



Queensland Public Interest Law Clearing House Incorporated

Submission to the Commission of Inquiry into Child Protection system

September 2012

Prepared by the Queensland Public Interest Law Clearing House Incorporated

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INTRODUCTION

The Queensland Public Interest Law Clearing House Incorporated (**QPILCH**) coordinates a range of legal services which provide people experiencing disadvantage with access to justice in civil law matters, drawing on pro bono and student resources.

Two QPILCH services are well-placed to respond to the Terms of Reference (**TOR**) of the Commission of Inquiry into the child protection system (**the Commission**).

- The Self Representation Service which QPILCH has operated at the Queensland Civil and Administrative Tribunal (**QCAT**) since January 2010 offers assistance to people representing themselves in QCAT in a variety of areas within QCAT’s jurisdiction, including child protection.¹ In section 2 of this submission, the Self Representation Service responds to the TOR 3. c) iii and d) and suggests recommendations in relation to the “complaints mechanisms of the child protection system”, in accordance with 6.d) of the TOR.
- The Homeless Persons’ Legal Clinic (**HPLC**) is a partnership between QPILCH and private law firms to deliver the only targeted civil legal services to Queenslanders experiencing homelessness.² The HPLC responds broadly to the TOR 3. a), b), c) i, ii, iii and iv, suggesting reforms that will “achieve the best possible outcomes to protect children and support families”, “reduce the over-representation of Aboriginal and Torres Strait Islander children at all stages of the child protection system” and “any legislative reforms required”, in accordance with 6. a), b) and c) of the TOR.

Preventing exits from child protection into homelessness is part of the Federal Government’s homeless policy framework, and was incorporated as a priority into the Queensland Government’s *Open Doors* homelessness policy.³ Strategy 3.4 of the National Framework for Protecting Australia’s Children⁴ is to “expand housing and homelessness services for families and children at risk”. Moreover, there is a growing body of Australian research exploring the nexus between homelessness and the child protection system.

The HPLC has been responding to this nexus since 2011, firstly by consulting with a range of child protection practitioners, community agencies and researchers, and considering relevant Australian literature; and secondly, by developing strategic, affordable strategies to address the issue.

¹ The Self Representation Service provides discrete task assistance to people during 1 hour appointments staffed by volunteer lawyers. Assistance is provided to people throughout the progress of their proceeding, to help them understand the law, and the rights and perspectives of the other party, observe court and tribunal rules and procedures, and to present their case in the best possible manner.

² By coordinating 300 volunteer lawyers from 23 law firms, the HPLC operates outreach legal clinics at 13 community organisations. HPLC volunteer lawyers substantively assist people experiencing homelessness with their legal issues, such as unlawful debts, unlawful evictions and support in the criminal justice system. Left unaddressed, these issues make it difficult for clients to attain sustainable housing and exit homelessness. See www.qpilch.org.au for further details.

³ Queensland Department of Communities and Homelessness Services, *Opening Doors: Queensland Strategy for Reducing Homelessness 2011-14* (July 2011).

⁴ Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, *Protecting Children is Everyone’s Business: National Framework for Protecting Australia’s Children 2009-2020* (2009).

As at June 2010, 10,606 children were engaged in on-going intervention with the Queensland child protection system (including interventions with parent agreement), with a 61% increase over the previous three years in long-term orders (where no reunification is planned).⁵ As at June 2011, 7,602 children were in out of home care in Queensland⁶ and Aboriginal and Torres Strait Islander children in Queensland were 8.7 times more likely to be subject to a protection order.⁷

The current Queensland government response to children and families in the child protection system would be more efficient and effective, if the connection between child protection and homelessness was specifically recognised and addressed by the Department of Communities, Child Safety and Disability Services, Child Safety Services, (the **Department**), and if genuine participation by children and young people in the decisions which concern them was promoted and resourced by the Department.

⁵ Commission for Children and Young People and Child Guardian, *Snapshot 2011: Children and Young People in Queensland* (2011) at 89.

⁶ Australian Institute of Health and Welfare *Child protection Australia 2010-11* (2012) Child Welfare series no.53 (2012) at 35.

⁷ *Ibid* at 28. Protection order rates for non-indigenous children are 5.1 per 1000 and for indigenous children are 44.8 per 1000.

SUMMARY of RECOMMENDATIONS

1. The Department provide family support when families are experiencing or at risk of homelessness, by:

- a) Making assessments of children and families which explicitly reflect the connections between child protection and homelessness, and providing intensive family support where homelessness exists, is a genuine risk or would be created by the Department's actions.
- b) Making the above assessment at the time when a Child Concern Report or a Notification is made by the Department. Such an investment in disadvantaged families would address the over-representation of Aboriginal and Torres Strait Islander children (where there has been a 48.2% increase in the number of indigenous children subject to a Child Concern Report from 2008/9 to 2009/10 in Queensland) and the "direct and fundamental relationship between our success in reducing child abuse and neglect on the one hand and reducing child and adult homelessness in Australia on the other".
- c) Strengthening the preference expressed in section 5B(c) of the *Child Protection Act 1999* (the **Act**) that the "preferred way" of ensuring a child's well-being is "through supporting the family". Section 5B(d) invokes the responsibility of the State in the absence of a parent "able and willing to protect the child". The following qualification should be inserted: "with assistance or support". This would echo section 5B(j), which includes this qualification when considering appropriate placements.
- d) Including a provision similar to that in New South Wales legislation, which provides that where a child's needs are not met due to the poverty or disability of a parent, this cannot be the only reason for intervention.

2. The Department provide family support which reflects the characteristics of disadvantage, by:

- a) Employing evidence-based, effective strategies to engage and persist with parents who are considered neither "able nor willing", mindful of the characteristics of disadvantage and the barriers to engagement. This requires policy recognition that disadvantaged families have multiple, complex needs and that protective concerns will rarely be addressed without support. Family support must be resourced and accessible at all points of the protective spectrum - prevention and early intervention strategies, as well as to facilitate contact, reunification and transition from care. Family support which is robust, timely, independent, flexible and integrated would provide balance to the investigative regime of the Department, and address child safety concerns, such as inadequate housing, lack of parenting skills, substance abuse and domestic violence.
- b) Connecting intensive family support to an explicit right to housing and to the support necessary to sustain that housing.
- c) Providing intensive family support whenever at-birth removals are contemplated by the Department. Sufficient resources to enable mothers and infants to be housed, supported and supervised (while investigations take place, and where no appropriate kin are located) should be a priority.

