

# Appendix D: Mandatory reporting requirements

## Commonwealth

### *Family Law Act (1975)*

#### Part VII – Children

#### Division 8 – Other matters relating to children

#### Subdivision D – Allegations of child abuse and family violence

#### **67Z Where interested person makes allegation of child abuse**

- (1) This section applies if an interested person in proceedings under this Act alleges that a child to whom the proceedings relate has been abused or is at risk of being abused.
- (2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.
- (3) If a notice under subsection (2) is filed in a court, the Registry Manager must, as soon as practicable, notify a prescribed child welfare authority.
- (4) In this section:

*interested person* in proceedings under this Act, means:

- (a) a party to the proceedings; or
- (b) an independent children’s lawyer who represents the interests of a child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph.

*prescribed form* means the form prescribed by the applicable Rules of Court.

*Registry Manager* means:

- (a) in relation to the Family Court – the Registry Manager of the Registry of the Court; and
- (b) in relation to the Family Court of Western Australia – the Principal Registrar, a Registrar or a Deputy Registrar, of the court; and
- (c) in relation to any other court – the principal officer of that court.

#### **67ZA Where member of the Court personnel, family counsellor, family dispute resolution practitioner or arbitrator suspects child abuse etc.**

- (1) This section applies to a person in the course of performing duties or functions, or exercising powers, as:

- (a) the Registrar or a Deputy Registrar of a Registry of the Family Court of Australia; or
  - (b) the Registrar or a Deputy Registrar of the Family Court of Western Australia; or
  - (c) a Registrar of the Federal Magistrates Court; or
  - (d) a family consultant; or
  - (e) a family counsellor; or
  - (f) a family dispute resolution practitioner; or
  - (g) an arbitrator; or
  - (h) a lawyer independently representing a child's interests.
- (2) If the person has reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.
- (3) If the person has reasonable grounds for suspecting that a child:
- (a) has been ill treated, or is at risk of being ill treated; or
  - (b) has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child;
- the person may notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.

Note: The obligation under subsection (2) to notify a prescribed child welfare authority of a suspicion that a child has been abused or is at risk of being abused must be complied with, regardless of whether this subsection also applies to the same situation.

- (4) The person need not notify a prescribed child welfare authority of his or her suspicion that a child has been abused, or is at risk of being abused, if the person knows that the authority has previously been notified about the abuse or risk under subsection (2) or subsection 67Z(3), but the person may notify the authority of his or her suspicion.
- (5) If notice under this section is given orally, written notice confirming the oral notice is to be given to the prescribed child welfare authority as soon as practicable after the oral notice.
- (6) If the person notifies a prescribed child welfare authority under this section or subsection 67Z(3), the person may make such disclosures of other information as the person reasonably believes are necessary to enable the authority to properly manage the matter the subject of the notification.

## New South Wales

Since 1977, the law has required medical practitioners to report physical and sexual abuse. This was expanded under the *Children (Care and Protection) Act 1987* to encompass other categories of mandatory reporters and what needed to be reported. From 18 December 2000, under the provisions of the *Children and Young Persons (Care and Protection) Act 1998*, the category of mandatory reporters was changed to anyone who:

- a) in the course of his or her professional work or other paid employment delivers health care, welfare, education, children’s services, residential services or law enforcement wholly or partly to children;
- b) holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, a person referred to in (a);

and that person has reasonable grounds (that arise as a consequence of their employment) to suspect that a child is at risk of significant harm.

Since 1998, agencies have also been required to report allegations about, or convictions for, child abuse against a person doing work for the agency, together with information on the action being taken by the agency, to the New South Wales Ombudsman.

Guidelines supplement and support these statutory obligations. The Child Wellbeing and Child Protection – New South Wales Interagency Guidelines detail each agency’s role, responsibilities and actions required in all aspects of child wellbeing and child protection intervention.

The ‘risk of harm’ reporting threshold was amended to ‘risk of significant harm’ from 24 January 2010, in accordance with the New South Wales Keep Them Safe reforms.

