Protecting Children

The Child Protection Outcomes Project
The **Allen Consulting Group**

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Mary Ann O’Loughlin
Director
The Allen Consulting Group

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Executive Summary

Context for the Report

Victoria’s child protection system does well what it was set up to do. It is effective in identifying and responding to critical episodes of allegations of child abuse and neglect, with the emphasis on determining the substance of a notified episode and acting decisively.

This is consistent with its intended role under the *Children and Young Person's Act 1989*. The Act provides for the protection of children and young people who have suffered, or who are likely to suffer, significant harm. A key consideration in the drafting of the legislation was that child protection was not to be confused with long-term social welfare programs; statutory child protection was conceived of as an emergency service.

But many things have changed in the fifteen years since the Act was first formulated. There has been sustained pressure on the child protection system, with a steady increase in the numbers of notifications, substantiations, children on care and protection orders, and children placed in care. Families involved with child protection face many challenges and difficulties, with increasing numbers of parents with psychiatric illness, serious problems of alcohol or substance abuse, and experience of domestic violence. Two-thirds of substantiations of child protection notifications now concern children neglected or suffering from emotional abuse.

If the current child protection arrangements continue, it is projected that nearly one in five (19 per cent) of the cohort born in 2003 growing up in Victoria will be notified for suspected child abuse or neglect during their childhood or adolescence. Of the 2003 cohort, it is projected that 9 per cent will be the subject of an investigation for alleged abuse or neglect. It is difficult to reconcile these figures with the intent of the *Children and Young Person’s Act* that child protection will be an emergency service.

Other indicators suggest that the Victorian child protection system has not changed sufficiently to deal effectively with the changing problems and scale of child abuse and neglect. For example, there is a high and increasing level of resubstantiations, with 40 per cent of all substantiations now concerning children or young people who have previously been the subject of a substantiated case of child abuse or neglect.

In response to this changing context, there have been a number of major reviews of child protection in Victoria. In the main these reviews have focused on how to improve program responses in child protection, *within the existing legislative and broad policy and practice frameworks*. Although this is clearly an important objective, the Child Protection Outcomes project of the Department of Human Services (DHS) provides the opportunity to take a more fundamental look at the appropriateness of the legislative, policy and program frameworks that determine the directions and boundaries of current policy and program responses.
This report puts forward broad directions for reform of Victoria’s child protection system. The directions for reform are based on analysis of outcomes that are achieved through child protection intervention by government, looking at the issues from three different perspectives:

- a comparison of the different broad approaches of governments to the problems of child abuse and neglect;
- analysis of the effects on children and families of the regulatory arrangements in Victoria; and
- developments in child protection systems aimed at improving the appropriateness and effectiveness of service responses for children and families.

**Government Approaches to Child Abuse**

The report compares the two main government orientations to the problems of child abuse and neglect in western OECD countries — the child protection orientation (for example, Australia, UK, USA and Canada), and the family service orientation (for example, Sweden, Germany, Belgium and the Netherlands). The report concludes that there is no available data to answer the question of which approach by government to the problem of child abuse results in better outcomes for children in terms of lead outcomes, such as levels of child maltreatment and number of child deaths.

This is not to say, however, that there are not major differences in the consequences for children and families from the two approaches. There is clear evidence that family service systems provide children and families easier access to a wider range of services and assistance than child protection systems. Family service systems also place more emphasis on working voluntarily with parents over longer periods of time to address problems, compared with jurisdictions with a child protection orientation, which are far more restrictive and coercive in their responses to parents.

**A Regulatory Approach**

Child protection is an area of social regulation by government. The report assesses the regulation of child protection in Victoria against three tests of good regulation.

The first test of good regulation is that it must be the most effective way of addressing an identified problem. A clear advantage of the regulatory approach to child abuse in Victoria is that it is highly effective in identifying and responding to significant harm, which is particularly appropriate for cases of a more episodic nature (such as some cases of sexual abuse or severe physical abuse). It is less effective, however, for cases of a more chronic nature, such as neglect. Increasingly, the key characteristics of most families involved in child protection (for example, low income, sole parenthood, substance abuse, and mental disability) are all long-term factors. This is shifting cases towards ones of a more chronic nature. Addressing the problems, or at least enabling the families to better cope with the problems, requires more flexible responses and sustained support.
Another problem with the regulatory approach to child protection in Victoria is that children who are at lower risk often fall outside the mandate of the legislation. Over time these children may face higher risks due to the chronic nature of their family’s problems, and opportunities are missed early on to provide positive assistance that can help the families avoid major problems in the future.

The second test of good regulation is that it must impose the minimum burden on those regulated. The report concludes that there is a high burden on many children and families associated with the responses most frequently enacted by protection services (investigation, and court proceedings to secure court orders).

The third test of good regulation is that it must have minimum negative impact on others. The report argues that court processes and particularly placement in unstable out-of-home care can negatively impact on children. Research demonstrates that the outcomes for children who grow up in care tend to be poor, especially for children who experience multiple and unstable placements. Since regulatory responses in the area of child protection are so dependent on actions that can involve negative impacts on others, the onus falls to the regulator to focus on other strategies that are more preventative and diversionary.

Recent approaches to regulatory reform offer ideas on how to improve the regulatory basis of child protection in Victoria. In summary, the report’s review of developments in regulatory arrangements has the following implications for child protection:

- there is a need for a spectrum of regulatory responses available for the wide variety of child protection concerns, problems and circumstances presented by families — in terms of both the depth and breadth of service options;

- a strategy based on a more comprehensive set of possible responses to the problems and issues can only be accomplished by child protection agencies working in partnerships with other government and non-government agencies;

- regulation is more effective when people see it as legitimate and procedurally fair, and when they are treated as trustworthy and with respect by those who regulate them;

- child protection regulation should build on, or interact more with, parents’ own ‘private regulation’, or self-regulation. Government regulation should respond to how effectively private regulation is working and can be encouraged to work better; and

- a child protection service must, however, retain the capacity and willingness to apply tough sanctions where risks of grave maltreatment are extreme and compulsion to protect the child is urgent. One of the main reasons for non-compliance is because people lack the competence or capability to comply. In these cases, removal of a child from the parent(s) may be the most appropriate response.
Developments in Child Protection Systems

The third key input into framing the directions for reform is consideration of developments in other child protection systems aimed at improving the appropriateness and effectiveness of service responses for children and families. These developments also go some way to addressing the issues raised by the review of regulatory arrangements. In summary:

- The UK has set a direction for reform away from the more investigative approach to child abuse towards a family support response. The Children Act 1989 embraces the idea of simultaneously safeguarding and promoting children’s welfare, providing for both the welfare and protection of vulnerable children. A defining characteristic of the UK framework is the acknowledgment that child protection cannot be separated from policies to improve children’s lives as a whole.

- A number of States in the US undertook major reforms of their child protection systems during the 1990s. While differing in detail, the reforms are all based on what has been called a differential response to the problems of child protection, with three key elements:
  - narrowing the focus of child protection, with the aim of both improving the capacity to respond effectively to the higher risk cases, and reducing the number of families inappropriately referred to child protection;
  - broadening access to services that protect children and strengthen families, based on partnerships between child protection and a variety of community partners; and
  - providing a more customised or differential response to families’ needs.

- A major review of the family service approach to child protection identified the use of what has been referred to as an ‘intermediate space’ or intermediate structure in many jurisdictions, which allows for highly flexible responses for families. The intermediate space falls between voluntary services and the coercive use of the legal power. The crucial point is that it allows for negotiation, dialogue and deliberation with families before the law becomes involved, and even when the law is involved.

- An important recent development in many child protection systems has been a greater focus on permanency for children in out-of-home care. The aim is to decrease the negative impact of lengthy periods in care, particularly for children with multiple placements who cannot return to their families, by looking sooner at the possibilities of more permanent, stable care arrangements, including adoption, long-term foster care and permanence within the extended family.

- All jurisdictions that aim to implement programs to ensure the safety and well-being of children are dependent on the effectiveness of the services delivered to achieve these objectives. Research into effective services highlights the necessity for the provision of earlier, intensive, comprehensive services that are flexible to the changing needs and circumstances of families, children and the communities in which they live.
Directions for Reform

With any regulatory intervention such as child protection, the objective of government is to solve problems. The analysis in the report leads to the general conclusion that, if government aims to solve (or at least minimise) the problems of child abuse and neglect, to do so effectively requires it to become involved in broader issues that go beyond the problems of immediate safety for children, to do so earlier, and with greater flexibility. This approach is similar to that of the UK, which accepts that there is a need for both government regulation to protect children, and also for obligations on government to provide services and supports to help families in need bring up their children.

In the context of recognising that a broader definition of the problem of protecting children would be needed as the starting point for legislative reform in Victoria, the report discusses a new model for child protection, based on a unifying framework for the protection and welfare of children. There are four key elements:

• a community partnership for the protection and welfare of children;
• a new model for intake, assessment and referral;
• a range of service responses that are appropriate for the wide variety of child protection concerns, problems and circumstances presented by families; and
• a focus on reducing out-of-home care where possible, but also on greater permanency and stability for children in care who are not able to return to their families.

A Community Partnership for the Welfare and Protection of Children

The report puts forward as the foundation for the directions for reform a community partnership for the welfare and protection of children, supported by new infrastructure, processes and governance arrangements. The approach is consistent with the view that child protection cannot be separated from policies to improve children’s lives as a whole.

Community Child and Family Support Centres

The first suggested building block for the new community partnership is the establishment of Community Child and Family Support Centres in local areas, which would bring together key children and family services. The services to be located in the Centres would include family support services, maternal and child health, child care and child protection. That is, services from all parts of the service continuum — universal, secondary and tertiary services — would be provided in the one location.

The Centres would aim to:

• identify earlier families who are vulnerable or in need by encouraging families to approach services for support;
• better integrate child protection services into the fabric of community life;
• broaden responsibility for the protection of children beyond the child protection system by increasing community service providers’ understanding of and responsibility for vulnerable and at-risk children; and

• foster greater service collaboration and coordination, providing a basis for better informed referral decisions, easier linkages of families to referrals, and better communication among workers.

Community Support Networks

The second building block is the establishment of Community Support Networks. This would extend the work of the Innovation Projects set up by DHS as part of the integrated strategy for child protection. The projects aim both to divert a significant proportion of families currently notified to child protection to community-based services and to minimise the progression of families into the child protection system by offering timelier, community-based support to families.

Fundamental to the success of the Innovation Projects is the key understanding upon which they are based: responding effectively to the complex and diverse needs of vulnerable families requires a network of locally coordinated, community-based services, including child protection, family support, health, police and schools, delivering an integrated service response.

Integrated Governance

It is clear that the effectiveness of the two key building blocks discussed — the Community Child and Family Support Centres and the Community Support Networks — would be critically dependent on a strong partnership among a range of relevant government and non-government agencies.

In Victoria, the task of building an effective partnership for protecting children would be complicated by the fact that most community services are contracted out to non-government community service organisations, and other essential services for families and children, such as education, housing and health, are provided by separate government agencies. These organisations and agencies have their own governance and management structures, priorities and accountability arrangements.

The way forward is the merging of service organisations, both government and non-government, into an integrated system that is managed as a system and held accountable for effective service provision in the context of local needs and conditions. What has been called integrated governance is aimed at doing this. Integrated governance arrangements permit, support and facilitate cooperation and collaboration among different agencies.

Integrated governance begins with the articulation of a shared vision and purpose, agreement on the key tasks to achieve them, and identification of the indicators to judge effectiveness. It may also include facilitative structures and processes such as protocols, common assessment frameworks, the pooling of funding and resources, and co-located services.
Legislative support would be required to give effect to collaborative relationships among the relevant government and non-government agencies in Victoria. The aim would be to provide a unifying framework for the protection and welfare of children, which are currently separately addressed in the Children and Young Persons Act 1989 and the Community Services Act 1970.

**A Model for Intake, Assessment and Referral**

Under the new approach to child protection, a process for intake is necessary to identify the children, young people and families who require either a referral to child protection services or a referral to other services and support, particularly to intensive family support. This is the second key element of the directions for reform.

Currently, access to the Victorian child protection system is via a single access and entry point — a notification of suspected child abuse. Following a notification, a screening process separates cases into those that require an investigation and those for which no further response is required. In the cases of ‘no further action’, there is the possibility of a voluntary referral to family support and other community services, but there is no follow up by DHS as to whether the referral took place, was sustained, or was effective in helping the family.

The proposed model is based on a differential response to reports of concerns about the safety and well-being of children. At the most general level, a differential response implies there are at least two pathways for families referred:

- a mandatory investigation for high risk families where it is considered that a child has suffered, or is likely to suffer, significant harm (as is the case now); and
- a voluntary assessment and service oriented response for lower risk families where it is considered that a family is facing severe stresses and problems that are impacting on the child’s welfare, and there are concerns about the parents’ capacity to deal with them.

This approach aims both to support better targeting and investigation of more serious allegations, while concurrently providing access to a range of support services for families who have high needs and face ongoing problems. Consistent with a broader partnership for the protection and welfare of children, it is proposed that responsibility for intake and initial assessment would belong to an integrated child protection and family support service — the Child and Adolescent Assessment Team, located at the Community Child and Family Support Centre. The team would be comprised of people with expertise and experience with vulnerable families and children, including, but not restricted to, child protection officers.

**Service Responses**

Under the new approach, it would be anticipated that the majority of notifications would be directed into the family assessment track, with the minority of notifications that require an investigative approach directed into immediate child protection assessment. But for this to be an appropriate outcome, it is critical that there is a broader range of service responses available for families.
This is the third key element of the new model: a significant increase in the range of responses to the many differing circumstances presented by families. Both the child protection assessment and the family assessment stages have the option of referral to other relevant services and support. It is this option that in particular opens up a broader range of service responses through referral of families to four possible sources of support:

- services at the Community Child and Family Support Centre;
- the Community Support Network;
- intermediate level responses, outlined further below; or
- other services not part of the Centre or Network, such as Centrelink.

**Intermediate Level Responses**

In general, the role of intermediate level responses in child protection is to seek agreement with the family and other relevant parties on a plan, including necessary support measures, to keep the child safe and hence avoid a formal statutory child protection intervention and court proceedings. They allow for dialogue and deliberation with families outside of formal legal processes. Cases would be referred to an intermediate level response directly following a child protection assessment or a family assessment, or from the Community Support Network.

An important aspect of the proposed approach is that participation in these intermediate level processes would be voluntary for families. Any decisions would require the agreement and cooperation of the family. However, equally as important, child protection officers would retain existing statutory powers to issue a Protection Application if they considered the child was not being adequately protected. To give an idea of how intermediate level responses might work in practice, the report discusses two specific options: Family Group Conferences and Community Child and Family Support Panels.

**Approach to Out-of-Home Care**

The final key element of the new model for child protection is a different approach to out-of-home care. The report argues that time spent in out-of-home care should be reduced as much as possible, and puts forward two general ways in which this can be done:

- first, there is an emphasis on avoiding out-of-home care and reducing time spent in care through preventative and diversionary strategies. A clear intention of the community partnership for protecting children is to reduce the need for out-of-home care. Other relevant proposals have been put forward in the earlier review of home-based care in Victoria; and

- second, for those children who spend long periods of time in care with no or little chance of reunification with their parents, reduction of time in care will come from a move to more stable and permanent care arrangements, such as permanent care or adoption. For these children, rather than facing a life of multiple placements and failed reunifications, more should be done, and done earlier, to provide them with the opportunity to live in and be part of a family.
A Summary View

The strategies of the new model for the protection of children emphasise:

- building a community partnership for the welfare and protection of all children;

- broadening responsibility for protecting children beyond the child protection system by increasing the community’s understanding of and responsibility for vulnerable and at-risk children;

- working respectfully with parents and children within their communities, acknowledging their needs, and building trust through dialogue and negotiation as the basis for more effective responses to the problems;

- helping families earlier who are vulnerable or in need by encouraging them to approach services for support and by the provision of more responsive and flexible services; and

- focusing on measures that are preventative and diversionary and provide permanence for children, with a clear intention to reduce time spent in out-of-home care.

These strategies are supported through infrastructure and processes, including:

- the establishment of Community Child and Family Support Centres in local areas to bring together key family and children services;

- a network of locally coordinated, community-based services, including child protection, family support, health, police and schools, to deliver an integrated service response;

- integrated governance arrangements that permit, support and facilitate cooperation and collaboration among different agencies working together for the welfare of children and families; and

- the development of intermediate level responses that allow for dialogue and deliberation with families outside of formal legal processes.

Finally, underpinning the elements of the proposed model for protecting children is the guiding principle that reform should be based upon advances in our knowledge about child development and welfare, and the experiences that hinder or enhance it.
Chapter One

Context

1.1 Background to the Report

Owing to concerns about both the increasing demand for services and the effectiveness of those services, the Victorian Government has introduced a range of reforms to child protection and placement services. These reforms were partly in response to two major reviews: An Integrated Strategy for Child Protection and Placement Services, and Public Parenting: A Review of Home-Based Care in Victoria. In the main these reviews focused on how to improve program responses in child protection, within the existing legislative and broad policy and practice frameworks. Although this is clearly an important objective, the Child Protection Outcomes project of the Department of Human Services (DHS) provides the opportunity to take a more fundamental look at the appropriateness of the legislative, policy and program frameworks that determine the directions and boundaries of current policy and program responses.

This report is part of the Child Protection Outcomes project. It is focused on the review of local, national and international literature, service reforms and data. The report includes an analysis of Victoria’s child protection system, and proposed broad directions for reform.

The impetus for this project came from two critical factors:

- the increasing demand for child protection services, which is placing pressure on the system and on government funding; and
- concerns that the changing characteristics and circumstances of vulnerable families and children may require changes to the child protection system in Victoria.

Victoria is not alone in facing these challenges. Jurisdictions across Australia and in similar countries around the world are grappling with the issues of increasing reports of child abuse and neglect and increasing numbers of parents with serious difficulties in caring adequately for their children.

1.2 Outline of the Report

The report has six chapters:

- The remainder of this first chapter looks at the context for the project, focusing first on some key information about Victoria’s child protection system, and second on the characteristics of the children and families involved with child protection.

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Chapter Two compares the outcomes and consequences of the two main government approaches to the problem of child abuse and neglect — the child protection orientation (similar to that in Victoria) and the family service orientation.

Chapter Three takes a very different approach to the question of the outcomes that are associated with Victoria’s child protection system by looking at the effects on children and families of the regulatory arrangements. The Chapter assesses the appropriateness and effectiveness of Victoria’s regulation of child protection.

Chapter Four looks at some ideas for improving the regulatory basis for child protection in Victoria, in particular building on developments in regulatory practice in other areas to open up a broader range of regulatory responses.

Chapter Five discusses developments in child protection systems that go some way to addressing the issues raised by the review of regulatory arrangements. It looks at developments in the UK and US, summarises the conclusions from research on effective family and children services, and presents the case for the provision of intermediate structures between voluntary services and the use of legal coercion.

Chapter Six puts forward some ideas for reform of Victoria’s child protection system to improve the outcomes for children and families, based on the findings of this report.

1.3 Victoria’s Child Protection System

The first point to make about Victoria’s child protection system is that it under pressure, and has been for many years, from increases in demand for services. The increased demand for child protection and placement services over the past decade is well documented in a recent review of Victoria’s child protection system. In summary, recent key trends in Victoria’s child protection system include:

- Notifications of suspected child abuse have increased steadily over the past decade. One important reason for the increase was the introduction of mandatory reporting and the consequential increase in awareness about child abuse and neglect in the community. Notifications increased by 75 per cent in the year following the introduction of mandatory reporting, from about 15,000 in 1992-93 to over 26,000 in 1993-94.

- Although the rate of increase in notifications has slowed over the past few years, there was still an increase of 20 per cent between 1996-97 and 2002-03 — from 31,707 notifications in 1996-97 to 37,967 notifications in 2001-02.

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An important trend over the past few years has been the increase in the number of renotifications of child abuse and neglect. In 2001-02, 62 per cent of all notifications had been the subject of a previous notification, in comparison with 36 per cent in 1993-94. In some cases, a renotification will be the result of changes in the circumstances of the child or family, but in other cases a renotification will indicate a lack of appropriate service response to the previous notification. For instance, about a quarter of all children notified had been notified four or more times before.

The number of substantiations of child abuse and neglect has also increased, from 7,034 in 1996-97 to 7,687 in 2001-02. This represents an increase in the rate of children who were the subject of a substantiation, from 6.2 per 1,000 children aged 0-16 years in 1996-97 to 6.5 per 1,000 children in 2001-02.

There is a very high (and increasing) level of resubstantiation, with 40 per cent of the cases substantiated in 2001-02 having been substantiated previously.

The number of children on care and protection orders has increased substantially, from 3,865 at 30 June 1997 to 4,975 at 30 June 2002. This represents a significant increase in the rate of children on care and protection orders, from 3.4 per 1,000 children aged 0-17 years at 30 June 1997 to 4.3 per 1,000 children at 30 June 2002.

In terms of out-of-home care, the number of children in out-of-home care has increased from 8,445 in 1997-98 to 8,628 in 2001-02. There has also been an increase in the rate of children in out-of-home care, from 3.0 per 1,000 children aged 0-17 years at 30 June 1997 to 3.4 per 1,000 children at 30 June 2002.

To gain a perspective on the extent of involvement in the child protection system, analysis was undertaken of the projected likelihood of members of the cohort born in 2003 who grow up in Victoria being notified for suspected child abuse or neglect. The analysis found that, on the basis of current experience, 19.3 per cent of the 2003 cohort — or nearly one in five children — will be notified at some time during their childhood or adolescence. Further, based on current experience, it is projected that 9 per cent of the 2003 cohort would be the subject of an investigation for alleged abuse or neglect and 4.5 per cent would be the subject of a substantiated case of child abuse or neglect during their childhood or adolescence.

### 1.4 Demographic Characteristics of Children and Families

To gain a better understanding of changes impacting on the child protection system in Victoria, an analysis was undertaken of the characteristics of cases which were first investigated for suspected abuse in 1996-97 compared with those first investigated in 2001-02. In 2001-02, 6,591 cases were investigated for the first time, compared with 8,018 cases in 1996-97.

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6 Department of Human Services, unpublished data.
As Table 1.1 below shows, the ages of the children in first investigated cases changed between the two years. Most importantly, there was a statistically significant greater proportion of children aged 0-4 among the cases first investigated in 2001-02 compared with 1996-97, and fewer children aged 10-14. Nearly half of all first investigated cases (49 per cent) now involve children under 5 years old.

Table 1.1
CHILDREN FIRST INVESTIGATED IN 1996-97 AND 2001-02
BY AGE-GROUP: %

<table>
<thead>
<tr>
<th>Age</th>
<th>1996-97</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4</td>
<td>42.8</td>
<td>48.7</td>
</tr>
<tr>
<td>5-9</td>
<td>24.9</td>
<td>23.7</td>
</tr>
<tr>
<td>10-14</td>
<td>24.9</td>
<td>21.4</td>
</tr>
<tr>
<td>15+</td>
<td>7.3</td>
<td>6.2</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Total number</td>
<td>8018</td>
<td>6590</td>
</tr>
</tbody>
</table>

Source: Unpublished DHS data.

There was no difference between the two years in the gender of children first investigated. In both years about 50 per cent of the children involved in cases investigated were male and about 50 per cent were female.

There was also no difference between the two years in terms of broad location, with about 58 per cent of clients from metropolitan regions in both years and about 38 per cent from rural regions (the remainder were after hours clients). However, it is possible that differences would be found at the regional level.

In terms of family type, Table 1.2 below sets out the different family arrangements for cases first investigated in 1996-97 and 2001-02. The data show that in 2001-02 most families first investigated were from sole parent families (41 per cent, of which 88 per cent were headed by a female). The only main statistically significant difference between the two years is in the increase in blended families, from 8 per cent in 1996-97 to 13 per cent in 2001-02.