3. The Department invest in cross-sector and cross-government collaboration, by:

- a) Recognising that no single agency or department can provide the necessary level of support state-wide; however government investment to assist services (government and non-government) to integrate and collaborate at the client level is an efficient and effective use of resources.
- b) Implementing the recommendations of the Family Inclusion Network, and funding this network to continue supporting collaborative practice and to hear from families with experience of the system.
- c) Developing connection at a service delivery level between the Department's homelessness services and child protection services, so that when working with the same families, integrated strategies are employed. This would complement the multi-agency coordination created by the Crime and Misconduct Commission 2004 Report which is at a Director-General/Child Safety Director level.

4. The Department address homelessness arising from transition from care, by:

- a) Enacting the principles and minimum standards for supporting young people transitioning from care, recommended in the AHURI report Pathways from out-of-home care.
- b) The Youth Housing and Reintegration Service (**YHARS**) be redesigned in consultation with youth agencies, such as the Create Foundation, Youth Housing Coalition, Brisbane Youth Service, Youth Advocacy Centre and Legal Aid Queensland to better integrate with existing.
- c) A Secure Housing Guarantee housing subsidy be created for care-leavers, in accordance with the principles of the AHURI report.
- d) Cost-neutral housing developments for care leavers, such as that proposed by Queensland Youth Housing Coalition, in partnership with other agencies be supported and resourced.
- e) Prioritising and resourcing the solutions offered by young people with an experience of care, in the CREATE Foundation report *What's the Answer?*

5. That court and tribunal processes and decision-making forums be improved, by:

- a) Utilising robust alternative dispute resolution processes, including Family Group Conferencing reflective of the original New Zealand model.
- b) Considering the strategic investment of a problem-solving court, similar to the Family Drug and Alcohol Court.
- c) Investing in the appointment of separate representatives for children subject to Court and Tribunal proceedings..
- d) Evaluating the complaint and internal review mechanisms of the Department with an aim to increasing the use and effectiveness of these mechanisms so that more concerns are resolved without commencement of review proceedings in QCAT.

- e) Evaluating the access by children in care to complaint, internal and external review processes.

QPILCH supports the right of Aboriginal and Torres Strait Islander peoples to self-determination and to be resourced to provide culturally distinctive responses to child protection issues of their children, in accordance with the mission of the Combined Voices campaign.

1. CONNECTIONS BETWEEN HOMELESSNESS AND CHILD PROTECTION

1.1. Connections between systems for individuals

The literature is cautious about establishing a *causal* link between homelessness and child protection, as the issues faced by individuals in these cohorts are complex and multi-faceted. What is evident is both a significant *correlation* between:

- the systems, and
- the biographies of those who experience complex homelessness, which frequently include having been a child in care.

Homelessness can be described as a marker of chronic system, community and family exclusion, and a homelessness researcher and former CSO remarked: “It’s hard to think of an area in child protection that isn’t linked to homelessness.”⁸

Evidence of these correlations includes:

Homelessness following experience of being in care:

- The peer-reviewed 2010 AHURI Report: Pathways from out-of Home Care,⁹ studied 77 young people who had left state care, finding that 88% had experienced homelessness and that 52% were currently homeless (using the ABS cultural definition of ‘homelessness’). This report traced the crucial need to provide immediate and supported housing for young people transitioning from care, and proposes a leaving care framework to address the connection to homelessness.
- 34.7% of young people leaving care in Australia report experiencing at least one episode of homelessness within the first year.¹⁰
- Specialist Homelessness Services Collection data for the December quarter 2011 shows that of young people presenting alone to a specialist homeless agency, 25% were under current care and protection orders.¹¹
- The July 2012 report of a FaHCSIA longitudinal study, *Journeys Home*, reviewed “local and international studies which indicate that disproportionate numbers of homeless people have experiences in the state care and protection system”. A clear correlation was found, with 25.9% of the homeless respondents (n=1681) having been placed into foster, residential or kin care. There was also a “very clear relationship” between having been placed in state care

⁸ Parsell, Dr. C, Institute of Social Science Research, Presentation at QPILCH (28 August 2012).

⁹ Johnson, G. et al, ‘Pathways from out-of-home care’, AHURI Final Report No.147 (2010), Melbourne: Australian Housing and Urban Research Institute, 4 at 25.

¹⁰ Moore, L, CREATE Foundation, Presentation at QPILCH (27 March 2012).

¹¹ Australian Institute of Health and Welfare, *Specialist Homelessness Services Collection: December Quarter 2011*, Cat. No. HOU 263, Australian Government.

and chronic (long-term) homelessness: “Among those who had been homeless for four years or more, 39.8% had been in state care”.¹²

- A 2011 Australian study of 88 adults experiencing long-term homelessness reported that 39.5% had been placed in out of home care as a child, and that 71.8% of those who had children have had them placed in state care.¹³

Homelessness following experience of your child/ren being in care:

- If the Department removes children from a family accommodated in public housing, the entitlement to that housing may change – based on the associated changes to both income benefits/parenting payments (which are tied to the number of children a person is the primary carer of) and number of bedrooms required. Once the housing is down-sized, the family cannot demonstrate a capacity for reunification. If the family was in private accommodation, the income changes typically render it an unsustainable option.
- A family, without a car, had children placed on a Temporary Order with a foster family more than 30km away. The parents moved into a tent in a caravan park near the children, in order to maintain contact with them. Their state-provided housing was revoked, as they weren't occupying it, and they were rendered homeless. This, in turn, hindered their attempts at reunification with the children, as they could not offer adequate accommodation.¹⁴
- When considering the impact on parents of having children removed, one study notes: “For homeless people with children, the removal of their children by Child Protection authorities is another potential source of trauma. The impact on children of placement in Child Protection is well documented...but the traumatic effect on parents of having their children removed is less well known...Feelings of incompetence, powerlessness, remorse, sadness and betrayal compound existing feelings of grief, shame and self-doubt.”¹⁵

Child protection following experience of being homeless:

- A 2006 literature review by Noble-Carr of the Institute of Child Protection found: “it was alarming to find that there was much evidence supporting the hypothesis that ‘for child protection agencies “homelessness” quantifies as enough reason for intervention’.¹⁶ The review cites reports where housing stress directly contributed to families being involved with child protection systems, and where “protective intervention appeared to be more directly influenced by family homelessness...rather than actual parenting concerns.”¹⁷
- Consultations with Queensland parents engaged in the child protection system found that parents felt they were “judged and blamed for being homeless rather than recognising the

¹² Scutella, R et al, ‘Journey Home’ (Research Report No. 1, Prepared for FaCHSIA, The University of Melbourne, July 2012) at 24-5.