To align with this reporting threshold, New South Wales developed a *Mandatory reporter guide* (MRG) during 2009 with the United States-based Children’s Research Centre and a wide range of human services and justice agencies across the government and non-government sectors. The interactive, online MRG became available for sector familiarisation from 23 December 2009 and formally commenced from 24 January 2010. Mandatory reporters were encouraged to use this resource to guide their decision making, such as whether or not to report a concern to the New South Wales Child Protection Helpline under the new ‘risk of significant harm’ threshold. The MRG is updated annually.

Using the online interactive tool and after the completion of a series of questions, a Decision Report is produced for the reporter, clarifying the appropriate course of action and detailing the rationale for the decision from the user’s responses to each question.

Child Wellbeing Units (CWUs) operate in the key government reporting agencies of Health; Education; and Police to support agency responses to child wellbeing and child protection concerns. The Family and Community Services (FACS) CWU ceased operation on 28 June 2014. CWUs provide advice, training and support to staff working with children or families to help determine when a child is at risk of significant harm and to report matters to the Child Protection Helpline. In less serious cases, CWUs assist in the identification of potential agency responses, to the extent possible within agency resources and capabilities; support appropriate local action or referral for the child and family; and, over time, drive better alignment and coordination of agency service systems.

## Victoria

In 1993, the Victorian Government proposed legislative changes to the *Children and Young Persons Act 1989*, which would mandate specific professional groups to notify suspected cases of child physical and sexual abuse. Doctors, nurses and police were mandated on 4 November 1993 to report child physical and sexual abuse. Primary and secondary school teachers and principals were mandated on 18 July 1994. Section 182 a–e of the *Children, Youth and Families Act 2005* lists the above professional groups as mandatory reporters.

## Queensland

In Queensland, as at 30 June 2014, the following persons are mandatory reporters, required by law to report child protection concerns to Child Safety Services:

- An authorised officer, employee of the Department of Communities, Child Safety and Disability Services who is involved in administering the *Child Protection Act 1999*, or a person employed in a departmental care service or licensed care service who becomes aware of, or reasonably suspects harm to, a child in the care of a departmental care service or a licensee (s.148, *Child Protection Act 1999*).
- Staff of the Commission for Children and Young People and Child Guardian (s. 25, *Commission for Children and Young People and Child Guardian Act 2000*).
- A doctor or registered nurse who becomes aware, or reasonably suspects, during the practice of his or her profession that a child has been, is being or is likely to be harmed (s.191 and 192, *Public Health Act 2005*).
- Family court personnel, separate representatives and counsellors who suspect child abuse (s. 67ZA *Family Law Act 1975*, Commonwealth).
- From 19 January 2015 the *Child Protection Reform Amendment Act 2014* amends mandatory reporting obligations under the *Child Protection Act 1999*. The following professionals will be included as mandatory reporters on commencement:
  - Doctors
  - Registered nurses
  - Approved teachers employed at a school
  - Police officers working in child protection
  - Persons engaged to perform a child advocate function under the *Public Guardian Act 2014*
  - An authorised officer, employee of the Department of Communities, Child Safety and Disability Services, a person employed in a departmental care service or licensed care service.

## Western Australia

The *Children and Community Services Act 2004* (Part 4 Division 9A of the Act), includes provisions relating to mandatory reporting of child sexual abuse by certain professionals in Western Australia. Police officers, teachers, doctors, nurses and midwives are required to make a report to the Department for Child Protection and Family Support (the Department) if they form a belief, on reasonable grounds, in the course of their work (whether paid or unpaid), that a child has been the subject of sexual abuse that occurred on or after 1 January 2009, or that a child is the subject of ongoing sexual abuse. Failure to make a report in relation to child sexual abuse can result in a fine of up to \$6,000.

Other mandatory reporting provisions in Western Australia include:

- provisions in the *Family Court Act 1997* (Division 8, Subdivision 4 and sections 159 and 160) require court personnel, counsellors, mediators and legal practitioners independently representing a child's interest to report allegations or suspicions of child abuse in Family Court cases; and

- approved education and care services providers are required, under the *Education and Care Services National Law (WA) Act 2012*, to notify the Education and Care Regulatory Unit of complaints alleging that the safety, health or wellbeing of a child or children was or is being compromised while that child/ren are using the service.

In Western Australia there are also agreed protocols between the Department of Health, the Department and the Western Australia Police, which require the reporting of all incidents of sexually transmitted infections (STIs) in children aged under 14. Mandatory reporters who know of a child aged 14 and over with a diagnosed STI, and who form a belief that sexual abuse has occurred or is occurring to the child, are required to submit a mandatory report under Division 9A of the Act.