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7 In this chapter, unless otherwise stated, the statistical significance of the results was tested by chi-square analysis undertaken by DHS.
Table 1.2

FAMILY TYPE OF FAMILIES FIRST INVESTIGATED IN 1996-97 AND 2001-02: %

<table>
<thead>
<tr>
<th>Family type</th>
<th>1996-97</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both natural parents</td>
<td>37.1</td>
<td>36.5</td>
</tr>
<tr>
<td>Sole parent</td>
<td>40.8</td>
<td>41.0</td>
</tr>
<tr>
<td>Blended family</td>
<td>8.3</td>
<td>12.9</td>
</tr>
<tr>
<td>Stepparent</td>
<td>4.9</td>
<td>5.5</td>
</tr>
<tr>
<td>Adoptive</td>
<td>0.3</td>
<td>0.3</td>
</tr>
<tr>
<td>Other</td>
<td>5.2</td>
<td>3.8</td>
</tr>
<tr>
<td>Unknown</td>
<td>3.3</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Total number</strong></td>
<td>8018</td>
<td>6591</td>
</tr>
</tbody>
</table>

Source: Unpublished DHS data.

In both years most families were on low incomes, with 65 per cent and 70 per cent of families in receipt of a pension or benefit or reliant on a low income in 1996-97 and 2001-02 respectively (Table 1.3 below). There was a major shift between the two years, with a greater proportion of first investigated families in receipt of a sole parent pension in 2001-02 (36 per cent) compared with 1996-97 (26 per cent) (a statistically significant difference).

Table 1.3

INCOME CATEGORY OF FAMILIES FIRST INVESTIGATED IN 1996-97 AND 2001-02: %

<table>
<thead>
<tr>
<th>Category</th>
<th>1996-97</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole parent pension</td>
<td>26.3</td>
<td>35.7</td>
</tr>
<tr>
<td>Unemployment benefit</td>
<td>7.9</td>
<td>9.2</td>
</tr>
<tr>
<td>Other pension/benefit</td>
<td>15.3</td>
<td>10.6</td>
</tr>
<tr>
<td>Low wage/salary</td>
<td>16.1</td>
<td>14.1</td>
</tr>
<tr>
<td>Medium wage/salary</td>
<td>24.0</td>
<td>25.9</td>
</tr>
<tr>
<td>High wage/salary</td>
<td>2.0</td>
<td>1.8</td>
</tr>
<tr>
<td>Other</td>
<td>5.2</td>
<td>2.7</td>
</tr>
<tr>
<td>Unknown</td>
<td>3.3</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Total number</strong></td>
<td>8018</td>
<td>6591</td>
</tr>
</tbody>
</table>

Source: Unpublished DHS data.
1.5 Indigenous Children and Families

The data for first investigations shows that there were significantly more Aboriginal and Torres Strait Islander clients first investigated in 2001-02 (6.4 per cent) compared with 1996-97 (4.0 per cent) (a statistically significant difference). This section provides an overview of the involvement of Indigenous children and young people in Victoria’s child protection system compared to non-indigenous children.

There are stark differences in the experience of Victoria’s Indigenous and non-indigenous children in contact with the child protection system (see Table 1.4). Indigenous children are highly over-represented in the child protection system. The data for 2001-02 show that, compared to non-indigenous children, Indigenous children were:

- almost five times more likely to be the subject of a notification;
- more than seven times more likely to be subject to an investigation;
- almost eight times more likely to be substantiated as experiencing abuse or neglect;
- more than ten times more likely to be subject to court orders; and
- 14 times more likely to have spent some time in out-of-home care during the year.

Table 1.4

<table>
<thead>
<tr>
<th>Child Protection Outcomes</th>
<th>Indigenous</th>
<th>Non–Indigenous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification</td>
<td>120.5</td>
<td>24.9</td>
</tr>
<tr>
<td>Investigation</td>
<td>71.4</td>
<td>9.7</td>
</tr>
<tr>
<td>Substantiation</td>
<td>48.1</td>
<td>6.1</td>
</tr>
<tr>
<td>On care and protection orders</td>
<td>40.6</td>
<td>3.9</td>
</tr>
<tr>
<td>Spent time in at least one out-of-home care placement during the year</td>
<td>80.0</td>
<td>5.7</td>
</tr>
</tbody>
</table>


Furthermore, the involvement of Indigenous children and families in the child protection system has increased much more over the past few years compared to non-indigenous children and young people. For example, between 1996-97 and 2001-02:

- the number of notifications for Indigenous children and young people increased by 84 per cent compared to an increase of 17 per cent for non-indigenous children;
- while the number of investigations of non-indigenous children decreased over this period by 11 per cent, the numbers increased for Indigenous children by 45 per cent; and
• the number of substantiations increased by 6 per cent for non-indigenous children but by 66 per cent for Indigenous children.

The involvement of Indigenous children and families in Victoria’s child protection system indicates that there are serious and entrenched child protection concerns in communities. These issues have been raised recently by Professor Mick Dodson in his National Press Club Address and also in major reviews in other jurisdictions. We suggest that the issues around the involvement of Indigenous children and families in child protection are so important and challenging that it is not possible to address them adequately in this report. They require further examination, in consultation with Indigenous communities and organisations.

1.6 Increasing Complexity of Cases

In addition to the changing demographics of the client population, the analysis of cases first investigated for suspected child abuse in 2001-02 compared with 1996-97 found many indicators of the increasing complexity and difficulty of cases involved with child protection.

First, as Table 1.5 below shows, children first investigated in 2001-02 were significantly more likely to have been previously notified than those in 1996-97: 35 per cent of children first investigated in 2001-02 had been notified on at least one previous occasion compared with only 23 per cent in 1996-97 (a statistically significant difference).

<table>
<thead>
<tr>
<th>Number</th>
<th>1996-97</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>77.1</td>
<td>65.2</td>
</tr>
<tr>
<td>1</td>
<td>16.1</td>
<td>20.3</td>
</tr>
<tr>
<td>2+</td>
<td>6.8</td>
<td>14.5</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100.0</td>
</tr>
<tr>
<td>Total number</td>
<td>8018</td>
<td>6591</td>
</tr>
</tbody>
</table>

Second, a statistically significant much higher proportion of cases first investigated in 2001-02 was substantiated (58.2 per cent) compared with 1996-97 (46.9 per cent).

---

Allegations of abuse are substantiated across four categories: emotional abuse, neglect, physical abuse and sexual abuse. Looking just at the cases that were substantiated of those first investigated, the most notable difference between the two years is in the emotional abuse category. A comparison of the two years shows a statistically significant increase in the proportion of cases first investigated that were substantiated for emotional abuse – 44 per cent in 2001-02 compared with about 35 per cent in 1996-97 (see Table 1.6 below).

<table>
<thead>
<tr>
<th>Category</th>
<th>1996-97</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotional</td>
<td>34.5</td>
<td>43.9</td>
</tr>
<tr>
<td>Neglect</td>
<td>22.1</td>
<td>19.7</td>
</tr>
<tr>
<td>Physical</td>
<td>35.1</td>
<td>28.1</td>
</tr>
<tr>
<td>Sexual</td>
<td>8.3</td>
<td>8.3</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Total number</strong></td>
<td><strong>3763</strong></td>
<td><strong>3839</strong></td>
</tr>
</tbody>
</table>

Source: Unpublished DHS data.
There were also statistically significant differences in risk levels between the two years. Risk level is categorised according to four levels:

- no further risk;
- moderate risk;
- significant harm; or
- very severe harm.

For those cases substantiated, there was a significant decrease in the proportion designated as ‘no further risk’ between the years: in 1996-97, 31 per cent of cases were defined as ‘no further risk’ compared to only 23 per cent in 2001-02, again indicating an increase in the difficulties facing families investigated by DHS (see Table 1.7 below).

Table 1.7
CHILDREN FIRST INVESTIGATED AND SUBSTANTIATED IN 1996-97 AND 2001-02 BY RISK LEVEL: %

<table>
<thead>
<tr>
<th>Risk</th>
<th>1996-97</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>No further risk</td>
<td>30.8</td>
<td>23.4</td>
</tr>
<tr>
<td>Moderate</td>
<td>44.2</td>
<td>50.4</td>
</tr>
<tr>
<td>Significant harm</td>
<td>23.1</td>
<td>24.7</td>
</tr>
<tr>
<td>Very severe</td>
<td>1.9</td>
<td>1.5</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Total number</td>
<td>3765</td>
<td>3839</td>
</tr>
</tbody>
</table>

Source: Unpublished DHS data.

DHS also collects data against more detailed categories of abuse types, such as type of physical abuse. The analysis found that there are important associations between these more detailed abuse types and age group (which are statistically significant). For instance:

- 0-4 year olds have higher levels of environmental neglect, exposure to domestic violence, exposure to psychiatric illness and likelihood of significant physical harm than other age-groups;
- children aged 5-9 are more likely to suffer significant harm due to sexual abuse;
- young people aged 10-14 and 15+ are more likely to have involvement in high risk/self harm activity, homelessness and suicide risk; and
- 26 per cent of young people aged 15+ who are substantiated are substantiated for involvement in high risk/self harm, homelessness or at suicide risk.
DHS tracks a number of ‘concerning characteristics’ of parents involved in child protection matters, including mental illness, intellectual and physical disability, alcohol abuse, substance abuse and domestic violence. The percentage of parents with these characteristics has increased significantly between 2001-02 and 1996-97 (the differences are statistically significant). The data illustrate the complex and challenging situations facing these families (see Table 1.8 below). In summary, in 2001-02:

- in 40 per cent of cases parents had experienced domestic violence;
- in 25 per cent of cases parents had problems with substance abuse;
- in 21 per cent of cases there were problems with alcohol abuse; and
- in 15 per cent of cases parents had a mental illness.

Compared with 1996-96, the greatest increase was in substance abuse which doubled from 12.5 per cent of parents to 25.2 per cent in 2001-02, although as noted above all categories increased significantly between the years.

Table 1.8
PER CENT OF PARENTS WITH CONCERNING CHARACTERISTICS: CASES FIRST INVESTIGATED IN 1996-97 AND 2001-02

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>1996-97</th>
<th>2001-02</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychiatric illness</td>
<td>7.5</td>
<td>14.7</td>
</tr>
<tr>
<td>Intellectual disability</td>
<td>1.4</td>
<td>2.2</td>
</tr>
<tr>
<td>Physical disability</td>
<td>2.1</td>
<td>2.9</td>
</tr>
<tr>
<td>Alcohol abuse</td>
<td>12.5</td>
<td>21.3</td>
</tr>
<tr>
<td>Substance abuse</td>
<td>12.5</td>
<td>25.2</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>24.1</td>
<td>40.3</td>
</tr>
<tr>
<td><strong>Total number</strong></td>
<td>8018</td>
<td>6591</td>
</tr>
</tbody>
</table>

Note: The data do not add to 100% as not all parents are identified with concerning characteristics and some parents have more than one characteristic.
Source: Unpublished DHS data.

Table 1.9 below looks at the associations of these parental characteristics with higher levels of involvement in the child protection system — substantiation of child abuse or neglect, and placement of a child in out-of-home care. The data show that the prevalence of these characteristics increases in parents who become more involved in the child protection system. This is particularly the case for psychiatric illness, alcohol abuse, substance abuse and domestic violence. For example,

- in 25 per cent of cases first investigated there were parents with substance abuse problems. This increased to 33 per cent of cases substantiated and 43 per cent of cases where children were first placed in out-of-home care; and
- in 15 per cent of cases first investigated parents had a psychiatric illness. This increased to 19 per cent of cases substantiated and 31 per cent of cases where children were first placed in out-of-home care.

Table 1.9
PER CENT OF PARENTS WITH CONCERNING CHARACTERISTICS: CASES FIRST INVESTIGATED, CASES SUBSTANTIATED AND CASES IN WHICH CHILDREN WERE PLACED IN OUT-OF-HOME CARE

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Investigated(1)</th>
<th>Substantiated(2)</th>
<th>Child placed in care(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychiatric illness</td>
<td>15</td>
<td>19</td>
<td>31</td>
</tr>
<tr>
<td>Intellectual disability</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Physical disability</td>
<td>3</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Alcohol abuse</td>
<td>21</td>
<td>31</td>
<td>37</td>
</tr>
<tr>
<td>Substance abuse</td>
<td>25</td>
<td>33</td>
<td>43</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>40</td>
<td>52</td>
<td>56</td>
</tr>
</tbody>
</table>

Notes: (1) Data for 2001-02 of cases first investigated. (2) Data for 2000-01. (3) Data for clients whose children were first placed in home-based care in 2001-02. Source: Unpublished DHS data.

The significance of these parental characteristics is highlighted in analysis of the likelihood of substantiation and resubstantiation of the cohort first investigated in 1996-97, according to parental characteristics. In terms of resubstantiation, it is the likelihood over the six-year period 1996-97 to 2001-02.

As Table 1.10 below shows, all of the tracked parental characteristics are strongly associated with the likelihood of a child being both substantiated for abuse or neglect and resubstantiated. For example, for cases first investigated in 1996-97, those where a parent had a substance abuse problem were 2.34 times more likely to be substantiated and 5.32 times more likely to be resubstantiated, compared to cases where the parent did not have a substance abuse problem. In particular, there were very high associations of substantiations and resubstantiations with alcohol abuse, substance abuse, domestic violence and psychiatric illness. Cases involving parents with these characteristics were at least twice as likely to be substantiated compared with cases involving parents without these characteristics, and at least four times more likely to be resubstantiated than other cases.

Table 1.10
LIKELIHOOD OF SUBSTANTIATION AND RESUBSTANTIATION BY CONCERNING PARENTAL CHARACTERISTICS FOR COHORT FIRST INVESTIGATED IN 1996-97

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Substantiation</th>
<th>Resubstantiation*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic violence</td>
<td>2.97</td>
<td>4.79</td>
</tr>
<tr>
<td>Psychiatric illness</td>
<td>2.66</td>
<td>4.24</td>
</tr>
<tr>
<td>Alcohol abuse</td>
<td>2.52</td>
<td>5.46</td>
</tr>
<tr>
<td>Substance abuse</td>
<td>2.34</td>
<td>5.32</td>
</tr>
<tr>
<td>Intellectual disability</td>
<td>1.67</td>
<td>3.31</td>
</tr>
<tr>
<td>Physical disability</td>
<td>1.38</td>
<td>2.17</td>
</tr>
</tbody>
</table>

Note: * This is the likelihood of resubstantiation over the six year period 1996-97 to 2001-02. Source: Unpublished DHS data.
1.7 **Summary of Trends**

This discussion of the context for the Child Protection Outcomes project has highlighted the following points:

- there is sustained pressure on the child protection system, with a steady increase in the numbers of notifications, substantiations, children on care and protection orders and children placed in care over the past decade;

- based on current experience, it is projected that 19.3 per cent of the cohort born in 2003 who grow up in Victoria will be notified at some time during their childhood or adolescence, 9 per cent will be the subject of an investigation for alleged abuse or neglect, and 4.5 per cent will be the subject of a substantiated case of child abuse or neglect during their childhood or adolescence;

- there are significant increases in the proportion of very young people and Indigenous children in the system;

- it is clear that the families involved face many challenges and difficulties, with a high proportion of sole parent families and families with very low incomes, and increasing numbers of parents with psychiatric illness, serious problems of alcohol or substance abuse, and experience of domestic violence; and

- finally, there are a number of indicators that suggest that the Victorian child protection system is not dealing effectively and appropriately with the problems of child abuse, in particular the high levels of renotifications (62 per cent) and resubstantiations (40 per cent).

The remainder of the report considers whether there are better way to address the problems of child abuse that can improve the outcomes for children and families.
Chapter Two
Government Approaches to Child Abuse: Consequences and Outcomes

The purpose of this Chapter is to compare the characteristics, outcomes and consequences of the two main government approaches to the problem of child abuse and neglect — the child protection orientation (as in Victoria) and the family service orientation.

2.1 Different Approaches to the Problems of Child Abuse

All governments would agree that children should not be abused or neglected and would wish for their safety, well-being and positive development into adulthood. However, governments differ significantly in the policies and programs they implement to ensure this.

Within western OECD counties, two broad approaches by government to the problems of child abuse and neglect have been identified:

- the child protection orientation (for example, Australia, UK, USA and Canada); and
- the family service orientation (for example, Sweden, Germany, Belgium and the Netherlands).

The different approaches are based on different views about what can and should be done by government to protect children from abuse and neglect and ensure their well-being. They have developed in different socio-economic and cultural contexts and are founded on different orientations to children and families:

- the child protection orientation emphasises the individual rights of parents and children. Government recognises the rights and responsibilities of parents to care for their children and their right to privacy. But if there is evidence of suspected abuse or neglect the government recognises the rights of children to protection. In the context of suspected abuse, the primary focus of interventions is the child’s welfare, which may require the early involvement of government in protection interventions. The potential for coercive intervention is therefore indicated at an early stage in any work with families;

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9 N. Gilbert (ed), 
• the starting point for intervention in the family service orientation is a recognition that children are best cared for within the family. The emphasis is placed on family unity and working with families as a whole to support and strengthen the parent-child relationship and family well-being. Under this orientation, there is much broader government and community support for all families in their care of children. The normalisation of community intervention is associated with a greater degree of voluntary accessing of services by families. Within this approach, the invocation of statutory powers is an intervention of last resort.

The two approaches have very different service responses and consequences for children and families. The different orientations impact on how families access services, the type of services offered, the role of the legal system and attitudes to out-of-home care. The key characteristics of the two approaches are set out in Table 2.1 and discussed further below.10

Table 2.1
CHARACTERISTICS OF TWO BROAD GOVERNMENT APPROACHES TO PROBLEMS OF CHILD ABUSE AND NEGLECT

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Child Protection Orientation</th>
<th>Family Service Orientation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Framing the problem of child abuse</td>
<td>The need to protect children from harm.</td>
<td>Abuse is a result of family conflict or dysfunction stemming from social, economic and psychological difficulties.</td>
</tr>
<tr>
<td>Entry to services</td>
<td>Single entry point; report or notification by third party.</td>
<td>Range of entry points and services.</td>
</tr>
<tr>
<td>Basis of government intervention and services provided</td>
<td>Legalistic, investigatory in order to formulate child safety plans.</td>
<td>Supportive or therapeutic responses to meeting the needs of children and families or resolving problems.</td>
</tr>
<tr>
<td>Place of services</td>
<td>Separated from family support services.</td>
<td>Embedded within and normalised by broad child welfare or public health services.</td>
</tr>
<tr>
<td>Coverage</td>
<td>Resources are concentrated on families where risks of (re-) abuse are high and immediate.</td>
<td>Resources are available to more families at an earlier stage.</td>
</tr>
<tr>
<td>Service approach</td>
<td>Standardised procedures; rigid timelines.</td>
<td>Flexible to meet clients’ needs.</td>
</tr>
<tr>
<td>Role of the legal system</td>
<td>Adversarial; formal; evidence-based.</td>
<td>Last resort; informal; inquisitorial.</td>
</tr>
</tbody>
</table>

While these two approaches define the usual spectrum of government intervention, many jurisdictions do not fit neatly into these two approaches. In some jurisdictions a family services orientation is part of a broader child protection orientation. For example, the central tendency toward a child protection orientation in the UK has been modified in recent years as initiatives have moved practice more towards a family service orientation. This shift is discussed in more detail in Chapter Five. Although the discussion that follows presents the two approaches as alternatives for the purpose of providing a clear picture of the differences, it needs to be kept in mind that the approach of some jurisdictions to child protection is more of a combination of the two.

**Framing the Problem**

An important determinant of government response to the problem of child abuse is how the problem is framed. A point made in the literature is that there is no accepted definition of child abuse. Child abuse is defined within the context of the normative and deviant child rearing behaviour of the society and of the time: ‘Child abuse is both an historical and cultural construct.’ This is illustrated by the difference in how the problem of child abuse is framed in the child protection and family service orientations:

- in child protection systems, the act of abuse is perceived foremost as a problem that demands the protection of children from harm by parents and other carers;
- in family service systems child abuse is seen as a problem of family conflict or dysfunction stemming from social, economic and psychological difficulties that are responsive to services and public aid. Families in this approach are seen as enmeshed in a web of problems that include the parents’ psychological and marital problems, the child’s problems, communication problems inside the family, and socio-economic stress.

This latter perspective on the problems of child abuse can be challenging for jurisdictions that have a child protection orientation. For example, in Finland social and health care providers perceive problems in the family, such as child abuse, as family problems amenable to general and supportive welfare services. Child abuse as such is seldom reported or diagnosed as a specific problem for treatment (with the exception of sexual abuse). The family orientation is so strong in Finland that it has been said that ‘it is difficult to identify child abuse as a separate problem requiring special treatment’.

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Entry to Services

Jurisdictions with a child protection orientation to the problems of child abuse usually have a single point of entry linked to a formal process of reporting or notification for suspected child abuse. Reporting is the intake phase of the service system. To enter the formal child protection system, families must be proven to be abusive or neglectful or likely to be so in the future. Hence, rather than voluntarily seeking out help, the majority of parents and children who become involved with child protection systems do so because of an agency-initiated investigation of their lives.

In comparison, access to child welfare services in jurisdictions with a family service orientation is not primarily via a child abuse report. Child abuse or neglect is not a necessary or even a typical precondition for beginning child welfare services. Families seeking help do not have to be defined as in need or have a child at risk. Generally, family service systems have several access points, including social welfare agencies serving the general population or a broad range of families in difficulty. Most families become involved either by a parent or child requesting assistance or on the basis of an offer of service from the agency following up on a report of suspected maltreatment. Almost all these involvements, including placement of children in out-of-home care, are on the basis of a mutually negotiated agreement. There are no specific criteria indicating maltreatment is necessary in order to receive assistance.

Basis for Intervention

The two different child welfare systems tend to operate primarily as a response to family need (the family service orientation) or as a mechanism of control (the child protection orientation). Thus preliminary intervention under the child protection system is usually an investigatory process backed by the legal powers of the state, in contrast to the therapeutic, needs assessment and support services offered under the family service oriented system.

Service Response

In child protection systems, services for families are oriented towards investigating the validity and seriousness of child abuse notifications and providing services to families (often through referrals to other providers) who have been reported. They are not directed toward voluntary clients who may come forward requesting services. Intervention, hence, is limited to the most serious cases when situations have often become chronic.

In general, child protection arrangements are more closely aligned with judicial processes and segregated from broad child welfare, family support or health promotion systems. After an investigation, the service responses tend to focus on:

- work with the family to identify actions that need to be taken or services and support that are required to ensure the safety of the child; and
- court processes which lead to orders. A range of court orders is possible, including the prescription of requirements that the parents must meet to ensure their children are not at risk of harm, and out-of-home care placement of children.
The family service orientation has a more flexible approach, typically emphasising the provision of services to maintain the family and the parent-child bond as an initial response. Usually, cases of child abuse are cared for and monitored through the general welfare service provisions of the state. For example, in Germany child protection agencies are embedded in the wider context of the whole welfare state service system. Child protection in Germany relies mainly on a full-fledged system of services ranging from low-cost day care to free counselling, from infant's health care and social assistance, to family services and family aids. Furthermore, unlike the child protection system, the family service orientation is much more open to responding to a broad range of families’ needs. Belgium is an example of this more open approach:

Families are encouraged to come when something goes wrong with their child, when the situation grows worse, when they are worried about the child's development, when they quarrel about the child, when the child upsets them, and when they think they need advice or support.14

In these systems the option to use formal and legal authority is still available. However, coercive and legally mandated interventions are regarded as last resorts and are generally avoided if possible.

Another defining trend in child protection jurisdictions is the decreasing amount of discretion given to child protection workers in working with families.15 Reliance on standardised information recording and processing procedures has increased substantially in recent years, partly due to the increasing requirements of the legal systems and to the demand for greater accountability. This has developed often as a result of reactions to ‘scandals’ about the failings of the system which have tended to lead to a demand for more processes and standards, with the intention of increasing the accuracy and objectivity of decision-making. A by-product of the standardised procedures and the legal recording requirements is that workers invest more time in ensuring compliance with these expectations, leaving less time to spend with families.

