after care services; and
- the lack of legislative provisions in the *Children and Young Persons Act 1989* for continued support for these young people past 18 years of age.

The Department acknowledges that developing transitional and after-care programs for young people is a priority area. However, it did not indicate to the Committee when it expects to develop after-care services, the nature of these services or the resources committed to delivering these services.

Accordingly, the Committee recommends that:

Recommendation 13.1:

The Department of Human Services implement the recommendations of the Leaving Care Study regarding case planning and review; case management; case work and direct care; the scope of the service; practice enhancement and service links; and further research, monitoring and evaluation.

Recommendation 13.2:

The Department of Human Services ensure that adolescents leaving its care have an immediate post-care plan in place.

CHAPTER 14: DEATHS OF CHILDREN UNDER PROTECTION

Key Findings:

14.1 The Department of Human Services has revised its framework for inquiries to review all deaths of children and young people who were clients of protective services.

14.2 The Committee is concerned that the Victorian Child Death Review Committee's annual reports lack detail.

14.1 Auditor-General's report and responses to the report

The Auditor-General reported the following findings from its review of the child death inquiry process of the Department of Human Services:²⁸⁹

- the Department conducted official inquiries into twenty of the eighty-five deaths of children who had been involved with protective services between January 1989 and December 1995. Of the deaths for which inquiries were not held, causes of death included natural causes, road accidents and sudden infant death syndrome. The Auditor-General argued that inquiries were warranted, in a small number of these cases, primarily as a result of the case histories of the children involved;
- the Department generally conducted child death inquiries thoroughly and responsibly under Ministerial direction, producing wide-ranging findings and recommendations that have helped improve child protection services;

²⁸⁹ Victorian Auditor-General's Office, 1996, Protecting Victoria's children: *The role of the Department of Human Services*, Special Report No. 43, p. 319

- long delays in the commencement and reporting of inquiries detracted from the quality of the inquiry process. Public accountability was further limited by the Department not reporting publicly on all deaths, publishing only the results of official inquiries; and
- the Department has established a Victorian Child Death Review Committee with a wide membership of external professional people. This committee should be of benefit to the Department in improving public accountability, given its general overview of all child deaths, causes and common themes, and its provision of advice to the Minister.

The Secretary of the Department responded by welcoming the audit's acknowledgement of the high standard of the inquiries undertaken and its endorsement of the Victorian Child Death Review Committee (VCDRC).²⁹⁰ However, the Secretary advised that the need for an inquiry was decided after consideration of the potential benefits and findings that emerge from departmental reporting and ministerial briefing processes, rather than decided from case history alone, as suggested by the audit report.

14.2 Subsequent developments and issues of concern

The Committee was advised that the Department has revised the framework for inquiries so it reviews all deaths of children and young people who were clients of protective services and explains individual cases as well as systemic issues.²⁹¹

The Committee also understands that the VCDRC reviews the clients of the protective services system within a broad context.²⁹² The aim of the VCDRC is to provide a multi-disciplinary focus on child death reports and to identify ways in which preventative and early intervention practices could improve the health and welfare of children at risk. It also provides advice and comment on any practice issues and themes that may emerge from the child death

²⁹⁰ Ibid

²⁹¹ Letter, dated 21 May 1999, from Mr W. McCann, Secretary, Department of Human Services

²⁹² Victorian Child Death Review Committee, May 1999, *Annual report of inquiries into child deaths: protection and care 1999*, DHS, p. 11

inquiry process. The VCDRC comprises experts from various backgrounds, including senior officers from the Department.

After considering the VCDRC's 1999, 2000 and 2001 annual reports, the Committee notes the following:²⁹³

- the relationship between the Department and the VCDRC has been redefined with the adoption of a partnership approach:

*The [VCDRC] accepts that some may see the relationship as too close, complete with the inherent criticism that the VCDRC will be seen to lose its independence. Members, however, took the contrary view, and saw this as an opportunity for a synthesis to occur that sees the [VCDRC] move from an overseer role, to an active, objective and vocal partner. No longer could the VCDRC merely be viewed as standing back from the field, critical of practice via issues and themes raised in the annual report. The result of the initiative clearly facilitates much greater opportunity for timely and mature debate on the at times thorny and emotive issues that surround child deaths within the protective system.*²⁹⁴

The Committee supports the VCDRC view of the new partnership model which allows it a more active role in the system.

The Committee also notes that the State Coroner has been invited to have a representative on the VCDRC. The State Coroner declined the invitation on the basis that in cases that require consideration by both the VCDRC and the Coroner, this may be perceived as a lack of impartiality;²⁹⁵ and

²⁹³ Victorian Child Death Review Committee, May 1999, *Annual report of inquiries into child deaths: protection and care 1999*, DHS; Victorian Child Death Review Committee, May 2000, *Annual report of inquiries into child deaths: protection and care 2000*, DHS and Victorian Child Death Review Committee, May 2001, *Annual report of inquiries into child deaths: protection and care 2001*, DHS

²⁹⁴ Victorian Child Death Review Committee, May 2000, *Annual report of inquiries into child deaths: protection and care 2000*, DHS, p. 10

²⁹⁵ Victorian Child Death Review Committee, May 2001, *Annual report of inquiries into child deaths: protection and care 2001*, DHS, p. 19

- more detail could be provided in the VCDRC annual reports. The 2000 report, for example, states that:
*The [VCDRC] found that in the main reports presented for review were of a high quality and addressed the practice issues in an uncompromising manner.*²⁹⁶

The provision of specific information supporting such a statement would be valuable. Similarly, further information about the effectiveness of the Child Death Inquiry model, reported in the 2001 report, would prove useful.²⁹⁷

Accordingly, the Committee recommends that:

Recommendation 14.1:

The Victorian Child Death Review Committee provide greater detail in its annual reports to enable Parliament and the Victorian community to obtain a better understanding of the factors leading to the deaths of children who were involved with protective services.