## South Australia

Under Sections 11(1) and (2) of the *Children's Protection Act 1993*, the following persons are required to notify Families SA via the Child Abuse Report Line (CARL) if they suspect on reasonable grounds that a child/young person has been or is being, abused and/or neglected and the suspicion is formed in the course of the person's work (whether paid or voluntary) or in carrying out official duties:

- (a) a medical practitioner
- (ab) a pharmacist
- (b) a registered or enrolled nurse
- (c) a dentist
- (d) a psychologist
- (e) a police officer
- (f) a community corrections officer (an officer or employee of an administrative unit of the Public Service whose duties include the supervision of young or adult offenders in the community)
- (g) a social worker
- (ga) a minister of religion
- (gb) a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes
- (h) a teacher in an educational institution (including a kindergarten)
- (i) an approved family day care provider.

In recognition of the shared community responsibility for promoting children's safety and protection, the Act also states that a person does not necessarily exhaust his or her duty to a child by giving a notification under Section 11.

The Department for Education and Child Development manages the delivery of a 7-hour training program entitled 'Child safe environments: reporting child abuse and neglect' and refresher courses to educate mandated notifiers about their obligations.

The report of the Independent Education Inquiry 2012–2013 conducted by the Honourable Bruce DeBelle AO, QC recommended an extension of existing processes of electronic notification to enable more persons to make an electronic notification when discharging the obligation to make a mandatory notification under section 11 of the *Children's Protection Act 1993*. The existing scheme is being significantly expanded in keeping with Justice DeBelle's recommendation and all mandated notifiers are now able to use the electronic notification

system to make lower-risk notifications. Information about the new online reporting system is available on the department's website and will also be provided to mandated notifiers through 'Child safe environments' training.

## Tasmania

In Tasmania, the *Children, Young Persons and Their Families Act 1997* (CYPF Act) emphasises that everyone in the community has a responsibility to ensure children are safe and protected. Under Part 3, Section 14 of the CYPF Act, the following are 'prescribed persons' who must report suspected cases of child abuse or neglect to the Secretary, Department of Health and Human Services or delegate:

- (a) a medical practitioner
- (b) a registered nurse or enrolled nurse
- (c) a person registered under the Health Practitioner Regulation National Law (Tasmania) in the midwifery profession
- (d) a person registered under the Health Practitioner Regulation National Law (Tasmania) in the dental profession as a dentist, dental therapist, dental hygienist or oral health therapist
- (e) a person registered under the Health Practitioner Regulation National Law (Tasmania) in the psychology profession
- (f) a police officer
- (g) a probation officer appointed or employed under section 5 of the *Corrections Act 1997*
- (h) a principal and a teacher in any educational institution (including a kindergarten)
- (i) a person who provides child care, or a child care service, for fee or reward
- (j) a person concerned in the management of an approved education and care service, within the meaning of the Education and Care Services National Law (Tasmania), or a child care service licensed under the *Child Care Act 2001*
- (k) any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in –
  - (i) a Government Agency that provides health, welfare, education, child care or residential services wholly or partly for children; and
  - (ii) an organisation that receives any funding from the Crown for the provision of such services.
- (l) any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons.

During 2004–05, as a result of the Tasmanian Government's Safe @ Home framework implementation, an amendment was made to the CYPF Act to extend the definition of abuse and neglect to include a child affected by family violence.

In August 2009, further amendments came into effect under the *Children, Young Persons and Their Families Amendment Act 2009* to permit prescribed persons to report concerns about the abuse or neglect of a child to community-based intake services or to Child Protection Services. These amendments were to allow for earlier intervention via community-funded services if a statutory response was not warranted. At the same time, and again to allow earlier intervention via appropriate services to occur, amendments were made to allow notifications in relation to pregnant women if the notifier believes there is a likelihood of abuse or neglect once the child is born.