Family service systems do not use formal standard risk assessment procedures with families. They rely more on discretion rather than detailed rules and regulations to guide assessments and interventions.16

**State-Parent Relationships**

Representatives of public authority function more in partnership with parents, and even children, in service oriented systems compared to the adversarial relationship characteristic of child protection systems.

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In child protection systems, child protection is regarded by many parents more as an enemy than a friend, as something to be feared and avoided and certainly not as a place to come voluntarily for help. Thus relationships with child welfare agencies are more often initiated by complaints filed by others than by self-referrals on the part of parents.

Alternatively, in family service systems, child welfare structures are organised around assessment, parental involvement in decisions, voluntary participation, and relationship building with the family. As opposed to legal processing, the key strategy for minimising the risks of child maltreatment is the negotiation of appropriate supports to strengthen families. When social workers are not able to negotiate voluntary assistance to families and children, more coercive methods, such as securing a court order, may be applied.

**The Legal System**

According to a recent review of the different approaches to child abuse, many of the differences between the child protection and family service orientations can be traced back in part to the nature of the legal system in each country.

In child protection jurisdictions, the legal system is adversarial. The adversarial approach adjudicates cases and decides whether or not there is sufficient evidence of child maltreatment to justify statutory intervention in family life. This approach is marked by the use of highly structured and standardised risk assessment measures and by the need to gather evidence in a manner acceptable to the Court. Because child protection systems are based on the legal requirement to demonstrate parental incapacity or misconduct before the state can intervene, much time is spent by workers gathering evidence suitable for use in formal legal proceedings.

In contrast, in family service jurisdictions the legal system is inquisitorial, which offers more flexibility in child welfare matters. The grounds for intervention imply a welfare rather than a rights basis. The court system is also relatively informal.

**Out-of-Home Care**

Finally, there is a generally higher rate of voluntary arrangements with parents in making out-of-home placements under the family service oriented systems. In Denmark, Belgium, and Sweden, for example, 75 per cent to 90 per cent of out-of-home care placements are voluntary, reflecting the view that public support and protection of children and adolescents should take place in cooperation with parents. In contrast, the vast majority of out-of-home placements are compelled in child protection systems. For example, in Victoria about 85 per cent of placements in out-of-home care are on a statutory order.

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20 Department of Human Services, unpublished data.
**Implications for Practice**

A very interesting study has been undertaken which allows some appreciation of the practical implications of the two different approaches to child abuse. The aims of the study were:

- to learn about different countries’ approaches to the problems of child abuse and how they worked in practice from the perspective of social workers directly involved in operations; and
- to elicit the views of social workers from different countries about the practice and views of other countries.

The countries involved in the study were England, Belgium, France, Germany, Italy and The Netherlands. The study was conducted in the mid-1990s. England was the only country with a child protection orientation to the problems of child abuse; all the other countries were working from a family service orientation.

The study was based on the view that a description of a social welfare system is almost impossible to understand unless it is attached to case material. In each country a group of social workers was given a standard case outline and asked to answer questions on the case. The case was divided into four stages describing escalating difficulties in a blended family, including suggestions of domestic violence and sexual abuse. In the case study, the parents were not cooperative with the social workers. The questions were designed to discover:

- what the social workers would do at each stage;
- why they would do it;
- what the legal constraints and possibilities were; and
- the theoretical and conceptual basis of their thinking.

The social workers were also asked to react to the responses of the social workers from different countries to the same case material and to reflect on their own system and practice in light of what they heard about others and the alternative ways of working.

To bring out the implications of the two different orientations in practice, the discussion below just focuses on the views of the English social workers towards their own child protection system compared with the other European countries. In summary, the main points from the perspective of the English social workers and their system were:

- The English social workers saw their system as heavily proceduralised. They noticed that the other social workers spent more time discussing how they would work with the family and very little time discussing procedural or legal aspects of the case.

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22 Although the study was conducted after the introduction of the *Children Act 1989*, as noted earlier, since the mid-1990s England has moved more towards a family support response and away from the more investigative, child protection approach represented by the English social workers in this study. This development is discussed in Chapter Five. See also D. Scott and S. Swain, *Confronting Cruelty: Historical Perspectives on Child Abuse*, Melbourne University press, Melbourne, 2002, p. 182.
There was a general concern among the English social workers about the amount of emphasis placed on following the right procedures, and the effect that this had on their ability to establish relationships with the families they worked with. Social workers in the English system reported that they often find themselves trapped in a situation where they would like to engage in work with families but that they must attend to their legal and procedural duties.

The English social workers reported that there was sometimes a tension between their system’s emphasis on child protection and support for individual rights. The problem for them was that, in the case before them, the rights of the parents were in conflict with the needs of the children. The rhetoric of the procedures enjoined them both to protect children and to respect parental rights. The only way that they could deal with this was by following procedures rigorously, but this sometimes went against their professional opinion as to how they should be working.

The pre-eminent role of the law as protector of individual rights was ever present in the minds of the English social workers’ discussion of the hypothetical case. Frequently any action they contemplated was checked for its legality. When they contemplated the use of authority, it was authority statutorily conferred upon them. The possibility of using the professional authority that derives from their own expertise was less apparent in their discussions compared with other social workers.

Although many of the English participants felt that the rights of the parents were not sufficiently safeguarded in the other European systems, there was also support for the view that concern for the rights of parents sometimes prevented social workers in England from protecting children.

The English social workers saw the systems of the other countries as concentrating too much on the family, at the risk of failing to protect the child and, at the same time, as too ready to override the rights of the parents. The family was seen as taking precedence over individuals, whether the child or parent. On the other hand, the English social workers seemed to envy their colleagues the working situation that these systems created for them, and to see less conflict for them in achieving the goals.

The English social workers took pride in the standards that were expected in their system and in the drive to protect children and put their interests first. But at the same time there was envy for social workers in the other countries. It seemed as though their colleagues worked within a framework of law and procedure that gave them a great deal more freedom to work in partnership with families and achieve change.

A clear conclusion from this discussion is that there are strengths and weaknesses of both the child protection and family service approach to the problems of child abuse. To form a better view of which approach is preferred, it would be helpful to have evidence on the outcomes for children and families of the different orientations. This is discussed in the next section.
2.2 Evaluating Outcomes

The purpose for identifying the different approaches across countries is to assess the extent to which they result in intended improvements or outcomes for children and families. It is, however, extremely difficult to get cross-jurisdictional indicators of outcomes, or even of proxy outcome measures such as resubstantiation rates, given the vast differences in data definition, collection and reporting.

In his international review of government approaches to child abuse, Gilbert presents the best attempt at comparison with the very limited data that is available. He reports only two indicators across nine countries: child abuse reporting rates per 1,000 children in the population and out-of-home care placements rates per 1,000 children in the population. But as Gilbert cautions:

Efforts by public authorities to collect data on child abuse reporting rates and placement vary in rigor and scope among the nine countries, as do definitions of abuse and types of placement alternatives. The figures presented in the case studies allow only a very rough comparison among the countries, which provides at best a general sense of magnitudes. If we are willing to forego precise discriminations, the figures in [the table] offer broad profiles for comparative purposes that are of heuristic value. \(^{23}\)

Another qualification which should be made is that Gilbert’s data are now out-of-date, being for 1992-93 or earlier.

Table 2.2 below compares the reporting and placement rates in a number of jurisdictions. It has been reproduced from Gilbert’s book, with recent data for Victoria added as a reference point. Gilbert’s analysis of the data is:

- in general it appears that the Anglo-American countries with a child protection orientation to child abuse (UK, USA and Canada) register much higher rates of reporting than the family service oriented systems such as The Netherlands, Finland, and Belgium;

- the range of out-of-home placement rates is much narrower in different countries than the range of reporting rates. There is also no apparent link between placement rates and the orientation of the systems. The United States, with a child protection orientation, and Denmark, with a family service orientation, register the highest out-of-home placement rates, while the lowest placement rates appear in family service oriented Netherlands and child protection oriented England;

- however, an examination of what these numbers represent in terms of the types of placements made and the extent to which they are involuntary suggests some operational patterns that do reflect the different orientations. Denmark, Sweden, Belgium, and Finland, for example, are the family service oriented systems with the highest out-of-home placement rates, but in each of these countries the vast majority of placements, from 75 to 90 per cent, are voluntary. In the countries with child protection oriented systems, most out-of-home placements are involuntary;

• there is also a big difference in what is included in out-of-home placements with, for example, Denmark including stays in boarding schools and lodging that allows adolescents to live independently away from their parents. In countries such as Netherlands, Finland, and Belgium a large proportion of placements may be addressing problems other than child abuse, such as delinquent behaviour, parent child conflicts, and children with disabilities.  

Some observations can also be made about the data for Victoria compared with the other jurisdictions:

• similar to other child protection systems, Victoria has very high rates of child protection reporting — 25.9 reports of suspected child abuse per 1,000 children compared, for example, with a rate of only 4.9 in The Netherlands and 13.6 in England;

• on the other hand, Victoria has the lowest rate of placement of children in out-of-home care compared with the other jurisdictions presented — 3.4 children per 1,000 are placed in Victoria compared with 4 per 1,000 in the UK and rates of around 9 per 1,000 in the US, Belgium, Sweden and Denmark (although some of these countries include children other than those with a protective concern as discussed above).  

Table 2.2

<table>
<thead>
<tr>
<th>Family service orientation</th>
<th>Child reports</th>
<th>Out-of-home placements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium (to age 17)</td>
<td>2.9</td>
<td>9.0</td>
</tr>
<tr>
<td>Denmark (to age 17)</td>
<td>—</td>
<td>10.5</td>
</tr>
<tr>
<td>Finland (to age 17)</td>
<td>—</td>
<td>7.0</td>
</tr>
<tr>
<td>Germany</td>
<td>15.0</td>
<td>7.3</td>
</tr>
<tr>
<td>Netherlands (to age 17)</td>
<td>4.9</td>
<td>5.2</td>
</tr>
<tr>
<td>Sweden (to age 17)</td>
<td>—</td>
<td>8.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Child protection orientation</th>
<th>Child reports</th>
<th>Out-of-home placements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>—</td>
<td>5.9</td>
</tr>
<tr>
<td>Ontario (to age 15)</td>
<td>21.0</td>
<td>4.9</td>
</tr>
<tr>
<td>England (to age 16)</td>
<td>13.6</td>
<td>4.0</td>
</tr>
<tr>
<td>United States</td>
<td>43.0</td>
<td>—</td>
</tr>
<tr>
<td>California (to age 18)</td>
<td>70.0</td>
<td>9.3</td>
</tr>
<tr>
<td>Victoria, Australia (to age 16)</td>
<td>25.9</td>
<td>3.4</td>
</tr>
</tbody>
</table>

Notes: (1) The figures for different countries should be interpreted with caution as they are based on different definitions of abuse and of the population placed in out-of-home care. They provide a general sense of magnitudes which are useful for broad comparative purposes.

(2) Data for Victoria are for 2001-02.


25 Note, however, that the data for Victoria are for 2001-02 while the data for the other jurisdictions are for 1992-93.
More generally, from the individual country summaries presented in the Gilbert study, it is fair to say that cases of child abuse and neglect or concerns increased across most of the jurisdictions during the 1980s and early 1990s, regardless of orientation. Jurisdictions also tended to report that there are increasing numbers of parents facing issues such as substance abuse and psychiatric problems and having difficulties coping with parenthood.

A more qualitative assessment of outcomes under the child protection and family service systems relies on the judgements made by experts in the field. The literature review undertaken for the project found no evidence that the outcomes for children under the two broad orientations of child protection and family service differed significantly in terms of lead outcomes such as levels of child maltreatment and number of child deaths.26 A report for the recent inquiry into the death of Victoria Climbie in the United Kingdom concluded:

I know of no evidence that shows how best to balance these sometimes conflicting pressures to achieve optimal well-being of children. Other countries fare no better than England, where the starting point is a higher level of voluntary engagement, generally lower levels of intervention and greater interest in needs than in ‘who did what.’27

However, one reviewer pointed out that, although there was no evidence that children are better protected in different countries, ‘We simply do not know’.28

**Mandatory Reporting**

Mandatory reporting operates in both child protection and family service oriented systems. However, the filing of a report in each of these systems has somewhat different implications. Reports filed in systems with a child protection orientation prompt investigations, with the potential for legal intervention in families. Those filed in systems with a family service orientation emphasise therapeutic and voluntary measures in response.29

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A recent review in Western Australia into mandatory reporting found no evidence that links the mechanisms of mandatory reporting with either the reduction of child maltreatment or the reduction of child deaths. This view is supported by another recent review which found no evidence clarifying whether finding and providing assistance to children at risk of maltreatment is more effective in systems with mandatory reporting.

2.3 Conclusions

A key objective of this project is to identify the outcomes that can be achieved through child protection intervention by government, with one important source of information being a comparison of different approaches across jurisdictions. This Chapter has compared the two main government orientations in western OECD countries — the child protection and family service orientations. It has concluded that there is no available data to answer the question of which approach by government to the problem of child abuse results in better outcomes for children in terms of levels of child maltreatment and number of child deaths.

This is not to say, however, that there are not major differences in the consequences for children and families from the two approaches. There is clear evidence that family service systems provide children and families easier access to a wider range of services and assistance than child protection systems. Family service systems also place more emphasis on working voluntarily with parents over longer periods of time to address problems, compared with jurisdictions with a child protection orientation which are far more restrictive and coercive in their responses to parents.

The next Chapter takes a very different approach to the question of the outcomes that are associated with Victoria’s child protection system by looking at the effects on children and families of the regulatory arrangements.

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50 Report by the Discipline of Social Work and Social Policy, University of Western Australia for the Western Australian Child Protection Council, Mandatory Reporting of Child Abuse: Evidence and Options, 2002, p. 33

Chapter Three
A Regulatory Approach

Child protection is an area of social regulation by government. Social regulation centres on issues of health, safety, welfare, working conditions and the environment, whereas economic regulation concentrates on the healthy functioning of markets. Generally, regulation is defined as:

…the imposition of rules backed by the threat of government sanctions, with the intention of modifying or controlling private behaviour.

As in all areas of regulation, it is the responsibility of government to ensure that the regulatory arrangements for child protection are appropriate and effective. This Chapter assesses the appropriateness and effectiveness of the regulatory arrangements for child protection in Victoria.

3.1 Good Regulation

In government, there has been a focus over the past few years on ‘what is good regulation?’. Taking the lead from the Productivity Commission, good regulation is regulation which, in achieving its goal, brings the greatest net benefit to the community. The word ‘net’ means that the regulation must be judged not only by its beneficial effects, but also by the costs that arise in achieving them. For this overall net benefit to be satisfied, regulation needs to meet three tests:

- regulation must be the most effective way of addressing an identified problem;
- it must impose the minimum burden on those regulated; and
- it must have minimum negative impact on others.

This Chapter uses these three tests to assess the regulation of child protection in Victoria. But before looking at each measure in detail, an overview is given of the legislative basis for the regulation — the Children and Young Person’s Act 1989.

3.2 Understanding the Children and Young Person’s Act

In assessing the effectiveness of Victoria’s regulatory approach to child protection it is important to be clear about what problem the legislation set out to address. The Children and Young Person’s Act (the Act) provides for the protection of children and young people. For the purposes of the Act, a child is in need of protection when the child has suffered (or is likely to suffer) significant harm, and the child's parents have not protected (or are unlikely to protect) the child from harm.

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Hence, the aim of the child protection service is to remove real or threatened harm to a child. A key consideration in the drafting of the legislation was that child protection was not to be confused with long-term social welfare programs. Once the emergency service that is child protection had intervened, the child and family would then be diverted to more appropriate services for longer-term assistance. This intention is clear in the Ministerial Statement on child protection made at the time mandatory reporting was introduced to Victoria. The then Minister stated:

Statutory child protection is an emergency service…

A large number of services is offered by the Department of Health and Community Services and in the non-government sector, which assists families with counselling and support and at an early point of intervention.

This is not the work of the child protection service. Its responsibility is to focus on specialist, short-term, interventionist work. 36

Thus the Children and Young Person’s Act focuses on:

- defining when a child is in need of protection (CYPA s.63);
- the processes of child protection notification (CYPA s.64), investigation (CYPA s.66) and the issuing of a protection application (s.68 and s.70);
- the making of court orders (CYPA Divisions 6 and 7); and
- the principles for the child protection case planning process (CYPA s.119-122).

The Act does not concern itself with the broader issues of family support and child welfare.

It is also important to appreciate that the Children and Young Person’s Act was designed to correct welfare practices of the 1960s and 1970s that saw children too readily removed from their parents’ care and negligible emphasis placed on family preservation. The Act, hence, established conditions for the exercise of statutory authority in family life and directed that family reunification be a primary consideration for child protection.

The Act, supported by regulations and guidelines, determines the regulatory framework in which the Department of Human Services delivers child protection services. The next sections of the Chapter assess the appropriateness and effectiveness of these regulatory arrangements against the three tests of good regulation set out at Section 3.1 above.

### 3.3 Effectiveness

In assessing the effectiveness of regulation, it is helpful to be clear about the regulatory framework; specifically, what triggers a regulatory response and what the response is. In identifying these, although the prime source of regulation is the Children and Young Person’s Act, the policies and practices of DHS in implementing the legislation are also very relevant.

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36 The Hon. Mr John, Minister for Community Services, Ministerial Statement, Legislative Assembly, Parliament of Victoria, 10 March 1993
In general, the Victorian child protection system is designed to be a highly targeted system, which identifies and responds to children in need of protection from significant harm, or at risk of significant harm. The trigger for a regulatory response under the Children and Young Person’s Act is a notification of suspected child abuse. As explained above, Victoria’s legislation clearly aims to intervene to secure a child’s protection only in very restricted situations: when the child has suffered significant harm or is at risk of significant harm. Although there are many calls on the child protection service to widen its intervention with families to secure broader child welfare objectives, this was not the intent of the legislation. As Sheehan points out, child protection was seen as a service of last resort, rather than as a gateway to the entire child and family service system.\(^{37}\)

In terms of the regulatory response, under the Act the first response is an investigation of the notification of child abuse or neglect to ensure the safety and well-being of the child. The legislation has no guidelines about what constitutes child maltreatment, nor how the court should decide significant harm and parental responsibility; magistrates decide this on a case-by-case basis.

For cases that are substantiated by child protection, the repertoire of responses then undertaken by DHS emphasises:

- continued protective intervention; and/or
- protection orders prescribing certain requirements that the parents must meet to ensure that their children are not at risk of harm; and/or
- protection orders for the out-of-home care placement of children.

Under section 86 of the Act, the Court must not make a protection order unless it is satisfied that all reasonable steps have been taken by DHS to provide services necessary to ensure the safety and well-being of the child. In general, DHS administratively limits protective intervention without a Court order to about 90 days. DHS makes an application to the Court for a protection order in about 45 per cent of all substantiated cases in which protective intervention is taken.\(^{38}\)

In summary, the child protection system is based on episodes of notifications and investigations, leading to either intervention or the case being closed by DHS. A recent review of Victoria’s child protection system identified both advantages and disadvantages with this approach.\(^{39}\)

A clear advantage of the approach is that it is focused on critical episodes of allegations of abuse and the appropriate actions to take in response to an episode. It is highly effective for identifying and responding to immediate risk, with the emphasis on determining the substance of a notified episode and acting decisively. This is consistent with its intended role noted above of an emergency service. This mission recognises that, as in all developed societies, there is a small minority of families within which there are extreme risks of grave maltreatment and the need to protect the child is urgent.\(^{40}\)

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\(^{38}\) Department of Human Services, unpublished data.


There is evidence that Victoria is successful in this role. For instance, an analysis of cases of renotifications to child protection found that cases of a more episodic nature, such as some cases of sexual abuse or severe physical abuse, were less likely to be renotified than cases of a more chronic nature, such as neglect, indicating a more effective response where there is scope for decisive action. This finding is reinforced by analysis of the experience of children placed in out-of-home care. Of the cohort of children first placed in out-of-home care in 1997-98, 66 per cent of children with recorded sexual abuse were successfully restored with their families over the next five year period compared with only 50 per cent of neglect cases.

However, there are also disadvantages with this approach. First, the statutory basis of child protection drives the process and treatment of families. Under the legislation, certain professionals (police, teachers, nurses and medical practitioners) are mandated to notify to child protection details of children they consider in need of protection. As noted in Chapter One, the introduction of mandatory reporting caused a large increase in notifications from mandated professionals and also from other groups and individuals due to greater awareness of child abuse in the community.

Second, the system is based on discrete episodes: notify, investigate, intervene or close by DHS. However, a large number of cases are renotifications (more than 60 per cent), resulting in re-assessments and re-referrals. Furthermore, as discussed in Chapter One, key characteristics of most families involved in child protection (for example, low income, sole parenthood, substance abuse, and mental disability) are all long-term factors impacting on the lives of parents and children. Addressing the problems, or at least enabling the families to better cope with the problems, requires sustained support.

Third, despite the concerns of those notifying, families who are lower risk often fall outside the mandate of the legislation. These families are often recognised as vulnerable and are referred to other services, such as family support. However, there are no established mechanisms to ensure that the follow up takes place, is sustained or is successful. A clear danger with this approach is that over time these families may become higher risk due to the chronic nature of their problems, and opportunities are missed early on to provide positive assistance that can help them avoid more major problems in the future.

This view has strong support from research studies in the UK which found that failure to offer support at an earlier stage may necessitate more trenchant, expensive and distressing interventions at a later date. In particular, the research was clear that there are many occasions when court proceedings could have been avoided if appropriate interventions had been available to the child or family at an earlier stage. Court action was taken because the accumulation of stresses and problems within the families had weakened parental capacity to the point that the children were at risk of suffering significant harm.

The high level of renotifications in Victoria challenges some common assumptions that underpin the current Victorian legislation and practice framework:

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42 Unpublished DHS data.

• that notified problems are easily definable;
• that notified problems are amenable to targeted and time-limited action;
• that these interventions can effect a permanent improvement or change; and
• that such improvements or change render the appearance of other problems unlikely.

Although these assumptions are reasonable in cases of a more episodic nature, such as some cases of sexual abuse or severe physical abuse as discussed above, the majority of child protection cases in Victoria are of a more chronic nature and do not support these assumptions. An analysis of cases suggested that there was little risk of significant harm to a child in many notifications, even at the point of notification. Even where there appeared to be a risk of cumulative significant harm, the risk derived from broad family circumstances and levels of functioning, not from specific dangerous parental behaviours.  

Another indicator of the lack of effectiveness of the current system in dealing with chronic cases is the high number of substantiated cases of child abuse that are resubstantiated. As noted in Chapter One, in 2001-02, 40 per cent of the substantiated cases of child abuse were resubstantiations.  Although there may be many reasons for a resubstantiation (such as a change in the families’ circumstances), nevertheless a high level of resubstantiations does indicate that in many cases DHS’ response to the problems facing the families is not appropriate or effective enough to avoid further significant harm to the child or children.

High levels of renotifications and resubstantiations suggest that it is a mistake to look at child abuse and neglect as a point-in-time event. This was the clear finding of the research studies summarised in the UK publication, Child Protection: Messages From Research. The studies demonstrated that, with the exception of very severe assaults and sexual maltreatment, long-term difficulties for children seldom follow from a single abusive event or incident — rather they are more likely to be a consequence of living in an unfavourable environment, particularly one low in warmth and high in criticism. Messages From Research argued that any incident has to be seen in context before the extent of the harm can be assessed and appropriate interventions agreed.