²⁹⁶ Victorian Child Death Review Committee, May 2000, *Annual report of inquiries into child deaths: protection and care 2000*, DHS, p. 19

²⁹⁷ Victorian Child Death Review Committee, May 2001, *Annual report of inquiries into child deaths: protection and care 2001*, DHS, p. 22

CHAPTER 15: APPEALS AND COMPLAINTS

Key Findings:

- 15.1 Evidence confirms the need for checks in the child protection system.**
- 15.2 The Department of Human Services should centralise its complaints review mechanism and invite a broader range of people to advocate for children and young people at case planning meetings.**

15.1 Auditor-General's report and responses to the report

The Auditor-General reported that the extent of the Department of Human Services' powers under the *Children and Young Persons Act* 1989, the varying levels of intrusion into the lives of families and the associated stress, combined with the significant impact on the lives of children resulting from statutory intervention, mean that adequate, independent and accessible appeal processes serving families and children are crucial.²⁹⁸

The 1996 audit reviewed the various appeals and complaints processes, including the Department's internal complaints-handling mechanism and the role of the Ombudsman. The Auditor-General recommended that the Department take several steps to improve its responsiveness to the concerns of children and families and to help improve the image of its protective services, including:

- ensuring that the views and needs of children are adequately heard and independently represented, possibly through the establishment of an Advocate or Children's Rights Officer, as occurs overseas;

²⁹⁸ Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 333

- providing easier access to mechanisms for appeals and complaints from all clients (particularly children and young people), with the involvement of external persons where appropriate;
- improving client communications and the regional complaints process;
- undertaking research on complaints and their handling to enable the Department to determine appropriate strategies for visibly providing an objective and impartial complaints process; and
- establishing a more accessible, low-cost, external appeals process.

The Secretary of the Department responded to the Auditor-General in 1996 by stating that the Department was committed to improving access and outcomes in its handling of client complaints.²⁹⁹ The Department had reviewed its internal complaints handling process in child protection services and, as a result, was adopting measures to address deficiencies and to improve outcomes. The Secretary also stated that it was disappointed by the audit report's lack of acknowledgement of the complexities faced by the Department in this area, and of the many factors that mitigate against effective and cooperative complaint resolution in child protection work.

15.2 Subsequent developments

The Carter Review of September 2000 recommended that an Office of Child and Youth Futures be established to:³⁰⁰

- track outcomes on behalf of Government and non-Government services;
- ensure marginalised young people receive an appropriate and high-quality service by acting, when necessary, as a purchaser of last resort;
- undertake audits and inspections of care and residential services; and

²⁹⁹ Ibid, p. 334

³⁰⁰ Carter, J. September 2000, *Report of the Community Care Review*, p. 169

- operate an independent appeals process.

The Ombudsman has argued that reviews of the Department's decisions should be made at the Head Office rather than by the Department's Regional Offices, as is currently the case.³⁰¹ The Ombudsman believes that such a revised arrangement would allow for more independent reviews and set standards across the State:

*The complaints review mechanism is a very good tool of management and it gives feedback on what may be occurring out in the regions. In my opinion the Department is foregoing one of its best tools of management if it does not have a centralised review body.*³⁰²

Accordingly, the Committee recommends that:

Recommendation 15.1:

**The Department of Human Services
centralise its complaints review
mechanism for issues relating to children
and young people in the protective care
system.**

The Ombudsman has also argued that the Department should allow scope for a broader range of people to advocate on the part of a child, to better represent the interests of the child:

... I think there should be a wider scope for a broader range of people to advocate on the part of, for example, the child. In my opinion the reason why at times children are in the care of the Department is that the parents are incompetent. I think incompetent parents are not the best advocates for their children. But it may be that, for example, grandparents are. Grandparents may be quite competent. It seems to me that if there were a broader range of people to advocate on behalf of and in the interests of the children, the children's interests would be far better represented.

³⁰¹ Transcript of evidence, 5 March 2001, p. 113

³⁰² Ibid

For example:

*... rather than simply having the parents attend a case planning meeting, having the grandparents as well, or any other person who may be suitable – for example, professionals who may be treating the children. At times the Department may, but my understanding is that it is certainly not the norm. I would have thought that just broader based ... advocacy on behalf of the children would be beneficial.*³⁰³

Accordingly, the Committee recommends that:

Recommendation 15.2:

The Department of Human Services review its practices regarding who is invited to advocate for children and young people in the protective care system (including case planning meetings), to allow scope for a broader range of people, such as grandparents or professionals who have been treating the child or young person, to advocate on behalf of, and in the interests of, the child or young person.

³⁰³ Ibid, p. 112

CHAPTER 16: FURTHER ISSUES ARISING DURING THE INQUIRY

The Committee would not normally include comment on matters outside the scope of an Inquiry in its report to Parliament. However, two significant issues were widely canvassed during the course of this Inquiry and the Committee believes that it is of value to refer to them in this report, along with some of the evidence presented.

Key Findings:

- 16.1 The review of out-of-home care services for Aboriginal children and young people found that, in 1998, few Aboriginal support agencies had performance targets and that all had been allowed to overperform to the detriment of the quality of the placement and, ultimately, to the detriment of the children and young people in out-of-home care.**
- 16.2 The development and implementation of a case management and planning framework for Aboriginal out-of-home care agencies should be a priority. The Committee was concerned to learn that a high proportion of indigenous children in the care system have no case plans, child care agreements or plans to return home.**
- 16.3 Peak welfare agencies have expressed concern about the lack of mechanisms to monitor compliance with the Aboriginal child placement principles and about the manner in which Aboriginal children entering the system are identified.**

Key Findings (continued):

- 16.4 The Department of Human Services has recognised past under-funding and has undertaken to provide increased funding to the Victorian Aboriginal Community Services Association (VACSA) for its peak body and community development, and has committed an additional \$1.1 million to Aboriginal placement and support services, two new Aboriginal family preservation services and eleven new case management positions.**
- 16.5 The Committee is concerned that Aboriginal agencies are working with excessive caseloads and that no adolescent community placement services are available in Victoria.**