¹³ Johnson, G, *Long-Term Homelessness: Understanding the Challenge* (2011), Sacred Heart Mission at 9.

¹⁴ Stedman, Terry, Presentation at the South West Brisbane Legal Centre (24 April 2012).

¹⁵ Above n 9.

¹⁶ Noble-Carr, D, ‘The experience and effects of family homelessness for children’ (A Literature review, Institute of Child Protection Studies, Australian Catholic University, 2006) at 49.

¹⁷ Ibid at 50.

current housing crisis” especially when foster parents were assisted with the very resources not available to the parents.¹⁸

- A Brisbane demonstration project, delivered by Micah Projects enabled 42 of the 46 homeless families in the project to end their homelessness by providing housing, linking family support to tenancy outcomes and promoting adult learning. 76% of the families had contact with child protection services and 57% had a child removed from care.¹⁹
- Noble-Carr found no national data to examine how many children who experience homelessness also end up in the Child Protection system, but data from individual services suggest rates of 20% to up to 58%.²⁰
- Noble-Carr cites a study where support workers reported families to child protection in the hope of providing better housing options,²¹ and a number of studies where fear of child protection becoming involved was cited as a deterrent for reporting housing crisis or accessing support. A 2009 University of Queensland study reports similar examples.²²
- Due to a lack of appropriate services, a child’s chances of being turned away from a homelessness accommodation service are 66% (when in the company of an adult) and 79% (when in the company of an adult couple). Children in families form the largest single group of those who seek support from the homeless service system, and have the largest unmet-need in the homelessness sector.²³ Almost 7500 family units in Australia were counted as homeless on Census night 2006. These turned-away families then sleep in cars, in parks and with a limited group of friends, all activities which place the children at-risk of notification.
- 32.5% of substantiations in Queensland in 2010/11 were for neglect.²⁴
- A 2010 literature review by the Australian Centre for Child Protection by Gibson noted that “homelessness may be considered a factor when a determination of “neglect” is made by child protection agencies,²⁵ and that : “Australia’s homelessness and child protection systems work in silos with little intersection, despite often working with the same children.”²⁶

¹⁸ See: Family Inclusion Network ‘Family Inclusion in Child Protection Practice’ (October 2007); Family Inclusion Network ‘Working in Partnership with Parents Report 2010-2011’ (2012) and Family Inclusion Network, ‘Final Report 2011-2012’ (27 July 2012).

¹⁹ Walsh, K and Stevens, B, ‘Ending Family Homelessness: A Possible Dream’ (2008) 21(4) *Parity* 22 at 22.

²⁰ Above n 9 at 44-5.

²¹ *Ibid* at 51-2.

²² Douglas, H et al, ‘Mothers and the Child Protection System’ (Research Paper, The University of Queensland, 2009) at 44-5.

²³ Homelessness Australia, ‘Homelessness and Children, Homelessness and Families’, *Homelessness Australia*, available from www.homelessnessaustralia.org.au, accessed August 2012.

²⁴ Above n 6 at 49.

²⁵ Gibson, C and Johnston, T ‘Investing in Our Future: Children’s Journey through homelessness and child protection’ (Research Paper, University of South Australia, April 2010) at 6.

²⁶ *Ibid* at 12.

- The largest notification to care is domestic violence²⁷, which is also the single biggest driver of homelessness.²⁸ It is well understood that a woman experiencing domestic violence who has children is frequently viewed as failing to protect them.²⁹ The broader definition of ‘family violence’ in the *Domestic and Family Violence Protection Act 2012* casts a wider net for the mandatory reporting scheme.
- Douglas cites: “[the department] workers consider a refuge “homeless” and they will absolutely not give their children back when they’re at a refuge”.³⁰
- Homelessness impacts the capacity of families to send children to school,³¹ which can become the basis for a notification to child protection.

1.2. Connections between demographics of service-users in both systems

Gibson noted that the “homelessness and child protection service systems are both responding to families-and potentially the same families-with complex needs. Despite the lack of data...there is practice wisdom to suggest this is the case.”³² It was further noted that “existing evidence points to the likelihood that some families, particularly those with multiple and complex needs, are both homeless and in contact with a child protection system”.³³

The Queensland Council of Social Services recognises that “disadvantaged Queenslanders are more likely to come into contact with the Child Protection system, which in turn places them at greater risk of intergenerational poverty and abuse. The task for policy makers in this area is to break the cycle. Stress induced by poverty, past abuse, neglect and substance abuse needs to be addressed early to avoid the need for costly and difficult crisis responses and the repetition of abuse and neglect in following generations..... people find themselves at the crisis end of the system because they were not able to find timely, practical help for domestic and family violence, mental health issues or drug and alcohol dependence.”³⁴

The similarity between the demographics of both systems has significant implications for policy and service delivery. Individual and structural demographics of homelessness which are recognised by the Queensland government³⁵ include:

- Poverty;
- Domestic violence;

²⁷ Above n 6 at 59. 39.7% of substantiations were for emotional abuse.

²⁸ Ibid at 7. Domestic Violence is the main cause of 25% of all requests for homelessness services and 34% of requests for accommodation by females.

²⁹ Above n 22 at 43.

³⁰ Above n 22 at 42.

³¹ Hulse, K and Kolar, V, ‘The right to belong’: family homelessness and Citizenship’ (Research Paper, Institute for Social Research, Swinburne University of Technology & Hanover Welfare Services, 2009).