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45 Unpublished data from DHS.
An interesting study from the US reinforces these findings. Analysis of reports of suspected child abuse found that a report on a particular family is likely to have been preceded by earlier reports and likely to be followed by subsequent reports. Furthermore, the subsequent reports on the same family were more likely to be about different kinds of abuse or neglect. For example, of families initially reported for sexual abuse, 54 per cent were re-reported but only 10 per cent of the subsequent reports were for sexual abuse. The study argues that reports should be looked at as manifestations of underlying problems. In some instances, new reports stem from changes in families. In other instances, new abuse and neglect arises from existing problems that at the time of a particular report may have been missed or not been regarded as related to the present child safety problems. The differences between the first and subsequent reports indicate that making an assessment on the basis of an individual report was a very poor basis for determining the appropriate intervention. The study concluded that there was a need for more sustained and broad-ranging approaches to families that go beyond immediate safety problems.

The regulatory framework of Victoria is very similar to other jurisdictions which take a child protection approach to child abuse issues, as discussed in Chapter Two. One of the clearest expositions of the problems with the effectiveness of child protection systems such as Victoria’s is given by Waldfogel, drawing on the work of a group of experts convened by the Harvard Executive Session on Child Protective Services. The group worked closely over three years to develop a deeper understanding of child protections systems and strategies for reform. Waldfogel identifies five major criticisms of child protection systems:

- over-inclusion: for a variety of reasons, some families are unjustly and inappropriately reported to child protection. Not only does this expose them unnecessarily to coercive and intrusive investigations, but it is also questionable practice in terms of cost effectiveness;

- capacity: the number of families involved with the child protection system far exceeds the capacity of the system to serve them responsibly and effectively;

- under-inclusion: some families who should be referred to child protection are not, a problem particularly related to the threshold approach to entry. The children coming into the formal child protection system are representative of children in many more families struggling with serious problems, whose well-being is being impaired because services and support are not available;

- service orientation: the basic service orientation of the child protection system is to investigate and remedy abuse and neglect in an authoritative way, and to keep families together whenever possible. Yet neither orientation is correct for all families; and

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service delivery: many families do not receive the services they need. In many instances, needed services simply are not available. Another fundamental problem is posed by the basic casework provided by child protection, which in many cases is the primary service families receive. Because they are large public bureaucracies engaged in a high-stakes enterprise, child protection agencies tend to adopt a uniform approach to all cases, prescribing specific procedures that must be followed in each case rather than encouraging a customised approach that takes into account the fact that families are a varied group whose needs change over time. Although standardised procedures exist to ensure that the delivery of services is fair, responsible and equitable, they often mean that families do not get a response that is sufficiently tailored to their needs.  

3.4 Minimum Burden

The second test of good regulation is that it must impose the minimum burden on those regulated. The Victorian legislation aims to achieve this through requiring that statutory intervention should be the minimum necessary to secure the child's welfare and safety (s.119 (1) (d)). There are, however, two indicators that the burden of regulation under the Act can fall too heavily.

The first indicator relates to mandatory reporting, which was not part of the original Act but introduced in 1993. While the principle of least intrusiveness requires a high threshold for intervention, mandatory reporting encourages a wide net of notifications of suspected child abuse. This leads to the problem of over-inclusion discussed above:

- based on current experience, it is projected that 19.3 per cent of the cohort born in 2003 who grow up in Victoria will be notified at some time during their childhood or adolescence;
- in 2001-02 in Victoria, there were 38,000 notifications of suspected child abuse, of which only about 35 per cent were investigated;
- of the 13,200 notifications investigated, 42 per cent were not substantiated;
- this means that about 5,500 children from about 2,000 families were subject to intrusive investigation for no or little gain.

Not only does mandatory reporting increase the number of notifications which flow through to increased investigations, but there is no evidence that mandatory reporting either reduces child maltreatment or child deaths.

Also, as noted above, 40 per cent of substantiations are resubstantiations in Victoria. This means that thousands of families enter and re-enter the system and are subjected to reinvestigations and reassessments under the formal child protection processes.

The second indicator that Victoria’s regulatory approach has a heavy burden on the regulated is the extent of court processes for many of the families substantiated.

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Generally, the child protection service issues a child protection application to the Children’s Court when they assess that they need to maintain involvement with a child and the family for an ongoing period (administratively set at more than ninety days), and that a community based plan will not offer the child sufficient protection. Whilst the Act (s.86 (1)(b)) appears to allow long-term intervention without a court order, it is the practice of child protection, and the perception of families, that the child protection service must have a mandate from the court to work intensively with families. As noted earlier, DHS makes an application to the Court for a protection order in about 45 per cent of all substantiated cases in which protective intervention is taken.

The system in Victoria offers little flexibility for the child protection service to work intensively over a longer period with families, away from the legal system, to resolve child protection concerns. The impact of this has been considerable growth over the years in the number of cases proceeding to court and the number of court hearings that might be needed to decide outcomes for children. This is reflected in a 23 per cent increase in total applications to the Children’s Court over the period 1995-96 to 2000-01, from 5,037 applications in 1995-96 to 6,205 in 2000-01.

The range and short time frame of many court orders results in continued re-applications to court to deal with ongoing child protection concerns, or to respond to parents who dispute child protection concerns or are unwilling to cooperate with child protection. The combination of adjournments, re-applications and unrealistic time frames for court orders create delays that stymie planning and at times leave children in situations that make it difficult to achieve continuity and stability of care. For example, in 2000-01, on average the time between lodging a Children’s Court application to the granting of an order was 66.2 days (or 12 working weeks).

Even after a final decision is made the child protection service can experience difficulties in implementing case plans developed around the court order. Parents who have experienced an adversarial and highly legalised approach are often unwilling to work with child protection. After all, child protection is an authoritative agency — for the most part, families do not come to the agency voluntarily and cannot terminate their involvement with the agency at will. Understandably, given the formal, procedural approach which may lead to court involvement, intervention by child protection is more likely to be perceived by parents as an intrusion rather than supportive intervention designed to provide meaningful assistance.

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52 Department of Human Services, Court Project Advisory Committee Court Project Brief, unpublished, no date, p. 8. The applications include breaches, extensions, protection, revocation and variations.
53 Department of Human Services, Court Project Advisory Committee Court Project Brief, unpublished, no date, p. 9. The applications include breaches, extensions, protection, revocation and variations.
Similar comments have been made about the use of court procedures in other jurisdictions. One UK review found most parents were deeply upset and humiliated by court appearances but there was no obvious difference in the interim outcomes for child or parents between similar cases where formal child protection or court procedures were used and where they were not (leaving aside a very small group of severe cases).  

Victoria’s Children’s Court was intended to be more informal and less adversarial than other courts. The Act allows for the relaxation of procedural rules and the Court ‘may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary’ (s.82 (1)(d)). However, the Child Welfare Practice and Legislation Review Committee found ‘there is little outward sign of this difference’, when compared to criminal proceedings.

3.5 Minimum Negative Impact on Others

The third requirement of good regulation is that it must have minimum negative impact on others. This is perhaps the most worrying aspect of the regulatory approach of the Victorian child protection legislation: it is hard to escape the conclusion that children can be negatively impacted upon by the processes (notwithstanding that there can also be gains for many children). There are two main reasons for this.

First, the regulatory approach of the child protection service may include court processes through protection applications. The child protection service applies to the Children’s Court for a child protection application under two conditions:

- by serving a notice directing that the child appear before the Children’s Court — protection applications by notice generally occur when there are concerns, but no immediate risk to the child. In these cases, a protective intervenor considers that they need to maintain involvement with a child and their family for an ongoing period (administratively set at more than ninety days), and assesses that the authority of the court is needed to protect the child as a community based plan will not offer sufficient protection; and

- by taking the child into safe custody pending the hearing in the Children’s Court. Protection applications by safe custody are generally used when there is immediate and apparent risk to the child, necessitating removal from their parent’s care.

In 2000-01, just over 2,500 protection applications were issued; 43 per cent of these were made by notice, and 58 per cent via safe custody. To the extent that these court processes include children, there must be some negative impact on the children. There is some evidence for this. For example, in 2000-01, children placed in out-of-home care during the period between the lodging of a protection application to the Children’s Court and the granting of a final order experienced on average 4.79 hearings and 3.42 placements in care during this time.

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56 Department of Human Services, Court Project Advisory Committee Court Project Brief, unpublished, no date, p. 9.
Other jurisdictions place a strong emphasis on diversion from the legal system (e.g., UK, Belgium, Sweden and Germany) and cases come before courts only when voluntary measures have failed to negate child protection concerns. For example, the English system, even with a legal system founded on the same adversarial principles as Victoria’s, provides for extended welfare work with families without a court mandate.\(^{57}\)

The second example of the negative impact of the child protection system for some children is the placement of children in out-of-home care. In Victoria during 2001-02, there were 8,628 children and young people in out-of-home care. At 30 June 2002, there were 3,769 children in care, of whom 34 per cent had been in care for two years or more.\(^{58}\) Assessing the impact of out-of-home care on children is a complex issue. The first consideration is the child’s safety: the decision to place a child in out-of-home care is made when child protection considers it is imperative for the protection of the child. But there is an argument that, in many cases, the principle of child protection can be at odds with the principle of acting in the child's longer-term best interests. This is particularly so when children experience multiple placements in care and/or frequent unsuccessful attempts at reunification with their family.

Hence, although children in care are generally at far less risk of being maltreated than they would have been at home, the success of foster care and residential care must be evaluated in terms of more than just protection. Research on the ameliorative effects of out-of-home care has generally yielded disappointing results. In many cases, it has not been shown to improve children's lives, and there is some Australian research that indicates that out-of-home care can have significant negative impacts on some children. Children in care tend to display an alarming rate of social, emotional, cognitive and health problems.\(^{59}\) Poor psycho-social functioning is particularly related to unstable placements.\(^{60}\)

For some children the problem, therefore, is not one of placement in out-of-home care but one of repeated unsuccessful attempts at reunification with their birth family, resulting in a lengthy time spent moving back and forth from the family home to often different out-of-home care placements. The Children and Young Person’s Act states that a primary goal for children in out-of-home care is reunification with their family, and DHS is required to develop a plan for reunification. Although clearly reunification is extremely important for most children, there is evidence that this is an unrealistic goal for some children. For example, analysis undertaken by DHS of a cohort of 1,809 children first entering out-of-home care in 1997-98 found that, over a five-year period:

- for 27 per cent of the cohort, reunification with their family was never attempted; and

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• for 19 per cent of the children and young people, reunification had been unsuccessful and they remained in out-of-home care.\textsuperscript{61}

There is a disturbing lack of permanency and stability in the lives of these children. Other jurisdictions have implemented measures to increase the take up of adoption for children such as these, pointing to evidence that adopted children do as well in terms of development and well-being as children in the general population.\textsuperscript{62} These developments will be discussed further in Chapter Five.

There is a particularly heavy responsibility on child protection services to avoid processes that negatively impact on others as much as possible given that the impact tends to fall on vulnerable children and young people. As one commentator has noted:

The power to protect children comes with an expectation of success. After all, if a service provider imposes an intervention on the family, one would expect at the very least that the child would be better off than he or she would have been without the intervention.\textsuperscript{63}

### 3.6 Summary Assessment

This assessment of the regulation of child protection in Victoria against the three tests of good regulation has found that:

• in terms of effectiveness in addressing the problem of child abuse and neglect, the regulatory approach has both advantages and disadvantages. A clear advantage is that it is highly effective in identifying and responding to immediate and significant risk, which is particularly appropriate for cases of a more episodic nature (such as some cases of sexual abuse or severe physical abuse). It is less effective, however, for cases of a more chronic nature, such as neglect. Increasingly, the key characteristics of most families involved in child protection (for example, low income, sole parenthood, substance abuse, and mental disability) are all long-term factors. This is shifting cases towards ones of a more chronic nature;

• there is a high burden on families associated with the responses most frequently enacted by protection services (investigation, and court proceedings to secure court orders); and

• court processes, and particularly placement in unstable out-of-home care, can negatively impact on children. Since regulatory responses are so dependent on actions that can involve negative impacts on others, the onus falls to the regulator to focus on other strategies that are more preventative and diversionary.

The next Chapter looks at some ways for improving the regulatory arrangements for child protection in Victoria.

\textsuperscript{61} Updated figures initially reported in Department of Human Services, Public Parenting: A Review of Home-Based Care in Victoria, 2003, at www.dhs.vic.gov.au.

\textsuperscript{62} Performance and Innovation Unit, Cabinet Office, United Kingdom, The Prime Minister’s Review of Adoption, 2000, at www.cabinet-office.gov.uk/innovation/2000/adoption

Chapter Four

Improving Regulation

Recent approaches to regulatory reform offer ideas on how to improve the regulatory basis of child protection in Victoria. This section looks at three:

- a wider range of responses to non-compliance;
- working with parents’ own ‘private regulation’ to change behaviour; and
- a strategic approach to improving compliance.

4.1 Responsive Regulation

Good regulatory practice necessitates a range of responses. Some discussions of regulatory responses present a dichotomy between two regulatory styles:

- coercive strategies revolving around formal, precise rules. This is viewed as adversarial and punitive and based on an underlying distrust of the regulated community; and
- voluntary compliance, which is seen as softer, more results oriented, and less wed to rules, stressing responsiveness and forbearance and preferring tools involving self-regulation, persuasion and negotiation.

But it is important to realise that each style has its own distinct advantages and disadvantages, and the choice between them should be pragmatic (what works?) rather than ideological. For instance, a crucial danger of a coercive approach is that it inhibits self-regulation. When punishment rather than dialogue is in the foreground of regulatory encounters, it is basic to human psychology that people will find this humiliating and will resent and resist in ways that include abandoning self-regulation. Such an approach can only lessen the will of well-intentioned people to comply. However the problem with the voluntary compliance model, based as it is on a typification of people as basically good, is that it fails to recognise that there are some people who are not good, and will take advantage of being presumed to be so.

Regulators should be able to vary their stances as they deal with different people and issues. In some areas, they may reap the benefits of the rigorous enforcement approach, while in other areas they might tread more softly:

In other words there is no reason why regulatory agencies should only have one act. Having several, plus the ability to choose the right act for the right issue, would be better. Such responsiveness could be more finely tailored if the agency learns a range of intermediate stances (between the two extremes) and is then able to select from this broader repertoire depending on the circumstances. This is the heart of responsive regulation.

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65 I. Ayres and J. Braithwaite, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, New York, 1992, p. 25

The basic idea of responsive regulation is that governments should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is needed. In particular, law enforcers should be responsive to how effectively citizens are regulating themselves before deciding whether to escalate intervention. Responsive regulation can be compared with regulatory formalism, which aims to define in advance which problems require which response and write rules to mandate those responses.\(^{67}\)

One version of regulatory responsiveness involves the use of a hierarchy of graduated responses to non-compliance. This is demonstrated by the enforcement pyramid (see Figure 4.1 below). The pyramid not only shows a hierarchy of responses from self-regulation through to non-discretionary punishment, but also suggests a balance among them, wherein the softer approaches at the base of the pyramid are employed more frequently (represented by the greater area), and the tougher sanctions at the apex are applied least often.

![Example of a Pyramid of Enforcement Strategies](image)

The enforcement pyramid is an attempt to solve the challenge that faces regulators of when to punish and when to persuade. At the base of the pyramid is the least interventionist approach to securing compliance with the law. As we move up the pyramid, more and more demanding and punitive interventions in people's lives are involved. The presumption is that the aim of regulation should always be to start at the base of the pyramid, then escalate to somewhat punitive approaches only reluctantly and only when dialogue and persuasion fail, and then escalate to even more punitive approaches only when the more modest forms of intervention fail.\(^{68}\)

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A crucial point is that the enforcement pyramid is a dynamic model. It is not about specifying in advance which are the types of matters that should be dealt with at the base of the pyramid, which are the more serious ones that should be in the middle, and which are the most egregious ones for the peak of the pyramid. A key policy prescription is for the regulator to try dialogue and cooperation first at the base of the pyramid, unless there are compelling reasons not to (such as to ensure urgently the safety of children). The regulator refrains from a deterrent response as long as there is cooperation but shifts to a deterrent response if cooperation and compliance weaken. A consequence of this approach is that responsive regulation is not designed to maximise consistency in law enforcement: ‘Both consistent punishment and consistent persuasion are foolish strategies’.69

A clear conclusion that can be drawn from the assessment of the regulation of child protection in Victoria in Chapter Three is that child protection services do not have enough responses in their repertoire. This is demonstrated by:

- the limited responses available to child protection workers in the face of the wide variety of problems and circumstances presented by families;
- the high burden associated with many of the responses enacted by protection services (for example, investigations and court proceedings to secure court orders); and
- the negative impact on children from court processes and particularly placement in unstable out-of-home care.

Not only does Victoria have few strategies for encouraging compliance, the strategies are generally clustered at the coercive end of the continuum of possible responses (or, to put it another way, at the apex of the pyramid). However, research into effective regulation suggests that compliance is most likely when an agency displays an explicit enforcement pyramid with a range of possible responses, as in Figure 4.1, and indicates willingness to move up and down the range in response to performance in securing regulatory objectives. Defection from cooperation is likely to be a less attractive option in the face of an enforcement pyramid than when confronted with a regulator having only one deterrent option. This is because it will be known by those regulated that initial resistance to compliance will result in the regulator imposing tougher sanctions from further up the enforcement pyramid.70

The point that defection from cooperation is likely to be less attractive in the face of an enforcement pyramid than when confronted with limited deterrent options is especially true if the only sanctions that are available are drastic ones, such as the removal of a child from a family. In these cases, it is politically and morally unacceptable to use the sanction with any but the most serious offences, the more so in the case of out-of-home care given the negative impact on children. Regulatory agencies have maximum capacity to lever cooperation when they can escalate deterrence in a way that is responsive to the degree of uncooperativeness, and to the moral and political acceptability of the responses.

70 I. Ayres and J. Braithwaite, 1992, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, New York, pp. 35-8
Furthermore, in the case of child protection, since regulatory responses are so dependent on actions that may involve negative impacts on children, especially out-of-home care, the onus must fall to the regulator to focus on other strategies that are more preventative and diversionary.

4.2 Changing Behaviour

Recalling that the purpose of regulation is to modify or control private behaviour consistent with regulatory objectives, the aim of child protection regulation is then to change the behaviours that contribute to or create the problems of child abuse. A view on the cause of abuse must therefore inform the appropriate government response to the problem.

A recent review of research on the aetiology of child abuse concluded: ‘All too sadly, there are many pathways to child abuse and neglect.’ The review emphasised three points about the causes of child abuse:

• child maltreatment is recognised to be multiply-determined by a variety of factors (for example, parental developmental history, attitudes to disciplining children, and poverty);

• child abuse operates via transactional processes at various levels of analysis (developmental, immediate situational, demographic, cultural-historical and evolutionary); and

• child abuse must be understood in the broad ecology of parent-child relations.

However, the review also emphasised that what determines whether child maltreatment will take place is the balance of stressors and supports in a parent’s life. That is, one parent can have very similar characteristics and face very similar problems to another parent (for example, sole parenthood and intellectual disability), but he or she may cope very differently with those problems in bringing up children due to the amount of support he or she receives compared with the other parent. For example, there is strong evidence that one of the most constant factors concerning child abusers is that parents were often abused or neglected themselves as children. For instance, in 19 per cent of cases investigated in Victoria, one or both of the parents had been involved with child protection as a child; for Indigenous cases, the level was 27 per cent. But research also shows the importance of supports — parents with histories of maltreatment who did not maltreat their own children had more extensive social supports and had experienced a non-abusive and supportive relationship with one parent while growing up. In other words, it is not just that there is no single cause of child maltreatment, but nor are there necessary or sufficient causes.

72 Unpublished data from DHS.
The implication of the conclusion that child maltreatment is multiply-determined is that no ‘magic bullet’ needs to be identified and targeted before intervention efforts can be initiated. This same central fact about maltreatment, however, poses many challenges. Although the multi-dimensional nature of child maltreatment suggests that there are many targets to focus intervention upon, it also indicates that directing efforts at any single target is not likely to be particularly successful.  

Developments in regulatory practice in other areas offer a guide on how to open up a broader range of regulatory responses. Generally, …sound policy analysis is about understanding private regulation—by industry associations, by firms, by peers, and by individual conscience—and how it is interdependent with state regulation…by working more creatively with the interplay between private and public regulation, government and citizens can design better policy solutions.

This suggests that child protection regulation should build on, or interact more with, parents’ own ‘private regulation’. Government regulation should respond to how effectively private regulation is working and can be encouraged to work better. There is evidence that well-planned, earlier services and support made available in consultation with the family about what they would find most helpful can lead to significant improvements in the well-being of children and parents.  

In the case of child protection in Victoria, because there is such a high threshold for intervention and because the regulatory responses are limited, the ‘regulatory space’ is very constrained. There is not much scope for interaction with and encouragement of parents’ capacity and desire to ‘self-regulate’. An alternative approach would start here:

Most families care deeply about their children’s development. Most parents make mistakes, often because they buckle under the stresses of family life. Most parents believe it is a bad thing to hit children but nine in ten will do so at some point. Most parents resent being told how to bring up their children, but will welcome practical support when it is offered as a response to identified social needs.

Such an approach would mean acknowledging that maltreatment of children, while always undesirable and frequently damaging to children's development, is a part of family and community life. Good support, formal and informal, can reduce the stresses that lead good parents and other carers to behave badly.


75 I. Ayres and J. Braithwaite, 1992, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, New York, pp. 3-4


There are examples of jurisdictions that offer a broader set of responses based on working more cooperatively with parents (for example, some western European and Scandinavian countries). In these jurisdictions, the key strategy for minimising the risks of child maltreatment is the negotiation of appropriate supports to strengthen families, as opposed to legal processing. These issues are discussed further in Chapter Five.

Opening up more responses also shifts the responsibility for confronting child abuse away from only the child protection service. Vesting sole responsibility for responding to child abuse within child protection is possible but only if the task remains narrowly defined and responses are limited to substantiated cases of maltreatment. If the strategy moves toward a more comprehensive set of possible responses to the problems and issues, child protection agencies can only accomplish this objective by working in partnerships with other government and non-government agencies. This is discussed further in Chapter Five.

Effective regulation is not just about *what* is done in response to non-compliance, but also crucially about *how* the response is made. Here, two points are particularly important. People are more likely to comply with the law:

- when regulation is seen as more legitimate and more procedurally fair; and
- when they are treated as trustworthy and with respect by those who regulate them. 79

Within the operation of the *Children’s and Young Person’s Act*, there is a striking example of a regulatory response that goes against these principles. The Act requires that, when a DHS officer investigates a notification of suspected child abuse or neglect, the officer ‘must inform the child and the child’s parents that any information they may give may be used for the purposes of a protection application [to the Court]’ (section 66 (2)(a)). Such an approach must not only be confronting and alarming to many parents, but also presumably often counter-productive in terms of enlisting the cooperation of parents in addressing the issues.

While it is important to build a regulatory approach upon parents’ own capacity for ‘private regulation’, such an approach would also need to recognise that among the majority of parents is a minority where risks of grave maltreatment are extreme and compulsion to protect the child is urgent. In all developed societies a small proportion of parents pose a serious threat to their children. 80 Thus, like all regulators, the child protection service must retain the capacity and *willingness* to apply tough sanctions. If it does not, it risks compromising its ability to achieve its core mission to protect children.

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An important point for child protection regulation is the finding of research that perhaps the most common reason in regulation for successive failure of non-coercive approaches is that non-compliance is not about the lack of goodwill to comply or about a rational calculation to cheat. One of the main reasons for non-compliance is that people lack the competence or capability to comply. This can be due to many reasons, including the lack of ability or the mental capacity to comply. In these cases, when self-regulation and deterrence fail, enforcement strategies include the option of incapacitation. Incapacitation includes measures such as the removal of a person from a position of authority and revocation of a firm’s license to operate. In child protection, incapacitation involves removal of a child from a parent’s care.

4.3 Improving Compliance

Advances in regulatory reforms emphasise that, while it is important to develop a range of regulatory responses, sanctions in response to incidents of non-compliance constitute only one aspect of regulatory responsiveness. Improving compliance is also an effective method of decreasing risks.