16.1 Aboriginal children in care

The 1996 report of the Auditor-General did not specifically address the issue of Aboriginal children in Victoria's child protection system. However, in taking evidence, the Committee became aware that Aboriginal children are over represented in the system, with the rate of indigenous children in out-of-home care in Victoria over eight times the rate of non-indigenous children.³⁰⁴

A recent report by the Australian Institute of Health and Welfare contains data that indicates the extent and significance of the issue, as illustrated in the following two exhibits.³⁰⁵

³⁰⁴ Australian Institute of Health and Welfare, 2001, *Child protection Australia 1999-00*, p. 43

³⁰⁵ *Ibid*, pp. 19, 34

Exhibit 16.1: Rates of children who were the subject of substantiations, by Indigenous status, by State and Territory, in 1999-2000

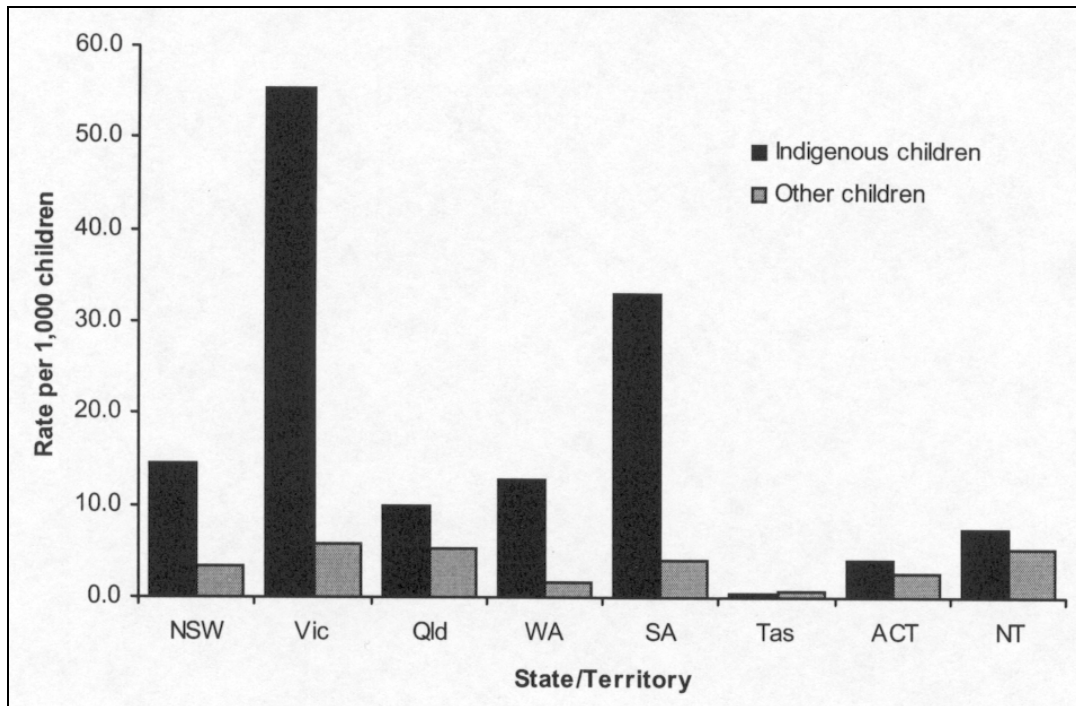
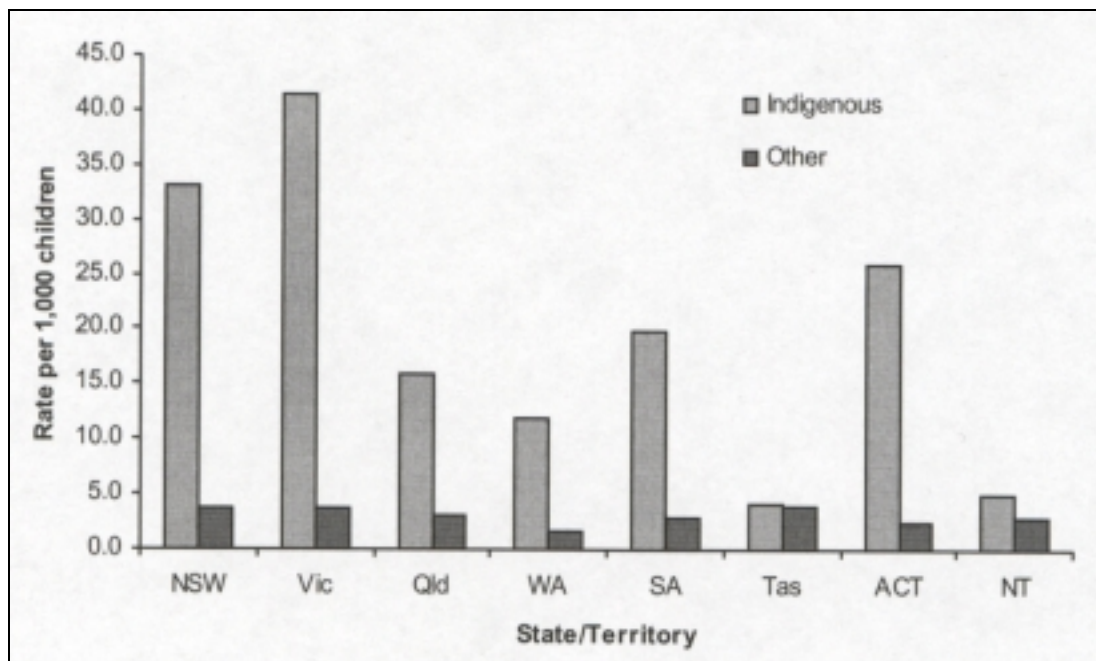


Exhibit 16.2: Rates of children on care and protection orders: Indigenous status by State and Territory, at 30 June 2000



16.1.1 Department of Human Services' review of services for Aboriginal children and young people

In December 1998, the Youth and Family Services Division of the Department of Human Services published the report *Statewide Review of Out-of-Home Care Services for Aboriginal Children and Young People*. This report concluded that significant gaps remain in the services provided for Aboriginal children and young people, despite years of targeted programs and policies.