³² Above n 25 at 37.

³³ Above n 25 at 4.

³⁴ Queensland Council of Social Services (QCOSS), Policy papers (2009) available from: www.qcoss.org.au, accessed August 2012.

³⁵ Above n 3.

- Lack of affordable housing;
- Aboriginal and Torres Strait Islander peoples;
- Drugs/Alcohol Abuse;
- Mental Illness;
- Institutional Care;
- Disability;
- Intellectual disability or impaired decision making capacity;
- From culturally and linguistically diverse backgrounds;
- Live in rural, regional or remote areas; and
- Lesbian, gay, bisexual, transgender or intersex.

QPILCH heard the child protection system described as “taking children off poor people”³⁶ with notifications where no actual abuse has occurred (“neglect-only”) generating approximately 32.5% of notifications.³⁷ On this basis, it seems common-sense that these families are known to both systems in Queensland.

RECOMMENDATION 1: The Department provide family support when families are experiencing or at risk of homelessness, by:

- a) Making assessments of children and families which explicitly reflect the connections between child protection and homelessness, and providing intensive family support where homelessness exists, is a genuine risk or would be created by the Department’s actions.
- b) Making the above assessment at the time when a Child Concern Report or a Notification is made by the Department. Such an investment in disadvantaged families would address the over-representation of Aboriginal and Torres Strait Islander children (where there has been a 48.2% increase in the number of indigenous children subject to a Child Concern Report from 2008/9 to 2009/10 in Queensland³⁸) and the “direct and fundamental relationship between our success in reducing child abuse and neglect on the one hand and reducing child and adult homelessness in Australia on the other”.³⁹

³⁶ Presentation to QPILCH, Name and date withheld (2012).

³⁷ Above n 6 at 39.

³⁸ Commission for Children and Young People and Child Guardian, *Child Guardian Report: Child Protection System 2009-10* (2011) at 68.

³⁹ Jamieson, K and Flatau, P, *The Child Protection System and Homelessness Prevention and Early Intervention Strategies* (2009) 22(2) Parity 15 at 15.

- c) Strengthening the preference expressed in section 5B(c) of the *Child Protection Act 1999* (the **Act**)⁴⁰ that the “preferred way” of ensuring a child’s well-being is “through supporting the family”. Section 5B(d) invokes the responsibility of the State in the absence of a parent “able and willing to protect the child”. The following qualification should be inserted: “with assistance or support”. This would echo section 5B(j), which includes this qualification when considering appropriate placements.
- d) Including a provision similar to that in New South Wales legislation, which provides that where a child’s needs are not met due to the poverty or disability of a parent, this cannot be the only reason for intervention.⁴¹
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1.3. Disconnect in policy and practice between systems

Best practice in homelessness system

For over a decade, the homelessness system has developed an understanding of the structural causes of homelessness, and of the similarity in biographies of those who experience chronic homelessness. Accordingly, governments and agencies have removed stigmatising and punitive policy frameworks and replaced them with practice which acknowledges the needs of those in chronic disadvantage and the service frameworks that are most likely to generate successful outcomes for clients.⁴²

Structural drivers such as lack of affordable housing, domestic violence and unsupported exits from institutions have been addressed with policy reform and service delivery that is:

- client-centred - focussing on the individual circumstances of the client and providing flexible support for the duration of the homelessness until housing is sustained;
- Integrated, cross government and cross sector, with agencies collaborating within their specialties, to cover the multiple and intensive support needs of the client;
- provides clear, persistent and flexible pathways to access support, which recognise barriers to engagement without the simplistic view that people in disadvantage ‘would get help if they wanted it’;
- prioritises the housing needs of the client, as all other needs cannot be significantly addressed without housing;
- recognises the lived experience of the client, including the impacts of trauma and social exclusion; and
- committed to individuals permanently exiting homelessness.

⁴⁰ The connection between support for families and the safety of the child is expressed in the Preamble and Article 5, 7 and 9, 3 and 12 of the *Convention on the Rights of the Child 1990* (United Nations), which is ratified by the general principles of the *Child Protection Act 1999* (Qld) at section 5B and in the Chief Executives functions at section 7.

⁴¹ See *Children and Young Persons (Care and Protection) Act 1998* (NSW) at section 170(2).

⁴² Above n 3; see also Department Of Families, Housing, Community Services and Indigenous Affairs, *The Road Home: The Australian Government White Paper on Homelessness* (2008), Queensland Government.

As the prevalence of homelessness expands in the community⁴³ the challenges for homelessness services grow, nevertheless the above practices have seen the development of a system which is non-punitive, collaborative and ultimately cost-effective for the community, socially and economically. Entrenched homelessness can be solved for an individual or family, indicating that homeless people are not “hopeless cases”.

Cross sector and cross agency integrated support

Integrated service delivery models operate at different points on a continuum of formality.

- The HPLC provides its legal services at locations where homeless people are accessing essential services.
- *Under 1 Roof (U1R)* is an innovative Brisbane response to homelessness. U1R is a loose consortium of homeless, housing and support community agencies operating in the Fortitude Valley area, which meet weekly to consider which agency can best meet the client’s current needs. With the client’s consent, appropriate, supported and individualised referrals are made.
- Homelessness Community Action Plans are a state-wide strategy,⁴⁴ bringing together businesses, community agencies and government to prioritise practical responses to ending homelessness in their local community.
- *Pathways to Protections* is a long-term crime prevention strategy in the Inala area which offered entry points to intensive family support from school counsellors, playgroups and community development strategies, based on the assumption that mobilising social resources to support children, families and their communities before problems emerge is more effective and cheaper than intervening when problems have become entrenched.⁴⁵
- The Special Circumstances Court (recently defunded) connected defendants in the Brisbane Magistrates Court who are homeless to housing and support for mental illness, employment skills and substance abuse, whilst maintaining connections to and trust with the client. A similar court operates in Britain in the child protection system and is referred to in more detail at 2.3 of this submission.
- The Family Responsibilities Commission⁴⁶ in indigenous communities in north Queensland is at the most formal end of the spectrum of integrated responses.
- We note the following example of integrated services from New South Wales:⁴⁷

A mother of three children was depressed and not coping on her own after her partner was convicted and jailed for domestic violence offences. The [New South Wales Police Force Child Wellbeing Unit (CWU)] checked the Wellnet database for background information on the family. They found that there had been child protection reports about the 18-month-old baby not being brought in for scheduled health checks.

