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Summary and recommendations Only

A Response to:

“Protecting Children: ten priorities for children’s wellbeing and safety in Victoria”

From Victorian Aboriginal Legal Service Cooperative Limited

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Summary and recommendations

This review almost completely side steps the issue of the adequacy of existing service levels. Rather than use increasing notifications and more complex cases as a basis for funding increased prevention and early intervention there is a focus on faster throughput to permanency and other restructures which shift functions to the NGO sector.

The Queensland Review(2003) and the ACT Review (2004) of Child protection highlight the problem of significant under resourcing, practice and policy problems. In Ontario, Canada the amount spent on child protection has increased from approximately \$500 million to over a billion in five years in response to increasing demand. It appears that Ontario has a funding model which is adjusted according to the level of service provided. There has been no suggestion of such an approach in Victoria.

This report ignores key policy concerns articulated in the Kirby Report such as the need for increased external accountability, the need for a detailed legislative review and significant increases to funding.

“The panel believes revised accountabilities should have sufficient independence to have credibility and the measures of performance should emphasise success and outcomes.”
Kirby Report (pg31)

The Department of Human Services recommendations in the subsequent Protecting Children Report (PC Report) 2004 propose dramatic strengthening of the Department’s powers. There appears to have been no notice taken of the need for independence or credibility.

The proposal for greater emphasis on speeding up permanency planning runs the risk of creating a second stolen generation according to many people who have looked at the DHS, Protecting Children: Technical Options paper.

Many Indigenous people would say that a second stolen generation is already here and point to the over representation rate in Protection applications and the fact that more than half of the approximately 500 children in out of home care are living with non Indigenous families.

Once Child Protection place a child with a foster family the amount and quality of time the child has with their parents can often be fairly minimal. If this situation is ongoing and a guardianship order is made to DHS, access by the child to the parents can be reduced to four visits a year. Even non Indigenous people without the long history of Aboriginal child removal often find this scenario one where they give up hope of reassuming custody and guardianship of their child. Once DHS Child Protection become involved many Indigenous parents give up hope.

Tackling over representation of Indigenous children requires more Koorie controlled services providing a wider range of services. It also requires a recognition that poverty, homelessness and racism get in the way of Indigenous people seeking assistance with other services and problems.

It also requires recognition that other family members or extended family members helping look after children can often be a “protective factor and an aid to resilience’ in the jargon of today, not necessarily a part of a qualifying period for permanent placement.

The Queensland Government recently completed its second review of Child Protection in five years. The second review involved two different independent reviews. The Government announced spending of \$260 million to implement changes. The Queensland review included a detailed case audit, recommended wide ranging changes including, increases to funding, taking children’s views into account and improved external accountability.

The Victorian review which is not independent makes little mention of the chronic under funding of the present system, and makes no recommendations for improved external accountability. The Queensland report also states that there are no statistics recorded on the number of complaints made in relation to maltreatment of children in out of home care in Victoria.

There is no acknowledgement in the PC Report of the considerable scope for non legislative change which exists already that the Kirby report supported the existing grounds for protection orders in the legislation.

In 2002, four years after the 1997 faster track permanency legislation was passed, the USA results indicate implementation has encountered difficulties. The United States Department of Health and Human Services, Child Welfare Outcomes 2001:Annual Report states: “..finalising adoptions in a timely manner is a considerable challenge in most states.”pg111-11 (2002). In short four years later it is not clear that legislating for shorter time frames is either a necessary or sufficient basis for improving child stability.

The Kirby Report says, “Regardless of the thresholds for permanent care decisions there is a need to explore a range of shared or inclusive parenting models that support positive long term relationships between children and their families even where there is no possibility of them living together.”(pg 42) VALS sees little evidence that this recommendation has been taken up. Similarly in relation to the Kirby Report recommendations on procedural fairness there appear to be little recognition of this in the Protecting Children Report.

Child protection is a complex web of interrelationships. It is important to hasten slowly. Otherwise the claim that this is a once in a generation review will be undermined by the failure to get the fundamentals right.

One of the ways to help do this is to ensure that the legislation and policy is as culturally inclusive as possible. Behrendt has highlighted that this can have benefits for other disadvantaged groups and the non Indigenous community more generally.