Improving compliance is based on a risk control, risk reduction strategy that involves:

- the systematic identification of hazards, risks and patterns of non-compliance;
- risk assessment and prioritisation;
- solutions for each problem; and
- a range of tools for procuring compliance and eliminating risks.  

The aim is to identify, prioritise and fix significant risks and patterns of non-compliance. A problem solving strategy picks the most important tasks and then selects appropriate tools in each case, rather than deciding on the important tools and picking the tasks to fit.

The advantage for child protection of a problem solving strategy for risk control is that it moves away from the limitations of an individual case approach. There are examples of program successes based on a targeted risk reduction strategy. For instance, a number of jurisdictions have implemented prevention programs based on an analysis of the problems and needs (and hence risks) of new mothers with a learning disability, mental health problem, or drug problem, and the evaluation results have been very positive. For example, early prevention programs based on intensive home visits by nurses to vulnerable young mothers have been found to significantly reduce the risk of child maltreatment.

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In this context, it is important to emphasise that problems are different from incidents or cases. They are more like a cluster of similar, related, or recurring incidents rather than a single incident. Because of this, it is necessary to take a broad approach in defining the problem. Defining the problem and determining the solutions and tools for eliminating risks will usually involve other agencies.

There is an important connection between the two strategies of developing a wider range of regulatory responses to child protection suggested by the enforcement pyramid, and a strategic approach to improving non-compliance focused on risks and patterns of non-compliance. The top end of the enforcement pyramid involves the more coercive responses to non-compliance, which of necessity are targeted at individuals (for example, court processes). But the bottom end of the pyramid allows for more cooperative and self-regulatory responses. Here, there is much more latitude for regulatory responses targeted at groups of people who share common risks and problems. But to do this effectively requires a strategic approach based on comprehensive analysis and risk assessment, and ways of controlling or reducing those risks.
4.4 Implications For Child Protection

In summary, the review of developments in regulatory arrangements has the following implications for child protection:

- the aim of regulation is to change private behaviour consistent with the regulatory objectives. Research demonstrates that there is no single cause or necessary or sufficient cause of child abuse. This points to the need for a spectrum of regulatory responses available for the wide variety of child protection concerns, problems and circumstances presented by families — in terms of both the depth and breadth of service options;

- a strategy based on a more comprehensive set of possible responses to the problems and issues can only be accomplished by child protection agencies working in partnerships with other government and non-government agencies;

- regulation is more effective when people see it as legitimate and procedurally fair, and when they are treated as trustworthy and with respect by those who regulate them;

- child protection regulation should build on, or interact more with, parents’ own ‘private regulation’. Government regulation should respond to how effectively private regulation is working and can be encouraged to work better;

- a child protection service must, however, retain the capacity and willingness to apply tough sanctions where risks of grave maltreatment are extreme and compulsion to protect the child is urgent. One of the main reasons for non-compliance is because people lack the competence or capability to comply. In these cases, incapacitation may be the most appropriate response; and

- a strategy for improving compliance is also needed. Improving compliance is based on a risk control, risk reduction strategy that identifies, prioritises and finds solutions for significant risks, problems, and patterns of non-compliance.

The next Chapter looks at developments in child protection systems that go some way to addressing the issues raised by this review of regulatory arrangements.
Chapter Five

Developments in Child Protection Systems

This Chapter discusses developments in child protection systems aimed at improving the appropriateness and effectiveness of service responses for children and families. There are five main sections:

- the first section looks at developments in the UK, with successive reforms aimed at implementing and reinforcing the directions of the Children’s Act 1989;
- the second section discusses the introduction in a number of US states of a differential response to families’ needs in response to major criticisms of the child protection orientation;
- the third section presents the case for the provision of intermediate structures between voluntary services and the use of legal coercion. This allows for negotiation, dialogue and deliberation with families, in effect building on and encouraging ‘private regulation’;
- the fourth section looks at the focus on permanency and opportunities for adoption for children in out-of-home care in both the US and the UK; and
- the final section summarises the conclusions from research on effective family and children services and the importance of the community context.

5.1 Refocusing Children’s Services in the UK

As discussed in Chapter Two, the UK is presented in the literature as a jurisdiction with a child protection orientation. It would be fair to say, however, that the UK set a direction for reform away from the more investigative approach to child abuse towards a family support response, beginning with the Children Act 1989. This Act was viewed as a major piece of reforming legislation. At its second reading in Parliament, the then Lord Chancellor told the House of Lords:

The Bill in my view, represents the most comprehensive and far reaching reform of child care law which has come before Parliament in living memory.83

A key difference with the Children Act compared with previous legislation is that it provides a unifying framework for most aspects of the law relating to the care and upbringing of children.84 This gives a working framework for the provision and delivery of services to children in need and their families. Most significantly in the context of this report, the Act embraces the idea of simultaneously safeguarding and promoting children’s welfare. It provides for both the welfare and protection of vulnerable children in two key parts:

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Part III and Section 17 sets out the obligations of the State to assist families who need help in bringing up their children through the provision of services to children in need;

while Part V and Section 47 provides for the protection of children where they are suffering or are likely to suffer significant harm.

The definition of ‘children in need’ is a key element of the Act, and made a significant change from previous child welfare legislation in that:

- it moved from concern about an undifferentiated group of vulnerable children to specific groups;
- it defined these groups in the context of children’s development; and
- it linked children in need to the provision of services.

Through this definition, the Act moves away from the identification of harm as the sole or main basis for service provision. Given the breadth of issues affecting children in need and their families, it follows that a broad range of services is necessary to respond to their needs.\(^85\)

While the Act contains provisions to both safeguard and promote children’s welfare, in the early years of its implementation concerns about child protection and the threshold of significant harm for state intervention continued to dominate. Consequentially, the family support provisions were not prioritised and only partially implemented. Research into the early implementation of the family support provisions (Section 17 of the Act) found:

- a failure to understand that duties in relation to Section 17 were statutory;
- a continuing emphasis on linking interpretations of ‘in need’ with eligibility criteria based on risk; and
- the difficulties some authorities found in moving from a reactive policing role to a more proactive partnership role with families.\(^86\)

However, attitudes and practice began to shift in the mid to late 1990s. A key impetus for this was the launching of the publication \textit{Child Protection: Messages From Research} in 1995. This publication proved to be something of a watershed in thinking about child welfare policy and practice in the UK.\(^87\)

\textit{Messages From Research} opened up a major debate in the UK about priorities and the appropriate balance between family support and child protection. It concluded that only in a small proportion of cases was abuse extreme and hence warranted more immediate and formal child protection interventions to protect the child. Putting to one side the severe cases, the most deleterious situations for children were those of emotional neglect. Unfortunately, the research suggested that these were just the situations where the child protection system as it was then operating in the UK seemed least successful.


Messages From Research made a number of suggestions as to how children’s safety could be improved. It argued for:

- the importance of sensitive and informed professional/client relationship;
- the need for an appropriate balance of power between participants where serious attempts are made at partnership; and
- a wide perspective on child protection concerned not simply with investigating forensic evidence but also notions of welfare, prevention and services and support.

The UK Department of Health responded in 1996 with a major initiative on refocusing services with a shift away from Section 47 inquiries as the primary route to the provision of services. The Department emphasised:

- while many people tended to polarise family support and child protection as distinct and contrasting, they should be promoted as essential elements of an integrated system;
- under the Children Act, family support was no more or less statutory (and hence discretionary) than child protection; and
- the integrated system was in need of rebalancing away from investigations and towards the provision of support and services.

Since the mid-1990s, the UK has moved more towards a family support approach, a direction reinforced by a number of key initiatives, including:

- the publication of Working Together to Safeguard Children in 1999, which sets out the roles, responsibilities and joint working relationships and processes for agencies and professionals to promote children’s welfare and protect them from abuse, as required under the Children Act;
- the Quality Protects program, a five-year program introduced in 1999 to transform services and outcomes for children in need. Local councils are required to submit annual plans setting out progress towards and plans for meeting the Government’s identified eleven objectives for children’s services, which reflect the broad intentions of the Children Act;
- the publication of Framework for the Assessment of Children in Need and their Families in 2000, with the objective of providing a systematic way of analysing, understanding and recording what is happening to children and families as a basis for assessments of needs and required responses; and
- a range of programs across children’s different stages, including Sure Start that targets disadvantaged neighborhoods and offers all families with young children help in promoting early years’ development; the Children’s Fund to promote preventative work with children aged between 5 and 13; and Connexions, which seeks to deliver guidance and advice to young people aged 13 to 19 years to improve their chances of full social, educational and economic participation. 

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A recent review of the implementation of the Children Act reported that progress has definitely been made in terms of refocusing services more towards family support since the mid 1990s. It found that the principles of the Act, such as safeguarding children and providing a range of services, have underpinned practice. While reporting that there were still some problems, it did find considerable progress had been made in achieving a better balance between simultaneously safeguarding and promoting children’s welfare, and between voluntary and compulsory measures.

The Children Act 1989 also aimed to reduce the involvement of families and children with the courts. For instance, the ‘no order’ principle of the Act stipulates that the court should not make an order unless it considers that to do so would be better for the child than making no order at all. There has been considerable change under the Act in the use of court processes. Research has shown that, compared with previous legislation:

- the threshold of significant harm that triggers intervention is higher;
- the families subject to court procedures under the Children Act have more problems, and increasingly serious problems, than those affected by previous legislation;
- the local authority is more likely to have explored alternative options for supporting children within their families before bringing care proceedings;
- the applications are more clearly thought out and less likely to be subject to challenge;
- fewer care proceedings are instigated in the wake of a crisis; and
- Emergency Protection Orders are not being used as a routine way to begin proceedings.

Recently, a Minister for Children was announced in the UK, based in the portfolio of Education and Skills, with responsibility for children’s social services, children at risk, family policy and family law. The new position reflects moves to join up children’s services locally with the creation of children’s trusts. The trusts, due to be piloted this year, will bring together key services for children and young people — education, health and social services — into new organisations responsible for commissioning all children’s services.

Interagency Cooperation

The aim of the children’s trusts is to prevent vulnerable children from slipping through the gaps in the child welfare system. Serious coverage problems have been exposed by recent inspections and inquiries in the UK, which found poor working relationships between health, social services, schools and police. Although there is a consensus that interagency cooperation is fundamental to effective child protection processes, the requirement to involve the broad array of agencies that comprise children's services continues to pose challenges in all jurisdictions.

In the UK, the Children Act 1989 requires social services, police, teachers and health professionals to work together on child protection issues, and this is grounded in the Working Together Strategy and the Quality Protects initiative. Agencies are no longer merely exhorted to co-operate but are legally required to do so. To facilitate this, a number of processes have been set up:

- a strategic board where senior members of all the main agencies meet to jointly plan services for children;
- a common assessment tool that is used by all agencies to help decide the level of concern for children and guide towards action; and
- an Area Child Protection Committee with representatives of the main agencies who meet to discuss mutual issues of concern.

However, commentators have noted that, although there have been improvements in interagency cooperation in the UK under this approach, in general improvements have focused on ensuring agencies report to one another important facts. There has been less concentration on interagency cooperation at the point of service delivery.

The problems with achieving effective interagency cooperation in England were starkly brought home in the recent inquiry into the death of Victoria Climbie:

It is deeply disturbing that during the days and months following her initial contact with Ealing Housing Department’s Homeless Person’s Unit, Victoria was known to no less than two further housing authorities, four social services departments, two child protection teams of the Metropolitan Police Service, a specialist centre managed by the NSPCC, and she was admitted to two different hospitals because of suspected deliberate harm.

The inquiry concluded that the legislative framework of the Children Act for protecting children is basically sound in the UK, but its implementation is grossly flawed.

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93 Children’s Services: The Issue Explained, at http://society.guardian.co.uk/children
97 Lord Laming (Chairman), The Victoria Climbie Inquiry: Summary and Recommendations, 2003, at www.victoria-climbie-inquiry.org.uk, p. 3
Children’s Green Paper

The UK Government responded to the inquiry into the death of Victoria Climbie as part of the Children’s Green Paper, Every Child Matters, released in September 2003. The Green Paper begins with recognising the common threads in recent cases of child deaths from abuse or neglect that led to a failure by government to intervene early enough:

- poor co-ordination of services;
- a failure to share information;
- the absence of anyone with a strong sense of accountability; and
- frontline workers trying to cope with staff vacancies, poor management and a lack of effective training.

The Green Paper sets out for consultation a framework for improving outcomes for all children and their families. A defining characteristic of the framework is the acknowledgment that child protection cannot be separated from policies to improve children’s lives as a whole. The framework includes both the universal services which every child uses, and more targeted services for those with additional needs. More specifically, the Green Paper addresses four main areas:

- early intervention before children reach crisis point and effective protection so children do not fall through the net;
- supporting parents and carers — the most critical influence on children’s lives;
- accountability and integration — locally, regionally and nationally — the underlying problems identified in the Victoria Climbie Inquiry; and
- workforce reform to ensure that the people working with children are valued, rewarded and trained.

An important part of the Green Paper’s consideration of ways to improve accountability and integration is development of the Children’s Trust discussed above. The Green Paper notes that the Government’s long term vision is to integrate key services within the single organisational focus of the Children’s Trusts in most areas by 2006. Children’s Trusts will have the following core features:

- clear short and long term objectives covering the five Green Paper outcome areas of: enjoying and achieving, staying safe, being healthy, making a positive contribution, and economic well-being;
- a Director of Children’s Services in overall charge of delivering these outcomes and responsible for services within the Trust and co-ordination of services outside the organisation; and

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• a single planning and commissioning function supported by pooled budgets. This would involve developing an overall picture of children’s needs within an area, and developing provision through public, private, voluntary and community providers to respond to those needs. The Trust should involve children and families in putting together the picture of their needs and in designing the services to meet those needs.\(^{102}\)

The Green Paper also considers the problems of integration for children who are in contact with more than one specialist service at a time as they can receive services that risk duplicating or cutting across each other. It proposes introducing a lead professional for children known to more than one specialist agency who would take the lead on their case and be responsible for ensuring a coherent package of services to meet the individual child’s needs.

5.2 US: A Differential Response

As discussed at Section 3.3, major criticisms of child protection systems in the United States emerged during the 1990s, which were highlighted in the work of a group of experts convened by the Harvard Executive Session on Child Protective Services. Several jurisdictions responded to the criticisms and introduced major reforms of their child protection systems. While differing in detail, the reforms are all based on what has been called a differential response to the problems of child protection, with three key elements:\(^{103}\)

• narrowing the focus of child protection, with the aim of both improving the capacity to respond effectively to the higher risk cases that need authoritative intervention, and reducing the number of families inappropriately referred to child protection, thereby sparing lower risk families unnecessary intervention. Proposals have included establishing tighter guidelines for child abuse notifications and stricter criteria for staff who screen reports;

• broadening access to services that protect children and strengthen families. This is based on building partnerships between child protection agencies and a variety of community partners to respond to both lower risk and higher risk families; and

• providing a more customised or differential response to families’ needs, responding to the criticism of the limitations of service delivery under the child protection approach.

The varying levels of risk presented by children reported for maltreatment underscore the logic of differential response systems. Serious cases and those posing the most immediate threat to a child’s safety may require and justify legalistic and intrusive investigations. However notifications stemming from the parent’s lack of resources or knowledge may best be addressed by a more supportive response. One aim of the differential response approach is to change the notifications reporting system from a purely investigative tool towards one that serves as an early warning device to flag families in need of help.\(^{104}\)

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\(^{103}\) This discussion is based on J. Waldfogel, ‘Rethinking the Paradigm For Child Protection’, in *The Future of Children*, 8(1), 1998, pp. 104-119

The aim is that, eventually, child protection will respond more effectively to protect children in the highest risk cases of abuse or neglect. The responsibility for responding to children and families who are at the lower risk end, and hence do not need an authoritative intervention, will increasingly shift from child protection to other agencies in the community. The various partners will work together in a coordinated way at the community level, perhaps even establishing local government entities to oversee the planning, funding and delivery of child protective services.

**Assessment Versus Investigation**

At the most general level, a differential response implies there are at least two pathways for families referred for abuse or neglect:

- a mandatory investigation for high risk families; and
- an assessment and service oriented response for the lower risk families.

Traditionally, child protection agencies have considered both investigation and assessment activities as part of the same function. In this approach, the functions are distinct.

The responses of investigation and assessment differ in several ways. First, only the investigation is mandatory. It is also adversarial; it gathers evidence about the alleged abuse or neglect and the alleged perpetrator. In contrast, an assessment identifies family needs and strengths and provides services as necessary to lower the risk of abuse or neglect. Assessments focus primarily on whether and how children might be protected in the future. This difference in orientation between investigation and assessment can have profound impacts on what questions are asked and how service opportunities are identified.

The outcomes of investigation and assessment responses often differ as well. If maltreatment is substantiated in investigated cases, they continue to be handled in an authoritative manner, which may include court ordered services, out-of-home care and prosecution of perpetrators. Cases that are assessed, on the other hand, would usually continue to be handled in a supportive manner with voluntary services. Low risk cases may receive an early intervention response, comprising family support with a mix of informal and formal services, and including parent education, housing assistance and neighbourhood support, offered by community partners.

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Evaluation

In the United States, several states have instituted differential response systems that offer safety assessments and service options as opposed to investigations for those notifications deemed less serious. Among the states offering this option are Missouri, Florida, Minnesota, Delaware, Oklahoma, South Carolina, Utah, Virginia and Kentucky. In general, evaluations have suggested that the implementation of a differential response approach can lead to positive outcomes for children and families in comparison with the more traditional child protection approach.

A comprehensive evaluation of the differential approach has been conducted in Missouri. In Missouri, hotline reports (or notifications) are screened into two categories — investigations for those cases representing the more serious threats to child safety and family assessment for those cases representing less severe incidents. As an indication, about 80 per cent of notifications of child abuse are handled under the family assessment track.

Missouri’s evaluation compared the outcomes of more than 900 families from 14 pilot counties and 14 comparison counties from 1994 to 1997. The evaluation found that:

- children in families that were screened for family assessment rather than investigations were safer than their counterparts in the comparison counties and they were made safer sooner;
- risk assessments conducted at the beginning and end of agency contact indicated that child safety improved for moderate and low risk families receiving voluntary assessments and referrals for services;
- a high proportion of the families in the assessment track demonstrated improvements in one or more safety areas, although no significant differences were demonstrated in some key problem areas such as child-adult conflicts or parenting problems between the pilot and comparison families;
- families in the pilot counties increased their use of community-based services and experienced significantly greater timeliness in the initiation of services from the time of the notification than those in comparison counties;
- also, a higher proportion of families were cooperative in following through on preventive services in the pilot compared with the comparison counties;
- while the comparison sites experienced a steady or slightly increasing level of notifications, notifications in the pilot sites dropped by eight per cent;
- the pilot sites also recorded slightly lower rates of renotifications for child abuse or neglect; and
- family satisfaction increased among families in pilot counties as evidenced by their receptivity to services, their belief that they improved as a result of services, and their view of the agency as a source of support.

Although the evaluation found that the level of assistance increased across the full spectrum of reports in pilot areas, it was most noticeable in three types of families:

- those who were unable to meet their children’s basic needs;
- those in which children experienced milder forms of physical abuse; and
- those in which there were conflicts between parents and older children.

The evaluation noted that these types of families traditionally received less attention and fewer services from public child protection systems, due primarily to the intense demands of a relatively small number of very serious and time-consuming cases. However, by adopting a more flexible response to reports and, in less severe incidents, focusing on a broader set of underlying issues and conditions and not just the initial accusation, the problems and needs of a larger set of such families were addressed.

Interestingly, there were also differences recorded for cases screened for an investigation. The evaluation found that investigations in the pilot sites that involved serious injuries were more likely to be referred for prosecution than were comparable cases investigated in the comparison counties. This finding was very important, as a primary concern with the new approach was whether reduction in formally investigated reports might lead to a relaxation of the child welfare agency’s vigilance in protecting children. This finding suggested that vigilance was increased.

In summary, although in some cases the results were modest, evaluations of differential response approaches have indicated that the reforms were related to lower rates of re-referral, improved family satisfaction and increased use of community services. In terms of program costs, in the short-run, although there were savings in some areas, they did not offset the implementation costs. Understandably, if child protection agencies are diverting a substantial proportion of notifications, expansion of services to even a small proportion of these cases represents an increase in current expenditures. Any savings that may be accrued due to early intervention services may not be realised for several years. The short-term benefits for differential response approaches may be limited to improving service access and family outcomes, not necessarily agency costs.

Although in general the evaluations of differential response approaches have been positive, the evaluation for Washington offered a cautionary note. The evaluation found that the level of risk and severity of some of the referrals to the family assessment track were inappropriately high and that the rates of re-referral were similar for families who did and did not engage in the assessment process. It made the obvious point that good initial risk assessments are crucial in a differential response model where the family’s participation in an assessment is voluntary.


More generally, the Washington evaluation does raise the question as to whether the two categories of response – high and lower risk – are enough. The lower risk category may be too broad, particularly if the only regulatory response is the offer of voluntary services and there is no monitoring of the take up or effectiveness of the services, or the progress made by the family. The risk for children may be too high in many cases.

An alternative is to provide a greater range of regulatory responses within this approach. Some jurisdictions have introduced a third category of case – moderate risk. Children assessed as at moderate risk receive, with their families, a response from both child protection and community partners, which comprises formal services that are assessed as required and form a co-ordinated family support and safety plan. This third category has the advantages of working with families through supportive services and diverting them from court processes. But it also allows for the possibility of retaining an element of coercion.

**Implications for Practice**

Shifting to a differential approach would represent a significant change from current practice in several respects. It would narrow the reach of authoritative child protection system and target that intervention to the children most at risk. This would help ensure that the system acts aggressively to protect children at high risk. It would also establish a less adversarial and more helpful response to families who are at risk of abuse or neglect but for whom coercive intervention is not necessary. Families at lower risk would be able to access services on a voluntary basis from a broad range of community agencies.

The practice and implementation implications of such a change in approach are wide ranging:

- it requires skilled screening teams to do the initial triage;
- it requires the family support track to be engaged quickly so that mistakes in assignment or situations that have deteriorated can be identified and redirected;
- it involves a careful articulation of the relationship between the two tracks;
- good assessment of parenting capacity becomes a central task; and
- not least it means that the family development services and supports must be available, and effective, because simply creating parallel investigative and assessment systems is futile.

Furthermore, if child protection is to provide a more differential response to the range of problems that can place children at risk of abuse and neglect, this can only be accomplished by working in partnerships with other government and non-government agencies. The partnerships would also have to be ‘deep’, including provision for cross-agency service planning and funding.

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**A Different Approach to Intake in Western Australia**

Western Australia follows a differential response to reports of concerns about the safety and well-being of children that has some similarities with the US model. This approach was developed under the ‘New Directions’ policy which was piloted in a number of regions in 1995-96 and introduced state-wide in May 1996. The objective of the New Directions policy was to improve information collection at intake to support the delivery of a broader range of responses to families. The policy approach is to separate issues of child welfare from allegations of child maltreatment to support better targeting and investigation of more serious allegations, while concurrently providing access to a range of support services where concerns are welfare based.\(^{112}\) More information on this approach and a comparison with the approach to intake in Victoria are given in Appendix A.

### 5.3 Intermediate Structures

An alternative way to conceptualise the issues around defining more flexible responses for families begins with the markedly different arrangements of the family service approach to the problems of child abuse and neglect discussed in Chapter Two.

A major review of the family service approach to child protection identified the use of what has been referred to as an ‘intermediate space’ or intermediate structure in many jurisdictions, which allows for highly flexible responses for families.\(^{113}\) The intermediate space falls between voluntary services and the coercive use of the legal power. It is sometimes represented by an institution and sometimes by a person-in-role (for example, the Confidential Doctor Service in Belgium and the Netherlands and the Inspecteur in France). The crucial point is that it allows for negotiation, dialogue and deliberation with families before the law becomes involved, and even when the law is involved.