⁴³ Above n 23. A growing demographic in homelessness is older, single women with careers in unskilled work who can no longer afford private rental.

⁴⁴ See: <http://www.communitydoor.org.au/homelessness-community-action-plans>.

⁴⁵ Homel R. et al, ‘The Pathways to Prevention Project: The First Five Years, 1999-2004’ (2006) Mission Australia and Griffith University.

⁴⁶ See: www.frcq.org.au.

⁴⁷ New South Wales Department of Families and Community Service, ‘Keep them Safe’ (Newsletter Issue 9, November 2010) available from: http://www.keepthemsafe.nsw.gov.au/resources/kts/issue_nine, accessed September 2012.

The CWU contacted the Family Referral Service, which was able to work with the family and put the necessary support services in place. The five-year-old child is now back at school, the three-year-old, who had delayed speech because of the trauma of witnessing domestic violence, is now getting speech therapy and the baby is now meeting developmental milestones. Gary Groves, Police NSWPF CWU Director said, “I hope never to see that family in the statutory system but I can confidently say that without the changes that have occurred [under Keep Them Safe] that’s exactly where they would have ended up.”

Invest in family support

It is inefficient and counter-productive that integrated practices are not fostered in the child protection system, which sits in the same Department charged with responding to homelessness, and in all probability deals with the same families. The expenditure of the Department on Intensive family support services has halved from 2009/10 to 2010/11.⁴⁸

The Helping Out Families and Referral for Active Intervention Initiatives are welcome, but insufficient to address the need, and unable to offer long-term support for stable housing outcomes. The enhanced availability of diversionary services in Victoria, and a focus on integrated family support services in New South Wales has seen a drop in the number of children entering out of home care in those states.⁴⁹

Gibson suggests the following common features of effective child protection practices:

- strengths-based approach which are child focussed and family centred;
- case-management with a focus on the exit stage;
- brokerage funds are available for flexible and strategic support;
- suite of integrated services;
- address therapeutic issues, such as trauma and histories of violence;
- prioritise schooling;
- link to housing;
- culturally specific; and,
- ensures safety.⁵⁰

Douglas⁵¹ echoes this list and the reports of the Family Inclusion Network characterise practices which ignore the family as not truly child-centred.⁵²

⁴⁸ Australian Institute of Family Studies, *The Economic Cost of Child Abuse and Neglect*, Australian Government (2012) at Table 5.

⁴⁹ Above n 6 at 103, 110; see also: Interim Review Plan: Keep them safe. A shared approach to child wellbeing at www.keepthemsafe.nsw.gov.au.

⁵⁰ Above n 25 at 38. It is significant that these practices, and the need for cross sector integration, are echoed in the “best practice” list for addressing indigenous over-representation posited by Libesman, T, ‘Child welfare approaches for indigenous communities: International perspectives’ (National Child Protection Clearinghouse Issue No. 20, 2004) Australian Institute of Family Studies.

⁵¹ Above n 22.

⁵² Above n 22; also see: Crime and Misconduct Commission, *Protecting Children: an inquiry into abuse of children in foster care* (January 2004) at Recommendations 4.2 and 4.3. These were reviewed in Crime and Misconduct Commission, ‘Reforming Child Protection: A review of the implementation of recommendations contained in the CMC’s *Protecting children* report’ (June 2007) Queensland Government at 5.

Recommendation 5.15 and 5.16 of the CMC's *Protecting Children Report 2004*⁵³ provided "that child-centred casework and... parental support be vested in different staff members" because it was cost effective, could reduce notifications, would reduce pressure on caseworkers and due to the potential conflict between the two functions. The 2007 CMC review of the reforms⁵⁴ was unable to say whether the separation of the roles was occurring in practice, and the examples contained in the three reports of the Family Inclusion Network would suggest it does not. Fostering collaborative, cross sector and cross agency responses to high needs families is an important strategy to address the concerns highlighted in this recommendation.

Tilbury suggests that the main driver of high numbers of children in care is not point of entry issues but longer time spent in the system, reflecting the lack of family support available after orders are made, which would support appropriate reunifications.⁵⁵

The HPLC is considering a range of pro bono advocacy options targeted at families connected to the child protection system to address legal issues arising from debt and insecure housing.

RECOMMENDATION 2: The Department provide family support which reflects the characteristics of disadvantage, by:

- a) Employing evidence-based, effective strategies to engage and persist with parents who are considered neither "able nor willing", mindful of the characteristics of disadvantage and the barriers to engagement. This requires policy recognition that disadvantaged families have multiple, complex needs and that protective concerns will rarely be addressed without support. Family support must be resourced and accessible at all points of the protective spectrum - prevention and early intervention strategies, as well as to facilitate contact, reunification and transition from care. Family support which is robust, timely, independent, flexible and integrated would provide balance to the investigative regime of the Department, and address child safety concerns, such as inadequate housing, lack of parenting skills, substance abuse and domestic violence.
- b) Connecting intensive family support to an explicit right to housing and to the support necessary to sustain that housing.⁵⁶
- c) Providing intensive family support whenever at-birth removals are contemplated by the Department. Sufficient resources to enable mothers and infants to be housed, supported

⁵³Crime and Misconduct Commission, *Protecting Children: an inquiry into abuse of children in foster care* (January 2004) at Recommendations 4.2 and 4.3. These were reviewed in Crime and Misconduct Commission, 'Reforming Child Protection: A review of the implementation of recommendations contained in the CMC's *Protecting children report*' (June 2007) Queensland Government at 5.

⁵⁴ Ibid.

⁵⁵ Tilbury C, 'A "stock and flow" analysis of Australian child protection data', (2009) 4(2) *Communities, Children and Families Australia* at 9.