The following key findings and recommendations emerged from the Review:³⁰⁶

- Aboriginal children and young people are over represented in the out-of-home care system;
According to the Placement and Support census 1995, Aboriginal children are nine times more likely than the general child population to be involved with placement and support services. The greatest over-representation of Aboriginal children in out-of-home care is in non-protective, voluntary care provided by Aboriginal agencies and/or kinship networks.³⁰⁷ For every 1000 Aboriginal children and young people aged 0-17 years, 40 children were placed in out-of-home care compared with 4 children per 1000 of the general population. Seventy-six per cent of Aboriginal children and young people placed by the Aboriginal agencies were voluntary placements compared with 30 per cent of placements in the broader placement and support system.³⁰⁸
- increased effort is required to facilitate access to, and use of, services that aim to support and strengthen Aboriginal families and to prevent the need for out-of-home-care placements;

³⁰⁶ Department of Human Services, 1998, *Youth and Family Services: The Statewide Review of Out-of-Home Care Services for Aboriginal Children and Young People*, pp. 10-23

³⁰⁷ Ibid, p. 3

³⁰⁸ Ibid pp. 20-21

The continuum of services for Aboriginal children and young people is underdeveloped, with intervention essentially the only service response available to an identified family crisis. Access to a diverse range of placement and support services for Aboriginal children and young people and their families is limited, and foster care is seen as the only option in those situations.³⁰⁹

- case management of, and planning for, out-of-home care needs improvement;

Evidence collected during the review suggests that placement services are provided with insufficient or no case management or planning, and that children and young people are remaining in out-of-home care for inordinate lengths of time, with no clear vision of permanency.³¹⁰ The long-term plans for 65 per cent of the Aboriginal children and young people in placement for more than two years, as at November 1996, were for them to remain permanently in their current placement. Only 26 per cent had a long-term plan to return home, and 4 per cent were expecting to move to a permanent placement.³¹¹ Consultations with agencies suggested that the data on case planning and child care agreements are contradictory and that planning for, and review of, voluntary placements is ad hoc, with little time being allocated to family reunification.³¹²

- the capacity of Aboriginal agencies to continue providing out-of-home-care services to their communities needs to be strengthened;

The review found that home-based care staff of Aboriginal agencies are managing caseloads much higher than those of their counterparts in non-Aboriginal agencies. This imbalance arises from the over-representation of indigenous children in the care system, the high demand for placement services, and the limited range of service options available to Aboriginal children

³⁰⁹ Ibid, p. 21

³¹⁰ Ibid, p. 10

³¹¹ Ibid, p. 15

³¹² Ibid, p. 23

and young people. The situation is further exacerbated by factors such as:

- the lack of a clear case practice framework;
- the lack of professionally qualified staff in Non-Government Organisations; and
- the absence of formal training and development programs for Non-Government Organisation staff and caregivers.

The review also found that few Aboriginal support agencies had performance targets and that all had been allowed to ‘overperform’ to the detriment of the quality of the placement and, ultimately, to the detriment of the children and young people in out-of-home care.³¹³

- training and developmental opportunities for staff and management in the funded Aboriginal agencies should be enhanced;

Few professionally qualified staff work in the out-of-home care programs in Aboriginal agencies. Training and professional development are generally not given priority within the out-of-home care programs in Aboriginal agencies, and caregivers do not have access to regular support and training programs.³¹⁴

- communication between the Department of Human Services and the Aboriginal agencies providing out-of-home-care should be improved;

The review also identified issues around the Department not funding the peak Aboriginal child care agency, the Victorian Aboriginal Child Care Agency (VACCA), to provide Statewide consultative and case work services. These issues include:

- a lack of support for protective investigations;

³¹³ Ibid

³¹⁴ Ibid, p. 24

- a lack of consultation with the local Aboriginal agency regarding protective services until a placement is required; and
- the absence of a direct advisory link between the Aboriginal agencies and the Department regarding support and placement programs for Aboriginal children.³¹⁵

In December 2000, the Department's Community Care Division released a document outlining a framework for Community Care services.³¹⁶ In this document the Department has signalled its intention to:

- contribute to the development of Department initiatives for indigenous Victorians; and
- review compliance with Aboriginal child placement principles, and develop strategies for improved compliance.

In 2000, the Department stated that it recognised past under-funding and has undertaken to provide increased funding to the Victorian Aboriginal Community Services Association (VACSA) for its peak body and community development, and has committed an additional \$1.1 million to Aboriginal placement and support services, two new Aboriginal family preservation services and eleven new case management positions.³¹⁷

The Committee welcomed the release in July 2001 of the Department's document entitled *Towards an Aboriginal Services Plan – A Statement of Intent for Consultation*.³¹⁸ The document reports that a specialist Aboriginal team has been established within the Child Protection and Juvenile Justice Branch to focus on improving the accessibility and cultural appropriateness of child protection and placement services and address over-representation

³¹⁵ Ibid, p. 25

³¹⁶ Department of Human Services, Community Care Division, 2000, *Stronger Citizens, Stronger Families, Stronger Communities – Partnerships in Community Care*, p. 28

³¹⁷ Ibid, p. 28

³¹⁸ Department of Human Services, Policy and Strategic Projects Division, July 2001, *Towards an Aboriginal Services Plan – A Statement of Intent for Consultation*

of Aboriginal children in the Protection and Care system.³¹⁹ The document also reports that a working group has been established with departmental and community organisation representation to establish a model of effective consultation with the Aboriginal community on all child protection case planning decisions as required by the *Children and Young Persons Act 1989*.³²⁰ The Department advised in September 2001 that the consultation process was not yet complete, but that major preliminary findings were as follows:³²¹

- VACCA should continue to be named in the protocol as the appropriate organisation for Child Protection Services to consult with when receiving notifications on Aboriginal children;
- VACCA should receive additional funding to provide an effective statewide service; and
- a range of other services are required for prevention, early intervention and diversion.