Under intermediate structures, agencies work to establish relations of trust with parents and children in order to negotiate agreed action if possible. Countries in which intermediary structures are prevalent have a range of procedures and programs that are organised around consensus building and cooperative working relationships. When social workers are not able to negotiate voluntary assistance to families and children, more coercive methods, such as securing a court order, may be applied. Although there are differences among the countries, intermediate structures share some common characteristics:

- they legitimate the flexible use of different forms of authority in child protection work;
- they allow time for full assessments on the basis of a proper engagement with families;
- they are undertaken on the basis of confidentiality and voluntary engagement;

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• they strengthen the authority of professionals working in partnership with families in a voluntary capacity.\textsuperscript{114}

In terms of regulatory responses, intermediate spaces or structures, through partnerships with parents, are good examples of strategies that interact with and encourage parents’ capacity and desire to ‘self-regulate’. This is reinforced by the voluntary and confidential engagement of parents and the more open access to services. In the child protection orientation, even under the differential approach, access to services and assistance is via a notification to a government agency. Although it is possible for parents to come forward themselves, the formal, proceduralised structures do not encourage it. On the other hand, intermediate structures report fairly high levels of direct access from parents. As an example, when Belgium introduced the Confidential Doctors Centres, referrals by abusive parents themselves increased from two per cent to 38 per cent under the new approach.\textsuperscript{115}

One demonstration of the implications of a strategy based more on self-regulation is seen in some of the jurisdictions’ approach to the placement of children in out-of-home care. As explained in Chapter Two, jurisdictions with a family service orientation tend to have a very high proportion of voluntary placements in care (from 75 per cent to 90 per cent are voluntary). The placements are agreed with the parents through discussion and negotiation as being in the best interest of the child. This is in comparison with jurisdictions that have a child protection orientation in which most of the out-of-home care placements are involuntary.

It would be reasonable to assume that voluntary placements have less negative impact on children than compulsory placements as children would be less likely to see the placement as punishment and to blame themselves for their family’s troubles. Also, these jurisdictions place a great deal of emphasis on ensuring a continuous relationship between children and parents during out-of-home care. Some jurisdictions have also developed alternative models of care in which parents and children are placed together in residential foster family care.

While intermediate structures are more commonly associated with jurisdictions with a family service orientation to the problems of child abuse, this is not an essential linkage. As Hetherington et al point out, whenever there is the potential for compulsion, there is bound to be a pre-legal arena in which the possibility or threat of compulsion creates a space for action which is not fully voluntary or fully coercive — an area of ‘semi-compulsion’. Since the vast majority of cases involving suspicion of child abuse do not come before the courts, this space exists for all jurisdictions; the issue is what happens in it.\textsuperscript{116} The questions which arise for jurisdictions with a child protection orientation include:

• Is it possible to incorporate responses between voluntary services and the coercive use of the legal power?

\textsuperscript{114} R Hetherington, A. Cooper, P. Smith and G. Wilford, Protecting Children: Messages From Europe, Russell House Publishing, Lyme Regis, 1997, p. 36
• Can structures and procedures be devised for a semi-authoritative mediation of differences among children, parents and child protection authorities?¹¹⁷

Within this context, intermediate structures can be viewed as an example of an approach to enforced self-regulation identified as part of the enforcement pyramid (see Section 4.1). It is recognised that perhaps the greatest challenge facing regulatory design is not at the base or the apex of the pyramid but at the intermediate levels. Enforced self-regulation is one approach to fill the gap.¹¹⁸

In the language of regulation, enforced self-regulation is about negotiation between the state (the regulator) and the regulated individuals or organisations to establish regulations that are particularised to each individual or organisation. Each individual or organisation is required to propose their own regulatory standards, which must be approved by the regulator, if they are to avoid harsher and less tailored standards imposed by the state. The strategy recognises that greater compliance comes from people who are responsible for designing and enforcing their own regulatory standards, while acknowledging that direct government involvement and monitoring is still required.¹¹⁹

Within the child protection orientation to child abuse, there are possibilities for enforced self-regulation approaches. For instance, it has been suggested that England’s child protection conference works as a ‘third mandate’ in child protection work between voluntary agreement and legal compulsion, deriving its authority from regulation and procedure.¹²⁰ The conference brings together professionals, the parents and the child (if appropriate). In cases where the child is placed on the child protection register of ‘children at risk’, the conference agrees on a plan for the child’s protection.

¹¹⁹ I. Ayres and J. Braithwaite, Responsive Regulation: Transcending the Deregulation Debate, Oxford University Press, New York, 1992, pp. 101, 113
Family group conferences are another example of an intermediate structure in place in some child protection systems that can be viewed as enforced self-regulation. Family group conferences based on trust and negotiation provide a forum through which conflict is resolved and acceptable plans are made for children at risk.\(^{121}\) For example, in the ACT, family group conferencing is considered an alternative to court action and therefore must take place before any child protection proceedings are under way.\(^{122}\) The legislation directs that legal representatives cannot attend the family group conferencing. If the family group conference results in an agreed plan, the written document may be registered in the Children’s Court (it can also remain an agreement between the family and the department). A Canadian study of the outcomes of the use of family group conferencing in serious cases of family violence found that abuse and neglect incidents halved in families that went through a family conferencing process compared with a matched control group of families.\(^{123}\)

It is very important to note also, however, that serious and legitimate criticisms have been made of certain approaches to family group conferencing, particularly concerning the imbalance in power between family members that can lead to the perpetrators of abuse dominating the proceedings.\(^{124}\) Studies of effective family group conferencing have demonstrated the importance of the involvement of protective authorities to heighten the legal leverage over the abusers. The role of the protective authorities is first to ensure that family members are safe. They then not only need to approve the plan and resource it, but also maintain their role of monitoring the safety of family members.\(^{125}\)

Here it is important to recall that the benefit of taking a responsive approach to regulation is that it involves the use of a hierarchy of graduated responses to non-compliance, as demonstrated by the enforcement pyramid. Thus, intermediate approaches such as enforced self-regulation are linked with the possibility of both less and more coercive enforcement strategies, depending on their success in achieving the regulation objectives. In this view, intermediate structures such as family group conferencing are not strictly an alternative to the coercive state, as in reality in many cases they can only be effective ‘in the shadow of the punitive state’.\(^{126}\) That they are part of a range of possible regulatory responses gives them greater effectiveness. This point is demonstrated by the studies of effective family group conferencing noted above which identified the importance of closely involving protective authorities to heighten the legal leverage over the abusers.

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This conceptualisation of intermediate structures as very much part of a continuum of enforcement responses may not sit comfortably with the family service orientation to the problems of child abuse. In this orientation, it does seem that there is a divide or separation between the two broad functions of child protection and family support, a position supported by many commentators. This report does not take this position but instead argues for an integrated child protection and family support system, an argument that is developed further in Chapter Six.

5.4 The Permanency Movement

An important recent development in many child protections systems has been a greater focus on permanency for children in out-of-home care.

In the United States, ‘permanency planning’ developed in response to the greatly increasing numbers of children who were experiencing indeterminate stays in out-of-home care with little or no chance of returning to their birth parents. Under the policy, social workers make time-limited plans at the point of intake for reunification and concurrent plans for adoption should reunification prove impossible. Permanency planning is intended to provide stability for each child entering care and is based on a hierarchy of preferred options. The first preference remains reunification with biological family, with adoption by carers or others if that is not possible. The next preference is for long-term foster care, with residential placement as a last resort. Though reunification is the first, preferred option, there is a time-limit placed on achieving it. The State is required to petition for termination of parental rights in cases where a child has been in care for 15 of the preceding 22 months (with some limited exceptions).

Recently, the UK also undertook a major review of policies towards children who spend long periods of time in out-of-home care. It began with a review of adoption policies announced by the Prime Minister. A strong case for a greater focus on permanency for children in out-of-home care was presented in the report, *The Prime Minister's Review of Adoption*, conducted by the UK Cabinet Office. The report concluded that the government should promote an increase in adoption for children in care and that there is scope to increase the number of adoptions each year. The report made clear that there was an important shift in adoption which needed to be widely recognised and acknowledged: adoption of children from care in the 21st century is less about providing homes for relinquished babies and more concerned with providing secure, permanent relationships for some of society’s most vulnerable children.

The report based its case on an analysis of the population of children in care in the United Kingdom, finding that it is spilt between those experiencing rapid turnover and children who stay longer. While many children had only a short stay in care of less than three months, of those in care on 31 March 1999, around 40 per cent had been in care for more than three years. Furthermore, the analysis found that the chance of successfully returning home decreases the longer a child stays in care:

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• at one month in care, children have about a 40 per cent chance of remaining in care for four years or more and most likely until leaving the system at 16 years;

• a child in care for more than 6 months has a 60 per cent chance of remaining in care for 4 years or more;

• by 12 months the figure has risen to 80 per cent.

In summary, the arguments for an increase in adoption of children in care put forward in the report were:

• the outcomes of children who grow up in care are poor in terms of employment, stability of relationships and involvement with the justice system. In comparison, there is a well-established evidence base that adopted children do as well as those in the general population;

• a very high degree of focused effort is required for preventative services to avoid the need for alternative placements where families are abusing or neglectful;

• return to birth parents can have positive outcomes, but the transition can also be very difficult. Success depends on the conditions at home and the quality of care;

• there is no evidence that returning home in itself necessarily or automatically delivers better outcomes than placement for fostering or adoption.

In 2000, the Government published its response to the report and subsequent consultation in a White Paper on Adoption: A New Approach. The Paper set out comprehensive reforms of adoption law and social service practice ‘to provide many more looked after children who cannot return to their families with a fresh start: the opportunity to live in, and be part of, a new family’. New national adoption standards were announced with benchmark timescales including:

• a sound plan for children’s permanent future must be made within six months of a child starting to be continuously in out-of-home care; and

• where the decision is made that adoption is the plan, a new family should be found within a further six months.

The statistics on children adopted from out-of-home care in the UK show that there have been significant increases in both the number of children placed for adoption and the number of children adopted in 2001. Another important result has been a decrease in the average time children adopted were in out-of-home care before being adopted. For such children, the average time decreased from two years ten months in 2000 to two years eight months in 2001.

While the White Paper focuses on changes to adoption law and the processes and support for adoption, it does place this within the broader context of a range of options for permanence, emphasising that the most appropriate option will depend on the circumstances and preferences of the child or young person in out-of-home care. The White Paper identifies a number of groups for whom adoption may not be the preferred outcome, in particular older children with strong links to their birth families, children being cared for on a permanent basis by members of their wider birth family, and some ethnic communities with religious and cultural difficulties with adoption. In addition to adoption, the following options for greater permanency for children and young people from these groups are identified:

- permanence within the extended family, which may remain an informal arrangement;
- long-term foster care; and
- ‘special guardianship’, which the UK Government is developing as a new legislative option to provide permanence short of the legal separation involved in adoption. It is very similar to permanent care arrangements in Victoria. The aim of the new option is to provide permanence for those children for whom adoption is not appropriate and where the court decides it is in the child’s best interest. It will give a carer clear responsibility for all aspects of caring for the child and for taking decisions to do with their upbringing. It will be legally secure while preserving the basic legal link between the child and their birth family.

5.5 The Effectiveness of Family and Children’s Services

All jurisdictions which aim to implement policies and programs to ensure the safety and well-being of children are dependent on the effectiveness of services to achieve these objectives. Although effective family and child welfare services are hence crucial to any strategy to expand the range of service responses, there is currently a poor state of knowledge of what works in children and family services. A number of reviews draw together the conclusions from the more robust evaluations that are available. The findings differ in detail according to whether the evaluations assessed treatment, preventative or family preservation and support programs, however, a few general conclusions can be made.

First, a strong conclusion from many reviews is that services must be provided early to families in need. It is extremely difficult for interventions to alter the trajectory of families if they already have extensive histories of serious physical abuse and neglect. Even when families receive skilled help, it often has little impact on the well-being of children or parents because by the time they receive it the problems are too entrenched.

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133 In this context, the discussion of family and children’s services is restricted to services for vulnerable families and children at risk.
Second, interventions that have demonstrated the greatest promise generally offer intensive services. There is evidence that long-term, intensive services can shore up troubled families that are motivated to make difficult changes to provide a safe home to their children.\(^{135}\) This is also supported by child development research, which suggests that sizeable and enduring interventions are needed to interrupt most chains of risk in children's lives.\(^{136}\) Alternatively, as one commentator has noted:

> Treating serious and chronic problems with weak, diffuse or short term interventions wastes scarce service resources and too often leaves children at risk.\(^{137}\)

In contrast to this advice, the evidence is that families and children often receive very low levels of intervention and assistance. A UK study found that much service provision is extremely low level and characterised by support from voluntary agencies and assistance from social services in the form of small amounts of advice, information and money. Most of the assistance for families was short-term — less than three months — and of the low intensity — one hour or less per week. Only about five per cent of children getting help from social services received intensive intervention over a long period. The researchers concluded:

> Given the level in complexity of social needs presented by significant proportions of children in the community surveyed and the fairly low level of interventions available, there is no logical reason to expect much impact on the children's developmental trajectories. Even well-designed and carefully focused interventions generally report modest effect sizes so these lower-level interventions are unlikely to achieve much beyond offering a benign safety net for families.\(^{138}\)

The situation is similar in Victoria with families receiving on average only 14 hours of family support services a year, with only 6 per cent receiving over 20 hours.

These findings suggest that there is a choice between ‘thin’ and ‘thick’ children's services. The UK study found that a lot of children were getting a little support — the thin approach. An alternative would be to offer much more assistance to a much smaller group of children — the thick approach.

Consistent with the thick approach is that interventions must recognise the complexity of families’ issues and problems:

> Interventions that change only one thing at a time often fail because they change only one thing at a time.\(^{139}\)

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Many of the initiatives aimed at strengthening families that are reported as most promising are complex efforts with multiple, interacting components that require constant mid-course correction and the active engagement of committed human beings. Such an approach makes a great deal of sense in light of the multi-dimensional nature of child maltreatment which both indicates that there are many targets to focus intervention upon, and also that directing efforts at any single target is not likely to be particularly successful (see Section 4.2).

In addition, successful interventions typically involve continuous adaptation to local needs and strengths, to lessons learned, and to changing circumstances. They are deeply dependent on context. Hence, funding must be sufficiently flexible so that services and supports can be tailored to the needs of individual families and communities. This will require changes to separate and categorically-based program funding.

This point emphasises the limitations of considering individual programs to be the sole unit of analysis or requirement for change. As a recent review of effective services and supports for families stressed: ‘We cannot march program by program into the better future we seek.’ By acknowledging the importance of the community context, this approach recognises the links between effective communities and effective services and supports for families.

The same review noted that often what was needed was not a new program but rather better connections between existing programs and agencies, including primary health services, family services, education, housing, mental health and drug and alcohol services. In doing so, however, it is crucial that ‘adult’ services, such as drug and alcohol services, become more sensitive to the needs of and take more responsibility for the children of their clients. A better connected service system would also allow for multiple entry points to essential services and supports.

Finally, many studies highlight the importance of the quality, skills, and responsiveness of staff in delivering effective services. A crucial part of this is that staff are welcoming to children and families, are sensitive to and respectful of their diverse needs, and acknowledge their views about what would help them. Children and families must have reason to trust the institutions and individuals offering services and support. At the same time, however, staff must pay special attention to uptake, participation, and attrition in order to reach and persevere with the highest-risk individuals and families.

**Extending Child Welfare Services into the Community**

There has been a recent, interesting development in some jurisdictions to broaden the mission and scope of child protection. The aim is to identify and offer services to families who have not been reported for child abuse but who struggle with significant personal or environmental challenges, by locating child welfare workers in key neighbourhood agencies such as schools, community service centres and healthcare centres.

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The logic of this approach is to reduce the barriers between families and service providers and create an environment in which families feel more comfortable drawing on public services for general support. In theory, services embedded in the community offer interventions more compatible with a family’s culture and normative standards of child well-being. Services are also less stigmatised.
The argument is well made in the UK Children’s Green Paper:

There is a strong case for basing multi-disciplinary teams in and around the places where many children spend much of their time, such as schools and Sure Start Children’s Centres, and also primary care centres. This would promote self-referral into services and enable children’s social workers and other professionals to engage in dialogue with teaching and school support staff. Embedding targeted services within universal settings can ensure more rapid support without the delay of formal referral, and enable frontline professionals to seek help and advice. Developing networks across universal and specialist professionals can strengthen inter-professional relationships and trust.

A recent review evaluated the success of this general strategy. In summary, the review found that locating child welfare workers in community settings was successful in:

- improving the ability of at-risk families to access resources sooner;
- better integrating child welfare services into the fabric of community life; and
- fostering greater service collaboration and coordination.

There was, however, no evidence available as to the impacts of this approach on key welfare outcomes such as child abuse notifications or child placement rates.

One very valuable outcome of the strategy was that community service providers increased their understanding of and responsibility for vulnerable and at-risk children. Previously, non-child protection providers considered their sole responsibility was to report suspected cases. The strategy encouraged all service providers to take personal action to connect families with needed services or to offer assistance. The strategy was also found to play a critical role in improving worker collaboration and service coordination for better informed referral decisions, easier linkages of families to referrals, and better communication among workers. Given the problems with interagency cooperation discussed earlier, these are significant achievements in their own right.

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Findings from a UK study reinforce the importance of encouraging all service providers to take personal action to connect families with needed services or to offer assistance, instead of simply referring the case to child protection. A three-year longitudinal study aimed to reduce youth crime by placing adequately resourced and trained social worker teams in schools. The results were significant declines in youth crime, truancy and drug abuse and significant increases in educational attainment and in the morale of teachers and families. The integrated project was also associated with marked improvement in child protection as the placement of social workers in schools provided an easy, acceptable and speedy access for children and families at risk. Whilst the number of families on the ‘At risk of child abuse register’ rose by 30 per cent in the surrounding county during the three year study, in the communities in which the study was conducted the number fell by 76 per cent. A cost benefit analysis showed the project paid for itself with a minimum 250 per cent surplus of the original investment.

These examples are part of what has been referred to as ‘an emerging direction’ in the development of services to keep children safe and strengthen families. This direction envisages these services as part of a larger array of services and supports that is developed more integrally with local communities and neighbourhoods. With this perspective, the development of service interventions focuses less on any one service model and more on the entire collection of help that a community can offer.

5.6 Summary Points

This Chapter has discussed developments in child protection systems that go some way to addressing the issues raised by the review of regulatory arrangements in Chapters Three and Four. For example:

- the UK and US have developed broader responses to the issues of child abuse, with less reliance on a forensic, investigative approach and a greater focus on child welfare and family services and support. They expand the available regulatory responses, reducing the high burden for some families associated with the more traditional options of investigation and court proceedings. They all do this, however, while retaining the capacity to apply more coercive responses in cases of high risk;

- the UK and US have also moved to tighten up permanency planning for children in out-of-home care. The aim is to decrease the negative impact of lengthy periods in care, particularly for children with multiple placements who cannot return to their families, by looking sooner at the possibilities of more permanent, stable care arrangements, including adoption;

- many of the developments emphasise the importance of working respectfully with parents and children, acknowledging their needs and building trust as the basis for more effective responses to the problems and as a prerequisite for changing behaviour;

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• the role of intermediate structures, such as family group conferences, was highlighted as a way of building on families’ capacity and desire to self-regulate. They are examples of ‘enforced self-regulation’. While it is important to have such intermediate level responses as part of the available range, their effectiveness is very much associated with being part of a continuum of responses that are linked with the possibility of both less and more coercive enforcement strategies depending on their success in achieving the regulatory objectives; and

• an effective regulatory approach requires effective responses, and in the case of child protection the effectiveness of family services is crucial. Research into effective services highlights the necessity for the provision of earlier, intensive, comprehensive services which are flexible to the changing needs and circumstances of families, children and the communities in which they live.
Chapter Six
Directions for Reform

The final Chapter puts forward some broad directions for reform of Victoria’s child protection system to improve the outcomes for children and families, based on the findings of this report.

6.1 Defining the Problem

With any regulatory intervention such as child protection, the objective of the government is to solve problems, regardless of how the government intervenes. Hence, before discussing how the government should intervene to protect children, a threshold consideration is, is the right problem being addressed?

As discussed in Chapter Three, in the main the Children and Young Person’s Act addresses the problem of children who have suffered, or who are likely to suffer, significant harm where their parents have not protected, or are unlikely to protect, them from harm. This statement provides a focused definition of the problem for which government intervention is justified, and the Victorian child protection system has been designed in line with this conceptualisation of the regulatory problem.

Both advantages and disadvantages were identified with this approach in Chapter Three. A clear advantage is that it is focused on critical episodes of allegations of abuse and the appropriate actions to take in response to an episode. It is highly effective for identifying and responding to immediate risk, with the emphasis on determining the substance of a notified episode and acting decisively. This is consistent with its intended role of an emergency service. This mission recognises that, as in all developed societies, there is a small minority of families within which there are extreme risks of grave maltreatment and the need to protect the child is urgent. This approach is particularly appropriate for cases of a more episodic nature, such as some cases of sexual abuse or severe physical abuse.

But problems with this approach were also identified, many stemming from the changes in the client population since the Act was introduced. These changes are shifting the problems to be addressed increasingly to ones of a more chronic and relapsing nature. In summary:

- the statutory basis of child protection drives the process and treatment of families. This limits the responses available and their flexibility to meet the differing needs of families, children and young people. For instance, there is a lot of difference between the situations of very young children (who are more likely than other age-groups to suffer from neglect, significant physical harm and exposure to domestic violence and psychiatric illness) and adolescents (who are more likely to have involvement in high risk/self harm activity, homelessness and suicide risk), and yet both groups are brought together under the same broad processes;

• the system is based on discrete episodes: notify, investigate, intervene or close. But high levels of renotifications and resubstantiations suggest that it is a mistake to look at child abuse and neglect as a point-in-time event. Furthermore, the key characteristics of most families involved in child protection (for example, low income, sole parenthood, substance abuse, and mental disability) are all long-term factors impacting on the lives of parents and children. Addressing the problems, or at least enabling the families to better cope with the problems, requires sustained support; and

• despite the concerns of those notifying, families who are at lower risk often fall outside the mandate of the legislation. These families are often recognised as vulnerable and are referred to other services, such as family support. However, there are no established mechanisms to ensure that the follow up takes place, is sustained or is successful. A clear danger with this approach is that over time these families may become higher risk due to the chronic nature of their problems, and opportunities are missed early on to provide positive assistance that can help them avoid more major problems in the future.

This analysis suggests that the current definition of the problems around protecting children that trigger government intervention is too narrow. Responding to the criticisms of the present child protection system would require:

• expanding the range of the problems to include broader concerns about children;

• enabling more flexible responses to the problems; and

• broadening the coverage of the problems that receive services and support to include those identified earlier.

That is, if government aims to solve (or at least minimise) the problem of child abuse, to do so effectively requires it to become involved in broader issues, earlier and with greater flexibility.

Understanding the causes of child abuse provides another key reason for taking a broader approach earlier. As summarised at Section 4.2, research has found that there is no single, sufficient or necessary cause of child abuse, and that the problems that lead to child abuse are usually entrenched and intractable. But more positively, the research also emphasised that what determines whether child abuse will take place in the face of these problems is the balance of stresses and supports. Hence, an emergency response, as the Children and Young Person’s Act was predicated on, is often too limited and too late to alter the trajectorics of families. The implications are clear. A broader approach to families is needed. Again, the analysis suggests the need for more sustained and broad-ranging approaches to families that go beyond immediate safety issues.

Here much can be learned from the UK experience discussed in Section 5.1. The UK approach recognises that there is a need for both government regulation to protect children, and also for obligations on government to provide services and supports to help families in need bring up their children. The UK legislation brings together provisions both to safeguard the protection of children and to promote children’s welfare.