⁵⁶ Adequate and appropriate housing along with support services that address non-housing needs is critical to preventing future episodes of homelessness. Location is also important to sustaining tenancies and preventing homelessness as access to familiar services and social networks can reduce social isolation for people. For further discussion see: Australian Housing and Urban Research Institute (AHURI), 'Homelessness and Housing' (2012) available from: <http://www.ahuri.edu.au/themes/homelessness1/> (accessed September 2012).

and supervised (while investigations take place, and where no appropriate kin are located) should be a priority.⁵⁷

RECOMMENDATION 3: The Department invest in cross-sector and cross-government collaboration, by:

- a) Recognising that no single agency or department can provide the necessary level of support state-wide; however government investment to assist services (government and non-government) to integrate and collaborate at the client level is an efficient and effective use of resources.
 - b) Implementing the recommendations of the Family Inclusion Network,⁵⁸ and funding this network to continue supporting collaborative practice and to hear from families with experience of the system.
 - c) Developing connection at a service delivery level between the Department's homelessness services and child protection services, so that when working with the same families, integrated strategies are employed. This would complement the multi-agency coordination created by the Crime and Misconduct Commission 2004 Report which is at a Director-General/Child Safety Director level.⁵⁹
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1.4. Transition from care concerns

Outcomes for children in care, as outlined below, suggest that the State often fails as 'parent', and international covenants which protect the family life of children⁶⁰ are an acknowledgement that out-of-home placements are intrinsically problematic.

Department officers use a standardised decision making tool to assess the risk of remaining with their family. A clearer picture might emerge of the financial and social benefit of responding more supportively to families, if Department officers were required to simultaneously consider the likely outcomes in Queensland of removing a child into care⁶¹:

⁵⁷ The Sustained Health Home Visiting scheme in NSW is an alternative response to high needs families in pregnancy. See: New South Wales Government, 'Expanded Services' (2012) available from: http://www.keepthemsafe.nsw.gov.au/v1/new_systems_and_services/expanded_services, accessed September 2012.

⁵⁸ Above n 18.

⁵⁹ Above n 53.

⁶⁰ Above n 40.

⁶¹ These risks are all increased for children who are Aboriginal and Torres Strait Islander, who have poorer outcomes the longer they are in care. See above n 5 and above n 38; Combined Voices campaign materials at www.combinedvoices.org.au; and Aboriginal and Torres Strait Islander Child Safety Task Force, *Together Keeping Our Children Safe and Well* (2010), available from: <http://www.qcoss.org.au/sites/default/files/Together%20Comprehensive%20Plan%20FINAL.pdf>, accessed September 2012.

- *Unemployment*: 34.2% of Queensland children in care who completed Grade 12 were neither learning nor earning.⁶²
- *Experiencing homelessness*: 34.7%- 88%.⁶³ These figures are from national or small study research.
- *Having multiple care placements*: 22% of Queensland children in care had more than five placements.⁶⁴ 32 of 77 young people who had transitioned from care had experienced 11 or more placements, with 16 experiencing 21 or more placements.⁶⁵
- *Involvement with juvenile justice system*: 65% of children in the Queensland youth justice system were known to the child protection system.⁶⁶
- *Not achieving national minimum standards for Year 9*: Reading-48 %, Writing – 50%, Numeracy-32%.⁶⁷
- *Running away from “home”*: 7% of 10-14 year olds and 11% of 15-17 year olds permanently abscond or “self-place” from care in Queensland.⁶⁸
- *Not being placed in a home-based environment*: 14% of Queensland children in care are not in a family home.⁶⁹
- *Poor transition to independence*: 53% of Queensland children in care had no transition from care plan or had not participated in the creation of the plan.⁷⁰
- *Problematic reconnection to family of origin after care*: 33% of Australian children in care return to families with unresolved, entrenched issues.⁷¹
- *Experiencing a protective issue as a result of the care*: 15.6% of all Queensland children in care experienced a protective concern sufficient to generate a Matter of Concern Report or a Child Placement Concern Report back to the Department.⁷²

“Separating children from their families (via removal into care or the eligibility policies of a refuge/shelter) appears frequently to lead to negative consequences for the children involved and also, potentially, for their future children.”⁷³

⁶² Above n 8, 85.

⁶³ See this submission at page 7.

⁶⁴ Above n 38 at 8, 35.

⁶⁵ Above n 9 at 27.

⁶⁶ Above n 38 at 86. This includes those subject to a child concern report, notification or substantiation at any time.

⁶⁷ Above n 5 at 95. These figures are based on Queensland children in care for two or more years.

⁶⁸ Above n 38 at 36.

⁶⁹ Ibid at 39.

⁷⁰ Above n 38 at 83.

⁷¹ Above n 9.

⁷² Above n 5 at 93.

⁷³ Above n 25.

Robinson suggests that the “crux of vulnerability for those who become homeless...is the lack of an experience of being precious to intimate carers as a child.”⁷⁴

Johnson (2011) suggests that “young people who are placed in the Child Protection system are caught in a double bind - in addition to trauma they have experienced at home, being separated from their biological family and placed in Child Protection is an equally traumatic event. Worse still, while being placed in Child Protection may provide short-term safety, longer term harm may result when placements are unstable, which is common in Child Protection systems across Australia....long-term homelessness is anything but a random occurrence....The way young people make sense of the materially depleted and traumatic conditions that characterise their lives, often establishes patterns of behaviour ...for years.”⁷⁵

Housing-based responses to transition from care issues

Best practice responses to homelessness in a international context have identified the five most effective policies to end homelessness, of which two are: “no one leaving an institution without housing options” and “ no young people becoming homeless as a result of transition to independent living “.⁷⁶

The AHURI Report *Pathways from out-of-home care* argues for the following two strategies to improve housing outcomes for care leavers:

1. *National standards*: where governments acknowledge their responsibility to young people as their corporate parent and plan a transition period where young people receive a joined-up approach across government agencies and policies, with strong linkages to drug and alcohol services, health services and employment/training services.
2. *Improved access to housing*: A no discharge policy into temporary or inappropriate accommodation, partnerships between leaving care services and housing associations and supervised apartments, and a Secure Tenancy Guarantee Scheme, which is a rental subsidy proposed for to care leavers.⁷⁷

As there are only 1165 young people in care over 15 years old in Queensland,⁷⁸ and only 527 of those discharged from care in 2010/11 were 15-17 years old,⁷⁹ it is surely affordable to provide these young people with a premium transition service that will assist them to become contributing adults.