16.1.2 Issues for Aboriginal childcare agencies

The Committee heard evidence from the VACCA and VACSA on the issues facing Aboriginal child care agencies in Victoria. Their evidence echoed the conclusions of the *Statewide Review of Out-of-Home Care Services for Aboriginal Children and Young People*. The VACCA expressed concern about the over-representation of Aboriginal children and young people in the protective care system, and about their extended duration in home-based and residential care compared with that of non-Aboriginal children.

According to the statistics presented to the Committee by the VACCA and the VACSA,³²² the average length of stay for indigenous children and young persons in home-based care is 239 days compared with 62 days for non-indigenous children, and

³¹⁹ Ibid, p. 16

³²⁰ Ibid, p. 21

³²¹ Letter, received 20 September 2001, from Ms P White, Director, Community Care Division, Department of Human Services

³²² Transcript of evidence, 11 October 2000, p. 21

the average length of stay in residential care is 224 days compared with 101 days for non-indigenous children.

The VACCA believes that such high representation is related to:

- a lack of adequate resources for placing the children and reuniting them with their families; and
- the underlying socioeconomic issues associated with family breakdown, such as poverty, high unemployment and homelessness.

The VACCA and the VACSA also identified two major problems with the lack of funding for Statewide consultative and case work services for child protective investigations.

The Lakidjeka crisis service delivered by the VACCA involves working with families to prevent Aboriginal children going into the child protection system:

... [the service] is the most critical program we run in the organisation ... our Lakidjeka Crisis Service is doing the work to keep the children out of the system, providing the support and the early prevention type of work prior to their going into care and protection. In that program we had 351 clients that we worked with over a 12-month period and we have five workers. That is a statewide service we operate that is not funded by [the Department].³²³

The Committee was advised that the high demand for placement services by Aboriginal agencies, the limited range of service options for Aboriginal children and the lack of adequate resources meant that Aboriginal agencies had excessive caseloads and were providing crisis intervention rather than proactive preventative services. The VACCA advised that:

There is a limited range of service options available to indigenous children and young people. We are always screaming about the fact that we do not get the opportunity to work with children at the earlier stage. A lot of the time we tend to be very much at the crisis intervention stage. We would like to be able to work with

³²³ Ibid, p. 24

*children and families, on positive parenting, strengthening families and the like, and to work more with families in playgroups and services like that rather than being constantly at this end. There are excessive caseloads.*³²⁴

Other peak non-Aboriginal community organisations also noted the lack of early intervention and preventative services. This issue is discussed further in Chapter 2.

The Committee was concerned to learn that there are no indigenous adolescent community placement services across the State:

*We do not have an indigenous adolescent community placement service across the state. They are real issues. Our children tend to grow into them, but we have to place our children with non-Aboriginal organisations. A lot of times we still then get requests to go and work with those children, but we do not actually have an indigenous adolescent community placement service across the State.*³²⁵

The VACCA and the VACSA advised the Committee that placements of Aboriginal children in care do not comply with the Aboriginal child placement principles contained in legislation. The principles, which are endorsed by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1997) and accepted by the Secretariat of National Aboriginal and Islander Child Care (the peak agency representing Aboriginal children and family services), include:

- that the removal of any Aboriginal child must be a last resort;
- that if, after consultation with a community-controlled Aboriginal welfare organisation, removal of a child from his or her family is considered unavoidable, then the authorities must have regard to the direction of the Aboriginal Child Care Agency;

³²⁴ Ibid

³²⁵ Ibid

- that if such a removal is necessary, then the child must be placed within the extended family or, if this is not possible, within the Aboriginal community, in close proximity to the child's natural family; and
- that if an Aboriginal placement is not available, then in consultation with the local Aboriginal Child Care Agency, the child may be placed with a non-Aboriginal family on the assurance that the child's culture, identity and contact with the Aboriginal community are maintained.

These principles are incorporated in the *Children and Young Persons Act 1989* and the *Victorian Adoption Act 1984*. Section 119(m) of the *Children and Young Persons Act 1989* states that:

In the case of an Aboriginal child:

- (i) *decision-making should involve relevant members of the Aboriginal community to which the child belongs; and*
- (ii) *in recognition of the principle of Aboriginal self-management and self-determination, arrangements concerning the child, and his or her care, supervision, custody, guardianship, or access to the children, must ... [involve] a member of the Aboriginal community.*

The *Victorian Adoption Act 1984*, section 50 – Adoption of Aboriginal child - states that:

The provisions of this section are enacted in recognition of the principle of Aboriginal self-management and self-determination and that adoption is absent in customary Aboriginal child care arrangements ... (section 50(1)); and

... that the proposed adoptive parents are persons approved by ... an Aboriginal agency as suitable persons to adopt an Aboriginal child. (section 50(2)(e)).

The Committee was advised that departmental service agreements with community service agencies do not require compliance with Aboriginal child care principles,³²⁶ and that the Department does

³²⁶ Ibid, p. 22

not have a system to monitor whether agencies comply with the placement principles. Consequently, indigenous children could be placed with non-Aboriginal organisations:

My coordinator went to a foster care forum in our region recently and found that there were a number of Aboriginal children in the care and protection system that she did not know about. As a coordinator she would normally be involved in case management, case placement or helping to assist in access.³²⁷

The VACCA expressed concern that the flow-on effect of the non-compliance with the Aboriginal child care placement principles is evident in the excessive number of permanent care applications for indigenous children from non-Aboriginal families:

That is not in a way to lessen the commitment of any of the families. Obviously if a child is placed with a family and is there for a length of time, the permanent placement would be the thing that may be wanted, but it is what happens prior to that that is of great concern, which is that in many cases the Aboriginal children have been taken out of their communities.³²⁸

Another area of concern to the VACCA is the lack of appropriate education outcomes for indigenous children in the care and protection system. A high percentage of the children (50 per cent for Morwell and Coburg and 75 per cent for Mildura) in the Koori Open Door Education schools have been in the care and protection system, indicating a high drop-out rate from the mainstream education system.