Recommendations

1. Money

- a) The increasing complexity of child protection cases and increases in notifications should be a basis not only for increases to tertiary sector services but also for wide ranging improvements in funding to early intervention and prevention programs.
- b) There should be a case audit to assess the existing levels of service provision and to review systemic policy and resource problems.
- c) VALS supports the extension of and rolling out early intervention services which have been introduced on a pilot basis around Victoria, expansion of Koorie specific secondary services and improved access to mainstream secondary services as urgent priorities.
- d) VALS supports better access to a range of early intervention services including pre-natal services .
- e) The problems highlighted by the Kirby Report in relation to new community intake services (resource shifts to the tertiary sector and services being stigmatised in a way that deters vulnerable families” (pg 28) and confidentiality issues have not been adequately dealt with in the Protecting Children Report. These issues are particularly problematic for Indigenous families.

2. Access to Legal Advice

- a) It is essential that legal advice is accessible to people who are going to be ‘diverted from the court’ and coerced into ‘intermediate interventions’ such as family group conferencing.
- b) Any proposal to change the case plan priority from family reunion to permanent care made at a case plan meeting should not be finalised until the parent has the opportunity to get legal advice and has the option of appealing to the Children’s Court.
- c) Lawyers should act on the Childs’s instructions not the child’s best interests

3. Law Reform

- a) VALS supports the Kirby Report view that the existing grounds for a protection order are broad enough and flexible enough to encompass present circumstances and therefore opposes both the DHS proposal to replace the grounds with child development needs and the proposal to add child development grounds to existing legislation.
- b) VALS does not support legislation to compel services to join partnerships or DHS defining quality standards or dispensing with the caution that Child Protection workers are required to give.
- c) Apart from simple changes future legislative reform should be based on a comprehensive review, which establishes culturally inclusive and wholistic legislation expressed in plain English.
- d) The current legislative proposals to implement faster permanency and alternative intake (which VALS regards as the partial outsourcing of child protection functions) could be improved and made more culturally inclusive.
- e) The main legislative proposals in the PC Report that directly mention Indigenous people are:
 - include the Aboriginal Child Placement Principles in legislation;
 - include the use of Aboriginal Family Decision Making Principles in legislation;
 - legislate for an Aboriginal person or organisation to have Guardianship powers; and
 - legislate to require the Minister to assist Aboriginal communities to provide effective prevention and intervention strategies.
 - And take into account Aboriginal issues in exercising guardianship powers.

These proposals are supported. However adequate funding, policy and training could improve outcomes in all these areas without legislation changing.

- f) Do not support pre birth notifications to child protection

4. Improved stability

- a) VALS support improved stability for children but don't support the present strategy being proposed to achieve fast tracking of permanency.
- b) VALS supports stability in service provision but disagrees with the assumptions:
 - i. that time in Out of Home Care necessarily equals instability;
 - ii. that an arbitrary time limit can be used to decide when out of home care means family reunification has failed and permanent placement is commenced.
- c). VALS Supports:
 - i. that a range of factors including the child's right to access and to culture should be considered by the Court before making a permanent care order

- ii. that a range of factors should be considered in making the case plan decision to give up on family reunion
- d) that families are given legal advice and the opportunity to have the case plan decision reviewed by the Children's Court as soon as the Department decide that reunion is no longer the goal of the case plan
- e) use of 'Inclusive parenting' and other models to ensure what the Kirby Report describes as 'positive long term relationships between children and their families, even when there is no possibility of them living together'.
- f) that there need to be reasonable efforts at reunification with court oversight
- g) VALS supports policy proposal to give Indigenous communities greater control over service development.

5. The need for external accountability and independent service standards.

- a) The Children's Court should have greater power to obtain reports and ensure that services are provided to people who are subject to its attention.
- b) An independent Children's Commissioner reporting to Parliament should be established to monitor program effectiveness including outcomes, procedural fairness over representation rates, cultural inclusiveness and overall quality of service.
- c) To avoid possible conflicts of interest and to achieve genuine partnerships the improved coordination and development of quality standards which the Department proposes would be more credible and more effective if it was driven by people independent of the DHS.
- d) It is important to ensure that quality service standards for Government and non government services are established collaboratively by a body independent of DHS.