The Queensland Youth Housing Coalition in partnership with other agencies developed a housing proposal which reflects the strategies above and is cost-neutral for government. The (currently

⁷⁴ Robinson C, ‘Rough Living: Surviving Violence and Homelessness’ (2010),Public Interest Advocacy Centre and UTS Shopfront at 28.

⁷⁵ Above n 13 at 10.

⁷⁶ FEANTSA, *Ending Homelessness: A Handbook for Policy Makers* (2012) available from: <http://www.feantsa.org/code/en/pg.asp?Page=1105>, accessed September 2012.

⁷⁷ Above n 13 at 4-7.

⁷⁸ Above n 38 at 83.

⁷⁹ Above n 6 at 67.

unfunded) pilot aims to permanently house and support 30 young people.⁸⁰ Collaborative proposals such as this should be encouraged and resourced.

The Youth Housing and Reintegration Service (YHARS), designed by the Department to offer access to housing and support for young people transitioning from care to was criticised by a number of agencies we consulted with, as being well-intentioned, but inaccessible for most young people, and not connected to the experienced youth housing and support providers in the sector.

Based on the value given to mentoring programs by young people with an experience of care⁸¹, the HPLC is currently developing a scheme to provide pro bono legal navigators to young people transitioning from care. Trained volunteer lawyers will act as a consistent contact point for the legal needs of vulnerable young people, such as housing, debt, crime. *Create* and *Peakcare* are partnering with the HPLC to deliver this new service, subject to funding.

RECOMMENDATION 4: The Department address homelessness arising from transition from care, by:

- a) Enacting the principles and minimum standards for supporting young people transitioning from care, recommended in the AHURI report *Pathways from out-of-home care*.⁸²
- b) The Youth Housing and Reintegration Service (**YHARS**) be redesigned in consultation with youth agencies, such as the Create Foundation, Youth Housing Coalition, Brisbane Youth Service, Youth Advocacy Centre and Legal Aid Queensland to better integrate with existing.
- c) A Secure Housing Guarantee housing subsidy be created for care-leavers, in accordance with the principles of the AHURI report.
- d) Cost-neutral housing developments for care leavers, such as that proposed by Queensland Youth Housing Coalition, in partnership with other agencies be supported and resourced.⁸³
- e) Prioritising and resourcing the solutions offered by young people with an experience of care, in the CREATE Foundation report *What's the Answer?*⁸⁴

⁸⁰ Above n 13.

⁸¹ CREATE Project Team, 'What's the Answer?' (Project paper, CREATE Foundation Ltd November 2010) at 14-19, 48 and 49.

⁸² Above n 9 at 5.

⁸³ For details of this proposal, contact Queensland Youth Housing Coalition or visit www.qyhc.org.au.

⁸⁴ CREATE Project Team, 'What's the Answer?' (Project paper, CREATE Foundation Ltd November 2010).

2. DECISION-MAKING, COURT AND TRIBUNAL PROCESSES

QPILCH is concerned about the lack of recognition in child protection legal processes of the realities of disadvantage for some Queensland families, and about the inappropriateness of a legal system that is simultaneously adversarial but under-funded and under-scrutinised.

The presentation of Walsh and Douglas to the Australian Institute of Judicial Administration on child protection and procedural fairness⁸⁵ confirmed the need for reform in the system. They suggested both more collaborative, non-court mechanisms and more rigour in procedure, calling for all decisions to be made by an independent decision-maker, all decisions to be subject to review and access to legal assistance for all participants.

The HPLC considered presentations from Legal Aid and Community Legal Centre practitioners and relevant research, which indicated that families involved in child protection proceedings are:

- stressed (given that their children are not with them and their parenting is being scrutinised);
- unlikely to have skills that will assist them to navigate the court process;
- faced with a legal adversary that is highly resourced to advance its argument;
- often unable to access legal assistance. Legal Aid grants are not available for all parents at all stages of the court proceedings;
- Required to cooperate with the department in order to maintain contact with their children and address family issues (where family support is provided) and yet not disclose information that may be prejudicial to them. Often the family are not even aware of the specifics of the allegations of harm for some months;
- Likely to be disengaged when their rights to participation, family life protections and natural justice have already been displaced, ostensibly in the name of “the child’s best interests”;
- Not protected by a body of case-law responses to statutory definitions (until recently); and,
- Subject to non-independent decision makers and processes.

In a field where so many fundamental rights are in potential conflict – the right to participate, natural justice, the rights of children, the rights of families, pregnant women, rights attaching to indigenous peoples and people with a disability – the need for rigorous procedures is of fundamental importance. We make the following observations:

2.1 Alternative Dispute Resolution

Family Group Conferencing was incorporated into Queensland practice as a potentially powerful restorative justice model to enable families to consider and negotiate in solving their problems. However a number of practice distinctions have diluted its efficacy considerably. Problems include:

- no requirement for a genuinely independent and impartial convenor. Convenors may be drawn from within department staff and may have been involved in prior investigations of the family, or sit at a desk near the current investigators or caseworkers.

⁸⁵ Available from: <http://www.aija.org.au/Child%20Protection%202011/Presentations/Walsh&Douglas.pdf>, accessed September 2012.

- relevant family members may not be invited to attend.
- no provision for “family time” which enables robust problem-solving and engages the family in taking responsibility for their children.⁸⁶ The only convenor in Queensland of family group meetings which follow the original and successful model is Logan Youth and Family Services. This service was evaluated in 2008 and consistently offers positive outcomes for the families involved.⁸⁷

New South Wales has launched a range of Alternative Dispute Resolution processes for children’s matters, including Family Group conferencing run by an independent facilitator and involving extended families, external mediation services for some child protection matters and Dispute Resolution Conferences for matters in court, facilitated by specially Children’s registrars.⁸⁸

2.2 Family Drug and Alcohol Court

The Family Drug and Alcohol Court (FDAC) is a diversion court in Britain for parents in care proceedings with substance misuse issues. It has operated since 2008 and was evaluated in 2011.⁸⁹ The evaluation found that a high number of parents were enabled to remain with their children (39% compared with 21% of non-FDAC parents), and that where alternative placement was necessary, this was achieved rapidly. Other issues such as mental health, housing and domestic violence were addressed, and FDAC parents were linked earlier and longer to substance abuse services. The programme delivered net savings as there was no need for independent expert evidence, hearings were shorter with fewer lawyers involved, and there were 50% less out of home placements.