The recent statement on child protection by the Victorian Minister for Community Services embraces the need for the protection of children to incorporate a broad-based response:
The government's emphasis is on prevention. We will:

- provide support for the development of all children;
- identify vulnerable children and families before they encounter difficulties and provide special support;
- divert children and families at risk into appropriate community based support and offer flexible alternatives to them when they need help; and,
- where children must be removed from their families, provide high quality care with an emphasis on stability.\(^4\)

The Minister also recognised that child protection requires a 'modern legislative base' and announced the reform of the *Children and Young Person’s Act*. Reform of the Act is essential to provide the foundation for a broader, more flexible response to the problem of child abuse. But it is also essential that the legislative reform recognises the obligations on government to provide adequate services and support. Without this, the focus of time and resources will continue to be given to the regulation of parents’ behaviour rather than on the equally (or perhaps even more) important focus of assisting families in need to bring up their children.

While the UK example is instructive, it must be acknowledged that in delivering against the obligations to provide services and supports to families in need, the UK government has the considerable advantage of being able to direct service providers. The *Children Act 1989* (Part III) places a duty on local authorities to provide support and services for children in need. In turn, under the Act (Section 27), the local authority may request help from agencies such as social service departments, education, housing and health. The agencies have a duty to comply, as long as the request is compatible with their own duties and discharge of their functions.

The situation in Victoria is very different, however, as most community services are provided by non-government agencies and there are no legislated obligations on these agencies, or even on other government agencies such as education and housing, to work with child protection to help vulnerable families. This would have to be addressed. Ways to do this are discussed in Section 6.2 below.

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\(^4\) Ms Garbutt, Minister for Community Services, Ministerial Statement – *Putting Victoria’s Children First*, Parliament of Victoria, 4 June 2003
In the context of recognising that a broader definition of the problem of protecting children would be needed as the starting point for legislative reform, the next sections discuss a new model for child protection. Four key elements are discussed:

- a community partnership for the protection and welfare of children supported by new infrastructure, processes and governance arrangements;
- a new model for intake, assessment and referral;
- a range of service responses that are appropriate for the wide variety of child protection concerns, problems and circumstances presented by families; and
- a focus on reducing out-of-home care where possible, but also on greater permanency and stability for children in care who are not able to return to their families.

6.2 A Community Partnership for the Welfare and Protection of Children

Defining the problem more broadly in terms of both the protection of children and child and family welfare necessitates new infrastructure, processes and governance arrangements to support the new direction. The sections that follow put forward a new model for child protection based on the notion of community partnership that reflects two objectives: the protection of children and child and family welfare.

The approach put forward is consistent with the view that:

…the heart of an improved system must be a community partnership for child protection. This is a confederation of parents, other members of the family and community, public and private agencies that over time assumes a far-reaching role in the design and implementation of a service delivery system that protects children. 147

A community partnership is also consistent with the perspective of the UK Children’s Green Paper that child protection cannot be separated from policies to improve children’s lives as a whole. The focus throughout is on securing the development and welfare of all children.

Community Child and Family Support Centres

The first suggested building block for the new model is the establishment of Community Child and Family Support Centres in local areas, which would bring together key children and family services. The services to be located in the Centres would include family support services, maternal and child health, child care and child protection (see Figure 6.1 below). That is, services from all parts of the service continuum — universal, secondary and tertiary services — would be provided in the one location.

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147 This Chapter discusses the key elements to support a new model for the protection and welfare of children. It is not intended to cover all the elements that may be important or required in moving to a new approach since the task is to provide broad directions for reform to be considered. In taking this approach, it is acknowledged that some very important issues have not been addressed (for example workforce issues and accountability arrangements).

148 F. Farrow, Building Community Partnerships for Child Protection: Getting From Here to There, Centre for the Study of Social Policy, for the Executive Session on New Paradigms for Child Protective Services, 1997, at www.chapin.uchicago.edu, p. 6
The idea to establish the Centres also draws on the development of the children’s trusts in the UK and the success of approaches that have located child protection staff in community settings (see Sections 5.1 and 5.5). The Centres would aim to:

- identify earlier families who are vulnerable or in need by encouraging families to approach services for support. This would be helped by providing easier access to services, both in terms of location and by recognising that parents are more likely to approach services that provide practical assistance, such as maternal and child health and child care;
- better integrate child protection services into the fabric of community life;
- broaden responsibility for the protection of children beyond the child protection system by increasing community service providers’ understanding of and responsibility for vulnerable and at-risk children. Increasing the range of service options should also reduce the need for notifications by these providers; and
- foster greater service collaboration and coordination, providing a basis for better informed referral decisions, easier linkages of families to referrals, and better communication among workers.

It would not be possible or appropriate for all the agencies that are essential to a community partnership for the protection of children to be located in these child and family support centres, such as schools, mental health services and drug and alcohol services. An additional process is required to encourage interagency cooperation and collaboration, and broader responsibility for protecting children.

**Community Support Networks**

This next step of establishing Community Support Networks builds upon the work being undertaken by the Innovation Projects set up by DHS as part of the integrated strategy for child protection. The rationale for the projects is consistent with the directions of the proposed model. The projects aim both to divert a significant proportion of families currently notified to child protection to community-based services and to minimise the progression of families into the child protection system by offering timelier, community-based support to families.
There are twelve Innovations Projects in eight Local Government Areas across Victoria (eight are already established and four are currently being set up and will be operational by early 2004). Each project develops its own processes and service responses following a thorough analysis of the needs and complexities of the client groups in the area in which it is located. Fundamental to the effectiveness of a project is the key understanding upon which they are based: responding effectively to the complex and diverse needs of vulnerable families requires a network of locally coordinated, community-based services, including child protection, family support, health, police and schools, delivering an integrated service response. The description of the service network in Shepparton in Box 6.1 below illustrates how the networks operate.

Box 6.1

THE SHEPPARTON INNOVATIONS NETWORK

Membership of the network is drawn from local services and includes family support services, schools, housing, police, child protection, youth services, maternal and child health services, community health services, child and adolescent mental health services, the local paediatrician, disability services and the local hospital.

The administration and organisation of the Network includes a 'standing committee' of ten members who meet monthly, with the full service network meeting quarterly, and a series of sub-committees. The current sub-committees are focused on:

- training and education;
- statistics and data;
- cultural and linguistic diversity;
- practice issues; and
- an infants (0-2) project.

The infants project is an example of a sub-committee with responsibility for monitoring vulnerable clients. The sub-committee has been established to engage stakeholders in identifying and referring families where there are identified issues with raising infants. The project focuses in particular on identifying vulnerable antenatal and immediately postnatal mothers. The objective of the project is to keep infants safe through early identification and intervention, thereby preventing any emergence of issues that would be likely to result in involvement with child protection.


While the Innovation Projects have been established to prevent entry and re-entry into the child protection system, the early success of these locally coordinated, community based services in effectively delivering an integrated service response suggests that the approach could have broader application. In particular, the approach would be of considerable benefit in supporting vulnerable children and young people who are already clients of child protection and who are likely to remain so for some time.\(^ {150} \) The model proposed in this report would incorporate these networks with their broader functions.

Integrated Governance

It is clear that the effectiveness of the two key building blocks discussed so far — the Community Child and Family Support Centres and the Community Support Networks — would be critically dependent on a strong partnership among a range of relevant government and non-government agencies. This would require an acknowledgment of mutual interest and responsibility to help solve the problems and address the issues better relating to the protection of children and child and family welfare.

But, as discussed in Section 5.1, the requirement to involve a broad array of agencies in addressing the problems poses challenges in all jurisdictions. Divided responsibilities, poor mechanisms for interagency consultation and support, and lack of shared responsibility for service provision among the various agencies involved with child protection clients (for example, mental health professionals, community welfare agencies, maternal and child health nurses, and schools) are factors regularly cited as problems in child death inquiries, both in Victoria and elsewhere.

The UK Children’s Green Paper identified the key causes of fragmentation as separate targets, planning requirements, funding streams, and review and accountability arrangements. The experience in the UK has been that where local areas have attempted to join up services — for instance across the local education authority and children’s social services — the central Government has still expected them to account for money separately, and separate inspectorates assess them, even if operationally services are integrated, and outcomes mutually reinforcing.

In Victoria, the problems are complicated by the fact that most community services are contracted out to non-government community service organisations and other essential services for families and children, such as education, housing and health, are provided by separate government agencies. These organisations and agencies have their own governance and management structures, priorities and accountability arrangements. Such structures and processes partly exist in order to maintain the clear distribution of responsibilities and specialisation of tasks among sectors and across agencies. These arrangements present difficulties in building an effective partnership for protecting children.

As other commentators have noted, the problem of disjointed and inflexible community services is partly due to the continued operation of a tradition that has emphasised separate organisational rather than collaborative attainments for non-government and government agencies, a tradition that is now out-of-date:

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…the modern reality of the transfer of very substantial public funds to non-government social agencies was bound to entail identity, value and administrative consequences for the latter. An identity as a totally independent agency, free to sustain established goals and programs without careful regard to the priority needs of the population being served and the available resources of the community, is increasingly difficult when public rather than private funding is to the fore.  

The way forward is the merging of older conceptions of separate service organisations, both government and non-government, into an integrated system that is managed as a system and held accountable for effective service provision in the context of local needs and conditions. What has been called integrated governance is aimed at doing this:  

Integrated governance describes the structure of formal and informal relations to manage affairs through collaborative (joined-up) approaches, which may be between government agencies, or across levels of government (local, State and Commonwealth) and/or the non-government sector.  

Integrated governance is not an end in itself but is about addressing those issues and problems that can only be solved in partnership. Hence, the concept of integrated governance incorporates an element of ‘mutuality’, as opposed to individual action — mutuality in terms not just of consultation but also in terms of shared responsibility for policy and program development, planning, implementation and evaluation. It begins with the articulation of a shared vision and purpose, agreement on the key tasks to achieve them, and identification of the indicators to judge effectiveness. It must necessarily also involve the relinquishment of some control by individual organisations and agencies.

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There is no one model for achieving integrated governance. There is a continuum of different ways of working, from informal through to formal relationships, which will be appropriate in different circumstances, such as:

- networking and cooperation, which is based on dialogue and working together (e.g., under a Steering Committee), but involves no change in the autonomy of participating organisations;

- coordination: which does involve some organisational change through more formal cooperation, meaningful training and a commitment to the aims of the other players; and

- collaborative relationships and partnerships, which can include joint planning, implementation, accountability for outcomes and evaluation of policies, as well as facilitative structures and processes such as protocols, common assessment frameworks, the pooling of funding and resources, and co-located services.¹⁵⁶

Integrated governance arrangements permit, support and facilitate cooperation and collaboration among different agencies. The structures and relationships that are appropriate in a particular case should be determined by what is necessary to achieve the agreed objectives and outcomes, taking into account the specific local conditions. In the case of the community partnership for protecting children it would seem that more rather than less formal relationships would be required, such as those identified above as part of collaborative relationships and partnerships. It is significant to note that, in the UK, the development of the Children’s Trusts has emphasised the need for common objectives and joint planning and accountability, supported by pooled budgets across key services (Section 5.1).

Although the discussion has focused on integrated governance arrangements at the local level, research has found that it is no good just integrating relationships at this level, which is often the easiest level to achieve. Each level of integration is hindered if there is lack of integration above it. Hence, as would be expected, leadership and commitment at the top of the organisations are critical to successful integration, with formal structures for ongoing dialogue to clear the barriers.¹⁵⁷

Legislative support would be required to give effect to collaborative relationships among the relevant government and non-government agencies. The aim would be to provide a unifying framework for the protection and welfare of children, which are currently separately addressed in the Children and Young Persons Act 1989 and the Community Services Act 1970. As an example, the UK’s Children Act provides a unifying framework for most aspects of the law relating to the care and upbringing of children, giving a working framework for the provision and delivery of services to children in need and their families.¹⁵⁸

6.3 A Model for Intake, Assessment and Referral

A process for intake is necessary to identify the children, young people and families who require either a referral to child protection services or a referral to other services and support, particularly to intensive family support.

Currently, access to the Victorian child protection system is via a single access and entry point — a notification, usually by a third party, of suspected child abuse. Access to intensive family support services is also through the protective gateway.

Understandably, there is a fairly high threshold applied at the notification and investigation stages in Victoria given that the available regulatory responses are limited and clustered at the coercive end of enforcement strategies (see Sections 3.3 and 4.1). Only 35 per cent of notifications are investigated, of which only 60 per cent are substantiated.

The high levels of renotifications indicate, however, that many families in Victoria who do not meet the threshold for intake into the formal child protection system nevertheless have high needs and face ongoing problems and could be better assisted by a system with a broader range of available responses. The next step in developing a community partnership for protecting children is therefore to identify improved processes for intake, assessment and referral. The proposed model is illustrated in Figure 6.2 below.

The proposed model begins with the intake of information about a child potentially in need of care and protection, which is called a ‘child report’. Child reports would include concerns from both mandated and non-mandated individuals, as is the case now. On intake of a child report, an initial assessment would be undertaken.

A threshold issue to decide is which agency would be responsible for intake and initial assessment; that is, where would the functions sit within government. As noted above, currently access to both child protection and to intensive family support services is through the protective gateway. There are problems with this approach. For example, understandably there is a fairly high threshold for these services. Also, access to services is limited because of resource constraints. Within this context, there is evidence from this and other jurisdictions that families are notified to increase their chances of receiving services and support.

To move away from this situation, and consistent with a broader partnership for the protection and welfare of children, it is proposed that responsibility for intake and initial assessment would belong to an integrated child protection and family support service. Reflecting the desired shift in the process, the intake function would be undertaken by a team of people located at the Community Child and Family Support Centre — the Child and Adolescent Assessment Team as shown in Figure 6.2. The team would be comprised of people with expertise and experience with vulnerable families and children, including, but not restricted to, child protection officers.

On intake of a child report, the Assessment Team would undertake an initial assessment, from which there could be two possible substantive decisions about the child report (it could also be decided that no further action was required). This is also shown in Figure 6.2.
First, the report could be considered to be a notification that a child has suffered, or is likely to suffer, significant harm and where the parents have not protected them from harm. In this case, as is the case now with notifications of suspected child abuse, there would be an immediate child protection assessment or investigation, conducted by child protection officers. *Parental involvement would be compulsory*. Under the proposed approach, it is not envisaged that there would be any diminished focus on the core mission to protect children, acknowledging that there is a small minority of families within which there are extreme risks of grave maltreatment and the need to protect the child is urgent. As has been noted previously, the capacity and willingness to apply tough sanctions must be retained, and even strengthened. Indeed, there is some evidence that a differential response system as proposed might increase the capacity to respond effectively to higher risk cases through improved targeting (see Section 5.2).

Second, the child report may not be considered to be a notification but nevertheless it could indicate that a family is facing severe stresses and problems that are impacting on the child’s welfare, and there are concerns about the parents’ capacity to deal with them. In these cases of ‘child concerns’ a family assessment would be undertaken by the Child and Adolescent Assessment Team over a longer period, leading to more tailored responses to the issues. In contrast to the child protection assessment, this assessment, however, would be voluntary for parents.
This process has many similarities with the differential response models implemented in a number of US states (see Section 5.2). An important implication of the process is that it recognises that a child report contains information about the family and child that informs more comprehensive assessments of their situation than that needed for a basic decision about whether to investigate for the purposes of child protection. The information is available to assist in making a more informed assessment of the appropriate response, service and support for the situation. This broadens the role of child reports from a process that may trigger an investigative response to one that also provides an early warning device to identify families in need of help.
Under this approach, it would be anticipated that, as in the US jurisdictions with a differential approach, the majority of notifications would be directed into the family assessment track, with the minority of notifications that require an investigative approach directed into immediate child protection assessment. But for this to be an appropriate outcome, it is critical that there is a broader range of service responses available for families. This issue is considered in the next section.

6.4 Service Responses

The key findings of the review of the regulatory arrangements for child protection are particularly relevant to this section (see Chapter Three). The review found that:

- there are not enough regulatory responses available for the wide variety of child protection concerns, problems and circumstances presented by families. In particular, while the responses available are highly effective in identifying and responding to immediate and significant risk, which is particularly appropriate for cases of a more episodic nature, they are less effective for cases of a more chronic nature, such as neglect;
- there is a high burden associated with responses frequently enacted by protection services (for example, investigation, and court proceedings to secure court orders); and
- court processes, and particularly placement in unstable out-of-home care, negatively impact on children. Since regulatory responses are so dependent on actions that do involve negative impacts on others, the onus falls to the regulator to focus on other strategies that are more preventative and diversionary.

The proposed model aims to significantly increase the range of responses to the many differing circumstances presented by families. As illustrated in Figure 6.2, under the proposed model there are two avenues for responses to families: following an immediate child protection assessment and following a family assessment.

The broad categories of responses under an immediate child protection assessment are similar to what happens now under a child protection investigation:

- no further action;
- referral to the Children’s Court where the child is at significant risk; or
- referral to other relevant services and support.

There are also three possible response options under a family assessment:

- no further action;
- referral to child protection services for an assessment where the family assessment has identified a greater level of concern than initially assessed (this may include cases where the family does not voluntarily cooperate with the assessment and concerns for the child’s welfare increase); or
- referral to other relevant services and support.
Both the child protection assessment and the family assessment stages have the option of referral to other relevant services and support. It is this option that in particular opens up a broader range of service responses through referral of families to four possible sources of support (see Figure 6.2):

- services at the Community Child and Family Support Centre;
- the Community Support Network;
- intermediate level responses (eg, the Community Child and Family Support Panel or Family Group Conferences), described further below; or
- other services not part of the Centre or the Network, such as Centrelink.

The full range of responses available following both the immediate child protection assessment and the family assessment allow for the main levels of regulatory responses identified in the enforcement pyramid (see Section 4.1). Figure 6.3 below uses the idea of the enforcement pyramid and maps examples of child protection enforcement options against the range of regulatory responses. As the Figure shows, there are three main types of regulatory responses:

- the least coercive regulatory response is self-regulation, with referral to services with no continuing involvement of child protection, such as services like maternal and child health and child care provided through the Community Child and Family Support Centre;
- the next level of enforced self-regulation combines a degree of self-regulation for design and implementation of the required changes with government involvement and monitoring. Examples of intermediate level responses in the protection of children are Family Group Conferences and Community Child and Family Support Panels, discussed further below; and
- the more coercive response level involving the traditional child protection statutory responses of investigation and court proceedings, including application for the permanent removal of a child from the family, also discussed further below.
In practice, however, within the options the emphasis should be on the less coercive approaches with less reliance on a forensic, investigative approach and recourse to the Courts, and a greater focus on child welfare and family services and support. The aim, as much as possible, is to reduce the high burden for some families associated with the more traditional options of investigation and court proceedings and work with the parents’ own capacity and desire to ‘self-regulate’. The emphasis, hence, is on working respectfully with parents and children, acknowledging their needs, and building trust through dialogue and negotiation as the basis for more effective responses to the problems. A key approach to doing this is through intermediate level responses.
Intermediate Level Responses

As noted in Section 5.3, intermediate structures between completely voluntary services and the coercive use of legal power are good examples of enforced self-regulation strategies. Enforced self-regulation strategies recognise that greater compliance comes from people who are responsible for designing and implementing their own changes, while acknowledging that direct government involvement and monitoring is still required to some extent at this intermediate level. Enforced self-regulation strategies offer both opportunities and challenges for child protection. Figures 6.2 and 6.3 identify options for intermediate level responses as possible enforced self-regulation strategies in child protection.

In general, the role of the intermediate level responses in child protection is to seek agreement with the family and other relevant parties on a plan, including necessary support measures, to keep the child safe and hence avoid a formal statutory child protection intervention and court proceedings. Cases would be referred to an intermediate level response directly following a child protection assessment or a family assessment, or from the Community Support Network. There are two groups of families likely to be referred:

- families with children currently subject to a Protection Application by notice who, through participation in an appropriate intermediate level response, could be diverted from court proceedings. A Protection Application by notice is generally made when there are concerns, but no immediate risk to the child.\(^{159}\) In 2000-01, 43 per cent of the 2,500 Protection Applications were made by notice; and

- families where a longer-term support plan is indicated — this group includes families with children considered highly likely to be renotified. Typically, the family may have significant, ongoing needs and problems that have not been resolved, but there may be insufficient grounds to issue a Protection Application.

It may be appropriate to refer a third group of families to an intermediate level response — families involved with services outside child protection where there are increasing concerns about the family. For example, these families, often with a history of prior involvement with child protection, may be exhibiting significant signs of stress and lack the necessary support to cope. These cases could come to the attention of the Community Support Network, or the Assessment Team via a child concern report, and may then be referred to an intermediate level response.

Importantly, in the proposed approach participation in these intermediate level processes would be voluntary for these families. Any decisions would require the agreement and cooperation of the family. However, equally as important, child protection officers would retain existing statutory powers to issue a Protection Application if they considered the child was not being adequately protected.

This last point highlights the fact that in individual cases the success of enforced self-regulation depends very much on parental cooperation and capacity. Hence, consistent with a responsive regulation approach, it is the conduct and attitude of the parents that will influence the decision whether a more or less interventionist response is needed.

\(^{159}\) Currently under a Protection Application by notice, a child protective officer must be satisfied that a child is in need of protection, and notice is given that the child must appear before the Children’s Court. The alternative of a Protection Application by safe custody is generally used when there is immediate and apparent risk to the child, necessitating removal from their parent’s care.
At the intermediate level, there is the need for a structure or process that allows for negotiation, dialogue and deliberation with families outside of formal legal processes. Two possible approaches are discussed further below — Family Group Conferencing and Community Child and Family Support Panels.

**Family Group Conferencing**

As discussed at Section 5.3, family group conferences are an example of an intermediate structure in place in some child protection systems. They are based on trust and negotiation and provide a forum through which acceptable plans are made for children at risk.\(^{160}\) For example, in the ACT, family group conferencing is considered an alternative to court action and therefore must take place before any child protection proceedings are under way.\(^{161}\)

New Zealand provides another example of extensive use of family group conferencing. A family group conference is called following investigation of a report of abuse, neglect or a care problem when a child or young person is believed to be in need of care and/or protection. The New Zealand Department of Child, Youth and Family describes a family group conference as a formal meeting for members of the family and extended family to discuss what needs to be done to make sure a child or young person is safe and well cared for. The aim is to support families to develop their own solutions to their problems. Social workers and families work together to reach agreement on how to keep a child safely within the family group. The meeting is organised by a care and protection coordinator and can involve children who have been taken into care temporarily as well as children living at home.\(^{162}\) A description of the steps involved in family conferencing is set out in Box 6.2 below.

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Box 6.2

THE FAMILY GROUP CONFERENCE APPROACH IN NEW ZEALAND:
SUMMARY OF THE PROCESS

1. Arrangements for a family group conference are made by a care and protection coordinator from the Department of Child, Youth and Family. As many family members as possible are invited to attend.

2. Funds are available to make sure everyone who needs to go to the conference does so.

3. The conference can take place anywhere that the child and their family feel comfortable, such as a meeting room or in a home.

4. The first phase of the conference is the information sharing stage. At this stage invited non-family guests (which may include police, doctors, teachers, social workers and the care and protection coordinator) present information regarding the safety of the child. These non-family guests may also describe what services they can offer the family, give advice and answer questions that the family may have.

5. The next phase of the conference is the family planning stage where the family is left alone to talk in private about how the child or young person can be cared for and kept safe, who should look after the child, and what help can be provided.

6. Once the family has reached a consensus, the family reports its decisions to the whole conference. Everyone has to agree on whether there is a care and protection problem and whether the proposed plan will keep the child safe.

7. The plan has to say who is going to be responsible for the care of the child, what services are needed to support the child and family, whether payments are needed to support the child, and when the plan is to be reviewed.

8. In 90 per cent of cases, family group conferences agree with a plan of what should be done. If agreement can’t be reached, the case goes to the Family Court for a solution to be worked out.