16.1.3 Issues relating to program administration

The Committee heard evidence of inconsistencies in the manner in which agencies record information about indigenous children in the child care and protection system, resulting in those children not being identified appropriately and being lost to the community.

³²⁷ Ibid

³²⁸ Department of Human Services, Community Care Division, 2000, *Stronger Citizens, Stronger Families, Stronger Communities - Partnerships in Community Care*, p. 28

The VACCA also expressed concern about:

- the lack of appropriate monitoring and evaluation of outcomes for indigenous children in the protection and care system;
- inadequate consultation with Aboriginal agencies on programs and policies; and
- a lack of clear operational guidelines on the proposed partnership approach.

16.1.4 Issues of concern

The *Statewide Review of Out-of-Home Care Services for Aboriginal Children and Young People* conducted by the Department of Human Services in 1998 identified many issues with care and protection services delivered to indigenous children and recommended measures to address these issues. The Committee is concerned that the measures proposed by the Department's Community Care Division do not adequately address all of the issues identified by the review and by the peak bodies, the VACCA and the VACSA.³²⁹

The lack of specific departmental targets for reducing the number of indigenous children in the care system is a particular concern. In this regard, the Committee noted that, in response to this issue, the Department has committed to a 10 per cent reduction in young Aboriginal people in custody within the juvenile justice system over the next two years.³³⁰

Accordingly, the Committee recommends:

³²⁹ Ibid

³³⁰ Ibid

Recommendation 16.1:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop strategies to reduce the number of Aboriginal children placed in out-of-home care, with the aim of improving access to a diverse range of support services for Aboriginal children and young people and their families.

Recommendation 16.2:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop appropriate performance information (including targets) to enable monitoring, and reporting in the Department's annual report, of its strategies to reduce the number of Aboriginal children in out-of-home care.

Evidence presented to the Committee shows that the development and implementation of a case management and planning framework for Aboriginal out-of-home care agencies should also be a priority. It is a concern that a high proportion of indigenous children in the care system have no case plans, child care agreements or plans to return home.

Accordingly, the Committee recommends that:

Recommendation 16.3:

- (a) The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop and implement a case management framework appropriate for Aboriginal agencies**

placing Aboriginal children in out-of-home care; and

- (b) The case management strategy should also aim to achieve appropriate educational outcomes for indigenous children in the care system.**

The VACCA and the VACSA have expressed concern about the lack of mechanisms to monitor compliance with the Aboriginal child placement principles, and the manner in which Aboriginal children entering the system are identified. The peak agencies have also highlighted the need for evaluation of the services provided to indigenous children in the care and protection system.

The Committee understands that the Department of Human Services has given a commitment to complete in 2001 its review of the protocol arrangements fulfilling the principles contained in the *Children and Young Persons Act 1989*.³³¹

Accordingly, the Committee recommends that:

Recommendation 16.4:

The Department of Human Services:

- (a) in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, develop procedures for agencies placing indigenous children in the care system;**
- (b) monitor compliance with these procedures; and**
- (c) report on these issues in the Department's annual report.**

³³¹ Ibid

Recommendation 16.5:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, review the current procedures to identify and record indigenous children in the State's protection and care system, and ensure a uniform method is used across the State.

The Department's 1998 review of out-of-home care services and the submissions by peak Aboriginal agencies highlighted:

- the inadequate funding for most services provided by Aboriginal agencies; and
- the lack of funding for preventative services provided by the VACCA.

The Committee is concerned about the review finding that Aboriginal agencies are working with excessive caseloads which is to the detriment of the children and young people in out-of-home care.³³² While highlighting this issue in its submissions to the Committee, the VACCA also noted that no adolescent community placement services are available in the State.

The Committee noted the recommendation from the review that the Department of Human Services consider funding Aboriginal service agencies on a performance basis to address the inequities in allocating funds.³³³ The Committee understands that additional funding of \$600,000 was allocated to VACCA in 2001-2002.

Accordingly, the Committee recommends that:

³³² Department of Human Services, 1998, *Youth and Family Services: The Statewide Review of Out-of-Home Care Services for Aboriginal Children and Young People*, p. 23

³³³ Department of Human Services, Community Care Division, 2000, *Stronger Citizens, Stronger Families, Stronger Communities – Partnerships in Community Care*, p. 28

Recommendation 16.6:

The Victorian Government allocate a high priority to preventative and early intervention programs for Aboriginal children at risk of abuse.

Recommendation 16.7:

The Department of Human Services, in consultation with Aboriginal Affairs Victoria and the appropriate Aboriginal peak agency, consider the provision of community placement services for indigenous adolescents.

16.2 Children's Advocate

A number of organisations and individuals giving evidence to the Committee presented arguments in favour of a Children's Advocate or Children's Commissioner. However, there were a wide variety of views on whether such a position was desirable and the appropriate model, functions and powers of such a position.

While this was raised in the context of an Inquiry focussed on Child Protection Services, the Committee believes that proposals for a Children's Advocate encompass far more than simply a role in the child protection system. It also notes the evidence of Ms Moira Rayner, Director of the Office of the London Children's Rights Commissioner:

I have been an ambivalent advocate of the concept of children's rights commissioners because I believe you can have children's commissioners who have no real power at all, given that they are focussing purely on a tiny segment of the population and on a different segment for each State, and they do not look at the overviews ...

... a child protection mechanism with high quality standards should not be confused with a children's commissioner. Create

*that role by all means – I passionately believe in it – but do not call it a children’s commissioner because it blurs the picture ...*³³⁴

Several jurisdictions both overseas and interstate have established children’s commissions. The Committee’s research identified independent human rights institutions designed to monitor and protect the rights and wellbeing of all children have been established in France, Norway, Sweden, Denmark, Belgium, Austria, Spain, Portugal and Iceland.

Ms Rayner advised the Committee that the Swedish model of child protection has been effective, with the rate of abuse and maltreatment of children being remarkably low.³³⁵ Ms Rayner attributes Sweden’s success to the availability of universal preventative services, the establishment of a children’s ombudsman and the widespread acceptance of the community’s responsibility to protect children.