Having a new child was a key motivation for participants to engage, which should be considered relevant to the process of at-birth removals in Queensland.

2.3 Internal review mechanisms and tribunal processes

The Self Representation Service has assisted 20 people seeking to review decisions made by the Department since the Service commenced operation in January 2010.⁹⁰ Drawing on its experiences of assisting these clients, the Service notes the following in relation to the internal and external processes of review available to those who have been aggrieved by a decision of the Department.

Children in care not accessing external review

The people who have sought assistance from the Service are either parents or carers of children in care. No child has sought assistance from the Service to review a decision by the Department relating to a child’s placement with a particular carer or contact with members of their families. This is despite efforts on the Service’s part to promote the assistance available to agencies which

⁸⁶ Ibid.

⁸⁷ Thomson J, *Evaluation report: Family Group Conferencing Program: Youth and Family Service* (Logan City) Inc. (June 2008) and Webber, J, Presentation regarding Family Group Conferencing YFS (May 2012).

⁸⁸ New South Wales Department of Families and Community Service, ‘Keep them Safe’ (Newsletter Issue 8, July 2010) available from: <http://www.keepthemsafe.nsw.gov.au>, accessed September 2012.

⁸⁹ The Family Drug and Alcohol Court (FDAC) Evaluation project – Final Report, FDAC Research Team Brunel University (May 2011) Brunel University London.

⁹⁰ Child protection is just one of a number of areas within the Service’s scope of assistance. 457 people have received assistance from the Service since its commencement in January 2010.

come into contact with children in care. The fact that children are not seeking assistance to review decisions which impact them suggests that children are either not aware of their rights to seek review, or if they are aware, they do not know the process by which they can seek review or who may be able to help them navigate that process. We understand other child protection practitioners and QCAT are cognisant of this issue, particularly as it paints a different picture to that which existed during the time of the Children Services Tribunal.

Limited appointment of separate representatives

Section 99Q of the *Child Protection Act 1999* (Qld) provides that QCAT must consider whether it would be in a child's best interests for that child to be separately represented in review proceedings, and if so, QCAT must order that the child be appointed a separate representative. In all cases in which the Self Representation Service has provided assistance, including cases where what amounts to a child's best interests is hotly contested and a request has been put forward for the appointment of a separate representative, no separate representatives have been appointed. We are uncertain as to the cause of this outcome, but understand that the limited funding available to secure legal representatives to fulfil the role of separate representative may be a contributory factor.

External review proceedings commenced out of necessity

Poor decisions by the Department, particularly decisions in relation to contact arrangements, occupy an unwarranted amount of QCAT's time. Proceedings to review such decisions which are commenced in QCAT by aggrieved parents or carers, after those parents or carers have sought to resolve their concerns with the Department to no avail, involve significant resources through the various stages of the QCAT review process.

Frequently, such proceedings do not progress to a final hearing, and the filing of review proceedings by a frustrated parent or carer acts to persuade the Department to reconsider the decision the subject of the review. This often occurs at the compulsory conference stage of proceedings after significant resources have been expended; with QCAT becoming a mechanism to encourage the Department to make decisions which it ought to have made in the first instance or after consultation with the parent or carer.

In a case we witnessed which progressed to a final hearing, the Department recognised its erroneous decision making and reversed its decision after being questioned by QCAT members about the veracity of the decision. The aggrieved parent then withdrew their review application, as the decision which was the subject of the review no longer stood. Although this achieved a resolution of the matter for the parent concerned, it was a resolution which was achieved at significant expense, which did not hold the Department accountable for its erroneous decision-making, and which did not result in the development of any precedent which may be drawn upon to guide the Department, QCAT, and applicants who have commenced review proceedings about what is good decision-making process. We understand the motivation for such an approach is non-adversarial resolution of matters where an ongoing relationship between the parent and/or carer and the Department is important. However, the value of formal decisions, which can have a normative effect on decision makers, is lost.

Questionable utility of internal review mechanisms

When the Department notifies a person of a decision, it provides that person with options if they disagree with the decision. These options are:

- Contacting the decision maker to arrange a meeting to discuss the person's concerns;
- Requesting an internal review of the decision by a senior Departmental officer; and
- Requesting an external review by QCAT.

Our experience reflects that of our colleagues in that the complaint and internal review mechanisms do not appear to present meaningful or consultative options to people aggrieved by decisions of the Department.

By way of example, in a recent case where we actively encouraged pursuit of an internal review by parents aggrieved by a decision of the Department to cease all contact between the parents and their children, the outcome of the review was a production of a report, which reiterated points relied upon, without any consideration of the concerns raised by the parents. We are now assisting the parents to pursue an external review of the decision through QCAT.

Further, although it does not appear that the options available to a person aggrieved by a decision of the Department are exclusive of each other, a recent decision of QCAT has suggested that when a person aggrieved by a decision pursues an internal review of that decision, that is the final recourse for that person. We have taken steps to obtain clarity on this point from QCAT.

RECOMMENDATION 5: Improve court and tribunal processes and decision-making forums, by:

- a) Utilising robust alternative dispute resolution processes, including Family Group Conferencing reflective of the original New Zealand model.
- b) Considering the strategic investment of a problem-solving court, similar to the Family Drug and Alcohol Court.
- c) Investing in the appointment of separate representatives for children subject to Court and Tribunal proceedings.
- d) Evaluating the complaint and internal review mechanisms of the Department with an aim to increasing the use and effectiveness of these mechanisms so that more concerns are resolved without commencement of review proceedings in QCAT.
- e) Evaluating the access by children in care to complaint, internal and external review processes.

QPILCH supports the right of Aboriginal and Torres Strait Islander peoples to self-determination and to be resourced to provide culturally distinctive responses to child protection issues of their children, in accordance with the mission of the Combined Voices campaign.⁹¹

⁹¹ See: www.combinedvoices.org.au.

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