9. After the conference, copies of the plan are given to everyone affected by the decisions. The care and protection coordinator has responsibility for seeing the plan is reviewed. If the plan is not working, or circumstances change, the coordinator must be told and another family group conference may be called.


The New Zealand approach has the key elements that have been identified in evaluations of effective family group conferencing (see Section 5.3). This includes the importance of the involvement of protective authorities to heighten the legal leverage over the abusers. Their role is to:

- before a conference is called, ensure that family members are safe;
- approve the plan and resource it; and
- maintain ongoing monitoring of the safety of family members.

Currently in Victoria, there is some use of family group conferencing but funds are limited. However, there is strong support for its extension in Indigenous communities.
Community Child and Family Support Panels

Another option for an intermediate level response would be provided through Community Child and Family Support Panels. This idea is being developed within DHS broadly based on the Scottish Children’s Hearings. The purpose of the Panels would be to ‘hear’ cases where a longer-term protective plan is indicated for the child. The Panels would be established and managed by the Community Support Networks.

Similar to the Children’s Panel in Scotland, the Panels would comprise only trained community volunteers. The inclusion of community volunteers develops the idea of a community partnership for the protection of children by giving members of the community a greater role to play in protecting children and supporting families. The panels would exclude people professionally involved in child protection cases, such as child protection officers and the police. The aim is to ensure that families receive a fair hearing free from any possible conflicts of interest.

A panel hearing (to be held in private) would involve a meeting with the child or young person, their parents, extended family, the child protection worker and other organisations involved with the family, such as the children’s school or the maternal and child health nurse. If the parents wish, they may choose to have a friend present. This approach also has similarities with family group conferencing. The role of the panel is to:

- consider the needs of the child and family;
- determine whether or not ongoing voluntary supervision is required and for how long; and
- specify the arrangements, including the length of time, for the services, support and other interventions that would be required to protect the child’s safety and welfare over both the immediate and longer term.

The panel hearing would be conducted on a voluntary basis and any decisions would require the agreement of the family and the relevant agencies providing services and support. Examples of the types of arrangements that could be specified by the Panel include:

- the provision of respite care for the child one weekend a month by the maternal grandmother;
- the provision of brokerage funds, for example, to clear existing rent arrears, help clean up the family home or purchase essential white goods;
- arrangements and support to ensure the child attends school regularly (for example, help with transport);
- regular fortnightly visits from the local family support service; and
- attendance at drug counselling by the father.

Member organisations of the Community Support Network would have responsibility for case management and providing the required support services. If deemed necessary for the child’s protection, there would be an option of child protection services maintaining a case planning responsibility.

At any time the family, child protection services or other support services could request that the matter is returned to the Community Child and Family Support Panel for further consideration. Similarly, child protection officers would retain existing statutory powers to issue a Protection Application if they considered the child was not being adequately protected.

**Some Key Characteristics of Intermediate Level Responses**

The two options of Family Group Conferencing and the Community Child and Family Support Panels illustrate some key characteristics of the use of enforced self-regulation strategies in child protection:

- The strategies build on families’ capacity and desire to self-regulate;
- The processes reflect the point that regulation is more effective when people see it as legitimate and procedurally fair, and when they are treated as trustworthy and with respect by those who regulate them;
- The strategies are based around negotiation and agreement with parents about appropriate actions and outcomes to meet the objectives of child safety and welfare; and
- The objectives of child safety and welfare must be achieved if parents are to avoid more coercive, and potentially less tailored, responses from child protection.

Furthermore, more generally, the effectiveness of intermediate level responses is very much associated with being part of a continuum of responses. This links an intermediate level strategy with the possibility of both less and more coercive enforcement strategies depending on their success in achieving the regulatory objectives. So, for example, if a plan agreed upon by all were successful in putting in place structures and change that enabled the parents to ensure the ongoing safety of their child, it would be the right response to shift to a less interventionist response, such as self-regulation. On the other hand, however, if the parents failed to cooperate, or were not able to cooperate, with the requirements of the plan and resisted attempts to engage them further, it may be the right response to escalate intervention to more coercive responses, depending on the degree of risk for the child.

Currently in child protection, the work that child protection officers do in many cases following an investigation that does not lead to a Protection Application (or not immediately) is an example of an enforced self-regulation strategy. These are cases that stay open for extended periods of time where the family may have significant needs and problems to resolve but there may be insufficient grounds or concerns to issue a Protection Application. Although in general the period of time is limited to 90 days, this is administratively determined by DHS rather than a requirement under the Act. In these circumstances, the child protection officers may work with the family to identify actions that need to be taken or services and support that are required to ensure the safety and welfare of the child are protected (for example, a parent’s attendance at a drug treatment program or access to mental health services).
There are two main differences with this current practice and the types of intermediate level responses under the proposed approach discussed above:

- first, not all cases referred to an intermediate level response would begin with a child protection investigation. Although child protection officers would have the option of referring cases to intermediate level responses where there are not urgent protective concerns requiring a Protection Application, many cases will be referred following the family assessment process or from the Community Support Network (as shown in Figure 6.2); and

- second, child protection officers would not have sole responsibility for working with the family. Although the specific arrangements would depend upon the option developed, in general a child protection officer would be part of a broader team. Consistent with the idea of a community partnership for the protection of children, responsibility for protecting children would hence be broadened.

**Available and Effective Services**

Finally, in terms of the service responses under the proposed model it is worth repeating two very important conditions:

- first, the services must be adequately resourced and available; and

- second, the services must be effective. As discussed in Section 5.5, research into effective services highlights the necessity for the provision of earlier, intensive, comprehensive services that are flexible to the changing needs and circumstances of families, children and the communities in which they live.

**6.5 Approach to Out-of-Home Care**

Most children and young people in out-of-home care are there because DHS has obtained a court order to intervene to protect them from further abuse or neglect from within their family. The statutory responsibility of DHS to protect children and young people from harm within the family is a weighty one. It takes on added weight when a child or young person is removed from the family home, as DHS must also ensure the safety, stability and positive development of the children and young people placed in care.

As reported in Section 3.5, analysis of the experience of the cohort of children and young people first placed in out-of-home care in Victoria in 1997-98 found, that at the end of a five-year period, nearly half of the cohort (46 per cent) was not restored with their family. Furthermore, many of the children and young people spent long periods of time in care, either continuously or through a combination of multiple periods following attempts at reunification. Research demonstrates that the outcomes for children who grow up in care are poor in terms of employment, stability of relationships and involvement with the justice system. As noted earlier, poor psycho-social functioning is particularly related to unstable placements, which includes a series of care placements as well as frequent unsuccessful attempts at reunification.\(^\text{164}\)

The new directions for child protection proposed in this Chapter include two responses to this evidence:

- first, an emphasis on avoiding out-of-home care and reducing time spent in care through the provision of preventative and diversionary strategies; and
- second, a greater focus on permanency and stability for those children who spend long periods of time in care with no or little chance of successful reunification with their parents.

**Avoiding Out-of-Home Care**

As pointed out in Chapter Three, since court processes, and particularly placement in unstable out-of-home care, can negatively impact on children, the onus falls to the regulator to focus on other strategies that are more preventative and diversionary.

Strategies to prevent children entering out-of-home care were a focus of The Allen Consulting Group’s earlier report for DHS on out-of-home care.¹⁶⁵ The report noted the importance of recognising that the out–of–home care system is significantly shaped by the approach, processes and services of the child protection and family support systems. The report argued that the development of strategies to prevent placement in care requires an approach that acknowledges the need for all relevant services (health, education, community services and child protection) to work collaboratively to help keep children and young people at risk out of care. This would include taking joint responsibility for developing solutions to problems and the allocation of the necessary resources. A major implication of this model is that because all the relevant services are included in the decision-making, a different service pattern may emerge, such as a package of intensive family support backed up by respite foster care instead of placement of a child in out–of–home care.

The community partnership for the welfare and protection of children put forward in this Chapter is consistent with this model. One of the clear intentions of the approach proposed to intake, assessment, referral and service response is to reduce the need for out-of-home care. This Chapter also considers greater use of family group conferencing, which the earlier report on out-of-home care also proposed as part of a preventative strategy given its good success rates for family preservation, particularly for Indigenous families.¹⁶⁶

More specifically, as part of this project, The Allen Consulting Group with DHS undertook analysis of the cost effectiveness of a range of programs and services aimed at diverting children from out-of-home care and reducing the time children spend in care. The diversionary services included:

- practical supports, such as re-parenting programs;
- relationship management, including how to handle stress, resolve conflicts with children, and implement behaviour management techniques with children;

¹⁶⁶ Department of Human Services, Public Parenting: A Review of Home-Based Care in Victoria, 2003, Chapter Eight.
• residential services involving the whole family moving into a residential service for a period of time for the purpose of undertaking a comprehensive assessment, develop an action plan to address problems and issues, and practice skills;

• respite care, providing short-term out-of-home care placement for the child or young person; and

• brokerage funds that enable case workers to purchase goods and/or services directly for the family’s benefit in order to achieve their goals and maintain the safety of the child/young person (e.g. child care).

The analysis found that investment in additional support services could divert children from out-of-home care and reduce their time in care. Supporting children and young people within their family was also found to be a more cost effective use of time and resources, compared with the cost of supporting children in out-of-home care. This latter point is an important one. Out-of-home care is very expensive to provide. For example, the total cost to Government (over a five-year period) for providing out-of-home care for the cohort entering care for the first time in 1997-98 is estimated at $116 million.

**Capacity, Compliance and Coercion**

The report does not argue that out-of-home should always be avoided. In the continuum of regulatory responses, a child protection service must retain the capacity and willingness to apply tough sanctions, including the removal of a child, where risks of grave maltreatment are extreme and compulsion to protect the child is urgent. But the report does argue that time spent in out-of-home care should be reduced as much as possible. In some cases, the reduction of time will come through preventative and diversionary strategies as discussed in the section above. In some cases, the reduction of time will come through a move to more stable and permanent care arrangements for children. This would include long term foster or kinship care, permanent care or adoption.

When a child is placed in out-of-home care the question that confronts a child protection officer is, when is it in the child’s best interests to return a child to their family? The evidence is that most children placed in out-of-home care are successfully reunited with their families and that reunification occurs fairly quickly. But as would be expected, the chance of a successful reunification decreases after time and after each re-entry to care. Then the question facing a child protection officer is, when is it in a child’s best interest to be able to live in a stable, permanent home that is not with their parents?

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167 J. Barber, and R. Gilbertson, 2001, *Foster Care: The State of the Art*. Australian Centre for Community Services Research, Flinders University, Adelaide, p. 44.
As noted earlier in the report in the review of regulatory arrangements, one of the main reasons for non-compliance with regulation is because people lack the competence or capability to comply. This report has identified the increasing number of parents in the child protection system with serious concerning characteristics related to issues of competence and capacity (see Section 1.6). For example, in 33 per cent of cases substantiated in 2000-01, parents had substance abuse problems; in 31 per cent of cases parents had problems with alcohol abuse; in 19 per cent of cases one or both parents had a psychiatric illness; and in many cases, parents have more than one of these problems. These factors are also significantly related to resubstantiation. As Dorothy Scott has recently noted, it remains to be seen what proportion of parents with such disabilities and serious drug dependence can adequately care for their children.

Regardless of the reason why, the defining characteristic for children for whom permanent care or adoption should be considered is that their parents lack the competence or capacity to protect them and ensure their well-being, even with the provision of intensive services and support. This may be the case even when parents are cooperative. For these children, rather than facing a life of multiple placements and failed reunifications, more should be done, and done earlier, to provide them with the opportunity to live in and be part of a family. Measures aimed at improving the stability and continuity of care for children who cannot return to their families, such as those recently introduced in the UK in response to this same set of problems, should be introduced in Victoria (see Section 5.4).

6.6 Appropriateness of the New Directions for Indigenous Children

The basic philosophy and approach of the proposed community partnership for protecting children has many qualities and elements that in principle would seem to be highly relevant and appropriate for Indigenous children, young people and their families. The strategies of the new approach emphasise:

- building a community partnership for the welfare and protection of all children;
- broadening responsibility for protecting children beyond the child protection system by increasing the community’s understanding of and responsibility for vulnerable and at-risk children;
- working respectfully with parents and children within their communities, acknowledging their needs, and building trust through dialogue and negotiation as the basis for more effective responses to the problems;
- helping families earlier who are vulnerable or in need by encouraging them to approach services for support and by the provision of more responsive and flexible services;
- working with parents’ own capacity and desire to ‘self-regulate’. Particularly in the case of Indigenous people, this would include working with a community’s own desire to self-regulate; and
- focusing on measures that are preventative and diversionary and provide permanence for children, with a clear intention to reduce time spent in out-of-home care.

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These strategies are supported through infrastructure and processes that also seem to be relevant and appropriate for Indigenous communities, including:

- the establishment of Community Child and Family Support Centres in local areas to bring together key family and children services;
- a network of locally coordinated, community-based services, including child protection, family support, health, police and schools, delivering an integrated service response; and
- the development of intermediate level responses that allow for negotiation, dialogue and deliberation with families outside of formal legal processes. Both of the two options discussed — Family Group Conferencing and Community Child and Family Support Panels — would seem particularly appropriate for Indigenous communities as they would give members of the community a greater role to play in protecting children and supporting families within their community.

Although it is hoped that the elements and approach of the proposed community partnership for protecting children are appropriate for Indigenous children and families, this cannot be assumed.

As was highlighted in Section 1.5, there are stark differences in Indigenous children’s experience of the child protection system in Victoria compared with non-indigenous children. Indigenous children are highly over-represented in the child protection system. The involvement of Indigenous children and families in Victoria’s child protection system indicates that there are serious and entrenched child protection concerns in communities. The conclusion from this overview was that the issues are so important and challenging that it is not possible to address them adequately in this report. They require further examination, led by consultation with Indigenous communities and organisations.

6.7 Achieving Change

Much change in child protection in countries similar to Australia has been driven by the findings of child death inquiries. But because, by their nature, child death inquiries focus on a single shocking case of gross failure to protect, the recommendations tend to focus on tightening rules and procedures.

This report is not constrained by this context and has been able to take a more strategic view of the issues. The directions for reform proposed are hence significant, aimed not at tightening existing procedures but reconceptualising child protection. It is fourteen years since the formulation of the Children and Young Person’s Act. Since that time, mandatory reporting has been introduced, the number of notifications has significantly increased, there have been major changes such as deinstitutionalisation for people with an intellectual disability or a serious mental illness, the scale of substance abuse in the community has increased greatly, and two-thirds of substantiations of child protection notifications now concern children neglected or suffering from emotional abuse. The current legislation is out-of-date. Continuing with the idea of child protection as only an emergency response is inappropriate.

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But change is not easy. As one US commentator has remarked about the challenges of moving to a more differential response to child protection:

Current child protection approaches are mandated in...law and deeply ingrained in policy and practice. Tens of thousands of caseworkers have been trained in this approach. Millions of dollars are spent annually to support CPS. All of this suggests change will be difficult. 170

A clear advantage of an inquiry into a child’s death as the basis for reform of child protection is that the highly charged context provides political momentum and a catalyst for change, which is seen as urgent. This is not the case for reform based more on strategic analysis and review. In this case, it can be seen as all too difficult to get ‘from here to there’.

But if the desire is for a reconceptualisation of child protection as the basis for reform, and not just for improving existing procedures, then the chances of getting the directions right for reform are better if one starts with a broader view of what the system should be like rather than trying to get there from the bottom up. This is what this report has tried to do:

History clearly shows that focusing on isolated inventions breeds problems of scaling up which have rarely been successfully addressed. Normalisation suggests an alternative strategy; it focuses on envisioning a wholly reconstituted system and suggests incremental strategies towards its accomplishment. 171

This last suggestion of incremental strategies is important for two reasons. First, the changes would have significant implications for practice, particularly given the emphasis on a community partnership for protecting children. This would require strong collaboration supported by integrated governance arrangements among relevant government and non-government agencies to achieve a shared responsibility for the protection and welfare of children.

Second, the changes, if implemented quickly, would need significant additional resources and funding. There would be ways of phasing in the changes which would ease the funding requirements, such as:

• beginning with the idea of ‘virtual’ Community Child and Family Support Centres to improve coordination of access to services;
• targeting the new infrastructure of Community Child and Family Support Centres to local areas most in need; and
• piloting moves to intermediate level responses, such as more extensive use of family group conferencing or the introduction of Community Child and Family Support Panels, to ensure the implementation of a cost-effective model.

170 F. Farrow, Building Community Partnerships for Child Protection: Getting From Here to There, Centre for the Study of Social Policy, for the Executive Session on New Paradigms for Child Protective Services, 1997, at www.chapin.uchicago.edu, p. 2

There may also be opportunities for redirecting current program funding to improve targeting of resources to the most vulnerable children and families. Furthermore, as discussed in Section 6.5, there are opportunities in some cases for more cost effective use of the resources currently expended on out-of-home care placements, through the provision of programs and services to divert children from out-of-home care.

The final point is to emphasise, as the report has done many times, that there have been significant changes in the lives of children and families, which have impacted equally significantly on the child protection system. This will continue, requiring further changes and reform to child protection. The idea that further change will be necessary down the track should be accepted at the outset. The acceptance of this idea encourages a system open to review and change. The concluding hope of this report is that reform will be based upon advances in our knowledge about child development and welfare, and the experiences that hinder or enhance it.
Appendix A

A Different Approach to Intake in Western Australia

Western Australia follows a differential response to reports of concerns about the safety and well-being of children that has some similarities with the US model described in Section 5.2. This Appendix provides more information on this approach and a comparison with the approach to intake in Victoria.

In Western Australia a relatively extensive screening process is employed when information or a report is received about a child or young person potentially in need of care and protection. Information raising concerns about children is provided directly to the regional service centre offices of the Department of Families and Communities. Although Western Australia does not have mandatory reporting, it does have a series of protocols with agencies where employees agree to report suspected cases of child abuse or neglect.

Figure A.1 below illustrates the process followed in WA on receipt of information about a child or young person potentially in need of care and protection. First, the Department undertakes an initial assessment through a review of its files and databases to check for any past contact with the Department. There may also be discussions with other relevant professionals, for example child health nurses or teachers. The Department then has four options for classifying contact and initiating any next steps:

- No further action required: the matter is dealt with immediately through the provision of advice or referral to an appropriate agency. This is the response to about 34 per cent of reports of concerns about children.
- Referral to family support: The family’s needs are assessed and a case plan is developed. Services may include financial assistance, mediation, advocacy, short-term respite placements and longer-term placements. Participation by the family is voluntary. About 17 per cent of all reports of concerns about children are formally referred to family support under a case plan.
- Child Maltreatment Allegation (CMA): In this case, the assessment is that the child has experienced harm or is at high risk of experiencing harm. A CMA requires an investigative response. Participation by the family is not voluntary. Of the total number of reports of information about a child or young person potentially in need of care and protection in 2000-01, about 49 per cent were investigated.

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• Child Concern Report (CCR): this is a ‘holding’ assessment category. It is used when the initial assessment of the report of a concern about a child has identified some concerns but there is insufficient information to identify an appropriate response. A decision on an appropriate response to a CCR (no further action; referral to family support; or a child maltreatment allegation) should be made within 30 days.

Figure A.1
WA APPROACH TO INITIAL CONTACT AND EXAMINATION OF CONTACT INFORMATION

Receipt of initial information

Immediate advice and/or referral to external services and agencies — including family support services funded by the department

Pathway 1

Initial assessment of information:
  a) decide on most appropriate service response type (statutory or non-statutory);
  b) decide on priority of response;
  c) classify contact.

Pathway 2 (continued)

CMA investigative response

Pathway 3 (continued)

Family Support

Pathway 4 (continued)

Child Concern Report

The implications of Western Australia’s approach to intake are best understood by comparing it with Victoria’s approach. In Victoria, notifications are ‘caller defined’, in that contact with DHS about a concern of child abuse or neglect is classified as a notification. Figure A.2 below illustrates the process followed in Victoria after receipt of a notification. Following a notification, a screening process is applied to filter information into notifications that require an investigation or no further response. Screening activities that are used to inform this decision include telephone follow-up with the family, school, extended family and community agencies. DHS also reviews existing involvement of the family with community services and any past contact with child protection. A case conference between parties that know the child may take place and DHS may decide to sight the child – at which point an investigation commences. In 2001-02, 35 per cent of notifications were investigated in Victoria.\(^{175}\) In the cases of ‘no further action’, there is the possibility of a voluntary referral to family support and other community services, but there is no follow up by DHS as to whether the referral took place, was sustained, or was effective in helping the family.

The two different approaches of WA and Victoria to initial contact and assessment of information impact upon the subsequent stages of the child protection system. This is illustrated by the data in Table A.1 below, which shows the level of involvement of children in the two states according to the main stages of the formal child protection system. Although the figures are not strictly comparable in that there are differences in legislation and processes in the two jurisdictions, the figures do show very clearly that the differences in approach are reflected strongly in the demand for child protection services. The following key points of difference are indicated by the data:

- due to the fact that WA does not have mandatory reporting, WA starts with a lower rate of notifications or reports of concern about a child — an estimated 14.5 per 1,000 children aged 0-16 compared with 25.9 notifications per 1,000 children in Victoria;
- the lower rates of notifications in WA flow through to lower rates of investigations, substantiations and placement on care and protection orders compared with Victoria. These outcomes are probably also influenced by the availability in WA of an alternative response to reports of concerns through family assessment, development of a case plan and referral to family support. This is in comparison with Victoria’s more limited available responses, with the emphasis on investigation or case closure; and
- although WA has a lower rate of placement of children in out-of-home care (3.1 placements per 1,000 children aged 0-17 compared with 3.4 placements per 1,000 in Victoria), it is noticeable that the two rates are more similar than the rates for the other stages of the child protection system.

Table A.1

<table>
<thead>
<tr>
<th>INVOlVEMENT OF CHILDREN IN CHILD PROTECTION AND PLACEMENT: VICTORIA AND WESTERN AUSTRALIA, 2001-02</th>
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<tbody>
<tr>
<td>Rate per 1,000 population</td>
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<tr>
<td>---------------------------</td>
</tr>
<tr>
<td>Notifications/ reports of concern(1)</td>
</tr>
<tr>
<td>Investigations(1)</td>
</tr>
<tr>
<td>Substantiations(1)</td>
</tr>
<tr>
<td>On care and protection orders(2)</td>
</tr>
<tr>
<td>In out-of-home care(2)</td>
</tr>
</tbody>
</table>

Notes: (1) Rate per 1,000 children aged 0-16.
(2) Rate per 1,000 children aged 0-17.
(3) This is an estimate based on the figures for all reports of concerns to the WA Department about a child or young person potentially in need of care and protection. See Report by the Discipline of Social Work and Social Policy, University of Western Australia for the Western Australian Child Protection Council, Mandatory Reporting of Child Abuse: Evidence and Options, 2002, p. 25

This last point about placement in out-of-home care is interesting as there could be concerns that WA’s less forensic, investigative child protection system provides less safety for children from abuse or neglect. The fairly similar rates of placement in out-of-home care perhaps indicates that, while WA and Victoria differ in their formal responses to families presenting with issues below the threshold for formal investigation, they take a similar approach to the protection of children in cases of severe abuse and neglect.

Both WA and Victoria set up systems to identify the potential group of children in need of care and protection, as provided by the statutory child protection service. However, the intake system in WA also operates to identify children and young people in circumstances where family support services might be of benefit. Hence, the range of decisions that can result from intake is broader in WA. In practice, WA does not have ‘child protection’ workers, as department employees undertake case work for both child protection and family support clients. Importantly, although in Victoria families who are not formally investigated may be referred to family support and other services, unlike in WA this is not preceded by a formal assessment of the family’s needs nor is it part of a care plan. The high level of renotifications in Victoria indicate that the families who do not meet the threshold for intake into the formal child protection system nevertheless have high needs and face ongoing problems and could be better assisted by a system with a broader range of available responses.