There are also children’s commissions in South America (Guatemala, Costa Rica and Peru), New Zealand, Queensland, New South Wales and Tasmania, although they fall short of the requirements for a true children’s commissioner in several respects.³³⁶

Shortly there will be children’s commissioners in Northern Ireland and Wales, although the legislative structure and powers of these offices are not yet clear.³³⁷ Children’s commissioners and ombudsmen also operate in some US States (Arizona, Tennessee and Washington) and Canada (in British Columbia).

The Defence for Children International (DCI), after examining models of commissions/ombudsmen overseas and in Australia, identified four essential components of a children’s commission that would ensure its effectiveness.³³⁸ The DCI argues that close

³³⁴ Transcript of evidence, 5 March 2001, p. 96

³³⁵ Ibid, pp. 97-98

³³⁶ Letter dated 6 February 2001, from Ms M Rayner, Director, London Children’s Rights Commissioner

³³⁷ Ibid

³³⁸ Defence for Children International, 1998, Extract from *Taking Australia’s Children Seriously – A Commission for Children and Young People*. The Australian Section of Defence for Children International describes itself as a local organisation in a global network of children’s rights

involvement of children is an essential ingredient of all four components:

- an exclusive focus on children and young people (under 18 years of age);
- the ability to influence law, policy and practice proactively and reactively;
- the ability to review children's access to, and the effectiveness of, all forms of advocacy and complaints systems; and
- the ability to conduct investigations and to undertake or encourage research and promote awareness of rights among children and adults.

Further, the DCI maintains that in terms of the structure of a commission, the position needs to:

- be independent;
- have certain statutory powers and authority, that is, the advocate must be established as a statutory authority and given authority to carry out its functions; and
- be adequately resourced by an Act of Parliament, that is, funding should not be determined within party politics but should be a commitment of all Members of Parliament. In addition, the budgetary allocation ought to be commensurate with the nature of the office's responsibilities.³³⁹

Ms Rayner suggested that a children's rights commissioner should have the power to:

- advocate, that is, to promote the objects of the office (the human rights framework) to Government, enabling the child's voice to be heard in policy debates and reviewing proposed and existing policies and practices relating to

agencies recognised by the United Nations. Refer to <http://members.dynamite.com.au/dci-aust/index.html>

³³⁹ However it should also be noted that commissions have been established on modest budgets. For example the New Zealand Commissioner had a budget of NZ\$950 000 in 1999/2000 and nine staff. The New Zealand Commissioner also handles individual complaints. The Office of Children's Rights Commissioner for London has five permanent staff for 1.7 million children

children and recommending new laws and policies without restriction;

- educate, that is, to inform the community and children about the human rights of children and the responsibilities of adults to protect, promote and respect those rights;
- inquire and report, carry out research, inquiries and investigations into possible breaches of those human rights, on its own initiative; and
- listen to children, that is, whether by receiving and trying to resolve complaints by children or their advocates, or (if resources are inadequate or if there is a conflict between advocacy and other functions) reviewing children's access to, and the effectiveness of, advocacy and complaints mechanisms. This may include the discretionary power to initiate, intervene in or support legal action on behalf of children.³⁴⁰

The DCI considers the following functions, roles and responsibilities are essential if a commissioner is to prove effective in ensuring and promoting the rights of children and young people:³⁴¹

- review proposed and existing laws, policies, resource allocations and practices relating to children and young people;
- make recommendations to the Minister as to laws that should be made to ensure the rights of children and young people;
- conduct inquiries;
- make reports to Parliament;
- conduct research around relevant issues;
- promote varied and targeted public education programs;
- perform an advocacy role;

³⁴⁰ Letter dated 6 February 2001, from Ms M Rayner, Director, London Children's Rights Commissioner

³⁴¹ Defence for Children International, 1998, Extract from *Taking Australia's Children Seriously – A Commission for Children and Young People*

- have the power to intervene in cases involving the rights of children and young people at the systemic level; and
- develop mechanisms to consult with, and promote meaningful dialogue with, children and young people.

16.2.1 Handling of individual complaints

Other than the court, the Ombudsman is the only other major independent avenue of child protection complaint investigations in Victoria.³⁴² In the year 1999-2000 the Ombudsman Victoria received 368 complaints against the Department of Human Services, 282 or 76 per cent of which related to child protection.³⁴³ A key question regarding the development of an Advocate for Children and Young People in Victoria is whether the Ombudsman should continue to handle individual complaints or whether such a function should be fulfilled by the Office of the Advocate.

The Ombudsman advised that his support for the establishment of a children's commission would depend on its purpose.³⁴⁴ Further:

*In the medium to longer term, if you want a department to function properly ... you have to rely entirely on the organisation itself for good management ... It just seems to me that the downfall in creating a commission may be seen as taking some of the responsibility of management away from the Department and that should not be the case. Responsibility should be fully and squarely on the shoulders of the people in the Department and anything that detracts from that, I would not be in favour of.*³⁴⁵

In Queensland, the Commission for Children and Young People has the mandate to receive, seek to resolve, monitor and investigate complaints about services provided to certain children by service providers.³⁴⁶ The NSW Commissioner advised that she

³⁴² Victorian Auditor-General's Office, 1996, *Protecting Victoria's children: The role of the Department of Human Services*, Special Report No. 43, p. 335

³⁴³ The Ombudsman Victoria, June 2000, *Annual Report 27*, p. 22

³⁴⁴ Transcript of evidence, 5 March 2001, pp. 114-115

³⁴⁵ Ibid, p. 115

³⁴⁶ *Commission for Children and Young People Act 2000* (Queensland), Part 3, proclaimed 2 February 2001

is inquiring into current complaints-handling mechanisms in New South Wales but will not be recommending that the children's commission take up such a function:

*I think we would be swamped by complaints and our resources would be taken up by dealing with individual clients, whereas I think one of the values of the children's commission is that we actually deal with systemic issues.*³⁴⁷

However, the NSW Commissioner is responsible for monitoring trends in complaints by children and young people. The DCI reinforces the view of the NSW Commissioner and does not recommend that commissioners handle individual complaints for a number of reasons. The DCI argues that often a number of complaint-handling bodies are already in existence, that is, Ombudsmen, and that these agencies should develop specialist children's sections and more accessible complaint mechanisms. Further:

*... the individual complaint based focus has been criticised as being unable to address more systematic and institutionalised forms of discrimination, its consumption of resources, and its traditional utilisation of private methods of resolution such as conciliation which has a limited capacity to educate the wider community about human rights and discrimination.*³⁴⁸

In Tasmania the Commissioner for Children may respond to individual complaints to monitor practice and policy issues relating to the health, welfare, care and protection, and development of children.³⁴⁹ The Commissioner may also maintain a watching brief on any children or young people who are considered to be at risk.

The New Zealand Commissioner handles growing numbers of individual complaints. It introduced a policy in 1999-2000 to encourage more direct liaison between complainants and agencies, thereby reducing the involvement required by the Office for the

³⁴⁷ Transcript of evidence, 23 January 2001, p. 79

³⁴⁸ Defence for Children International, 1998, Extract from *Taking Australia's Children Seriously – A Commission for Children and Young People*

³⁴⁹ Office of the Commissioner for Children (Tasmania), Information Booklet

Commissioner for Children. As a result, the complaints handled by the Office are usually complex and involved.³⁵⁰

Unlike a statutory commissioner, the London Children's Rights Commissioner:

*... does not hold itself out as able to receive and resolve individual complaints, but of course staff are listening to their stories. Without knowing what is happening in children's lives we cannot advocate for them. We are accessible to children, and we are looking to promote test cases on children's rights, wherever we can.*³⁵¹

Accordingly, the Committee recommends that:

Recommendation 16.8:

The Ombudsman Victoria continue to handle individual child protection complaints.

16.2.2 Conclusion

As the issue of a Children's Commission goes well beyond the Child Protection Services and hence the scope of this Inquiry, the Committee believes that a recommendation out of the evidence given to this Inquiry would necessarily rely on limited evidence and would therefore be inappropriate.

It does, however, believe that the issues raised are important ones and should be considered further by the Government.

³⁵⁰ The Commissioner for Children (New Zealand), June 2000, *Report of the Commissioner for Children: Te Tari o te Kaikomihana mo nga Tamariki for the year ended June 2000*, p. 5

³⁵¹ Letter, dated 6 February 2001, from Ms M. Rayner, Director, London Children's Rights Commissioner

APPENDIX 1: LIST OF PERSONS PROVIDING EVIDENCE

Public hearing - 11 October 2000

Children's Welfare Association of Victoria	Ms C Clare, Chief Executive Officer; Mr K Patterson, Deputy Chief Executive Officer; Mr B Lamb, Anglicare Victoria; Mr B Mitchell, MacKillop Family Services; Mr J Avent, Salvation Army; and Mr V Coull, Glastonbury Family Services
Children's Protection Society	Ms R Lever, Chief Executive Officer; Ms K Flanagan; and Ms L Hewitt
Victorian Aboriginal Child Care Agency Cooperative	Ms M Cadd, Chief Executive Officer
Victorian Aboriginal Community Service Association	Mr A Bamblett, Executive Officer
Department of Education, Employment and Training	Mr G Schaeche, Assistant General Manager, Student Welfare and Support; and Ms C Murphy, Student Welfare Officer
Department of Human Services	Ms M Wagstaff, Director, Community Care Division; and Ms J McAuley, Assistant Director, Child Protection and Juvenile Justice

Public Accounts and Estimates Committee

Public hearing - 8 November 2000

Australian Education Union	Mr P Steele, Vice-President, Primary; and Ms C Stewart, Deputy Secretary
Children's Protection Society	Hon. J F Fogarty, AM, Board Member
University of Melbourne	Professor D Scott, Department of Social Work
Australians Against Child Abuse	Mr J Tucci, Chief Executive Officer
Department of Education, Employment and Training	Mr M White, Director of Schools; and Ms C Murphy, Manager, Student Welfare

Public hearing - 23 January 2001

Commission for Children and Young People, New South Wales	Ms G Calvert, Commissioner for Children and Young People
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Public hearing - 5 March 2001

Office of Children's Rights Commissioner for London	Ms M Rayner, Director
Office of the Commissioner for Children, Tasmania	Ms P Ambikapathy, Commissioner for Children
The Ombudsman Victoria	Dr B Perry, Ombudsman

APPENDIX 2: LIST OF SUBMISSIONS AND OTHER INFORMATION RECEIVED

Submissions

Australian Early Childhood Association

Children's Welfare Association of Victoria

Department of Human Services (correspondence received in response to Public Accounts and Estimates Committee's questions, dated 25 May 1999 and 8 August 2000)

Hon. J F Fogarty, AM

Oz Child: Children Australia

Whittington Primary School

Other information

Hon. C Campbell, MP, Minister for Community Services, received 8 January 2001

Commission for Children and Young People (NSW), received 23 November 2000

Department of Human Services, received 11 October 2000 and 3 November 2000

Office of Children's Rights Commissioner for London, received 9 April 2001

Office of the Commissioner for Children (New Zealand), received 2 February 2001

Public Accounts and Estimates Committee

Office of the Commissioner for Children (Tasmania), received
29 January 2001

APPENDIX 3: ACRONYMS AND ABBREVIATIONS

CPS	Children’s Protection Society
CWAV	Children’s Welfare Association of Victoria
DCI	Defence for Children International
DEET	Department of Education, Employment and Training
DHS	Department of Human Services
DSE	Department of School Education, now DEET
FACTS	Funded Agency Client Transaction System
NGO	Non-Government Organisation
UN	United Nations
UNICEF	United Nations Children’s Fund
VACCA	Victorian Aboriginal Child Care Agency
VACSA	Victorian Aboriginal Community Service Association
VCDRC	Victorian Child Death Review Committee
WTS	Working Together strategy