## Australian Capital Territory

Mandatory reporting was introduced on 1 June 1997. Section 356 of the *Children and Young People Act 2008* states that the following people are mandated reporters:

- (a) a doctor
- (b) a dentist
- (c) a nurse
- (d) an enrolled nurse
- (e) a midwife
- (f) a teacher at a school (including a teacher's assistant or aide if the assistant or aide is in paid employment at the school)
- (g) a person providing education to a child or young person who is registered, or provisionally registered, for home education under the *Education Act 2004*
- (h) a police officer
- (i) a person employed to counsel children or young people at a school
- (j) a person caring for a child at a child care centre
- (k) a person coordinating or monitoring home-based care for a family day care scheme proprietor
- (l) a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families
- (m) the public advocate
- (n) the official visitor
- (o) a person who, in the course of the person's employment, has contact with, or provides services to, children, young people and their families as prescribed by regulation.

## Northern Territory

The *Care and Protection of Children Act 2007* makes it mandatory for any person who reasonably believes a child has suffered or is likely to suffer harm or exploitation to notify the Department of Children and Families or a police officer. The reporting obligation covers any belief that a child less than 14 has been, or is likely to be, a victim of a sexual offence. Registered health practitioners have an additional responsibility to report if they have formed a belief that a child aged 14 or 15 has been, or is likely to be, a victim of a sexual offence, and the age difference between the child and the offender is greater than 2 years.

Failure to make a report carries a maximum penalty of 200 penalty units.

The Act provides that a person acting in good faith in making a report under section 26 is not civilly or criminally liable, or in breach of any professional code of conduct.

# Appendix E: Legislation

## Child protection legislation

### Commonwealth

*Family Law Act 1975*

### New South Wales

*Children and Young Persons (Care and Protection) Act 1998*

### Victoria

*Children, Youth and Families Act 2005*

*Child Wellbeing and Safety Act 2005*

### Queensland

*Child Protection Act 1999*

### Western Australia

*Children and Community Services Act 2004*

*Family Court Act 1997*

### South Australia

*Family and Community Services Act 1972*

*Children's Protection Act 1993*

### Tasmania

*Children, Young Persons and Their Families Act 1997*

*Children, Young Persons and Their Families Amendment Act 2009*

### Australian Capital Territory

*Children and Young People Act 2008*

### Northern Territory

*Care and Protection of Children Act 2007*

## Legislative definition of ‘in need of care and protection’

For a child to be placed under an order, a court needs to determine whether the child is in need of care and/or protection. Each state and territory has legislation defining ‘in need of care and protection’.

### New South Wales

In New South Wales, under section 71(1) of the *Children and Young Persons (Care and Protection) Act 1998*, a child or young person may be found to be in need of care and protection for any reason ‘including, without limitation, any of the following’:

- (a) there is no parent available to care for the child or young person as a result of death or incapacity or for any other reason
- (b) the parents acknowledge that they have serious difficulties in caring for the child or young person and, as a consequence, the child or young person is in need of care and protection
- (c) the child or young person has been, or is likely to be, physically or sexually abused or ill-treated
- (d) subject to subsection (2), the child’s or young person’s basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents or primary care givers
- (e) the child or young person is suffering, or is likely to suffer serious developmental impairment or serious psychological harm as a consequence of the domestic environment in which he or she is living
- (f) in the case of a child who is under the age of 14 years, the child has exhibited sexually abusive behaviours and an order of the Children’s Court is necessary to ensure his or her access to, or attendance at, an appropriate therapeutic service
- (g) the child or young person is subject to a care and protection order of another state or territory that is not being complied with
- (h) section 171(1) applies in respect of the child or young person.

Section 71 (1A) states that if the Children’s Court makes a care order in relation to a reason not listed in subsection (1), the Court may only do so if the Director-General pleads the reason in the care application.

Section 71 (2) provides that the Children’s Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of:

- (a) a parent’s or primary care-giver’s disability, or
- (b) poverty.

### Victoria

In Victoria, Section 162 of the *Children, Youth and Families Act 2005* indicates that a child is in need of protection if any of the following grounds exist:

## Section 162

- (1) (a) the child has been abandoned and after reasonable inquiries:
    - (i) the parent(s) cannot be found; and
    - (ii) no other suitable person can be found who is willing and able to care for the child
  - (b) the child's parent(s) are dead or incapacitated and there is no other suitable person willing and able to care for the child
  - (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type
  - (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type
  - (e) the child has suffered, or is likely to suffer, emotional or psychological harm of such kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parent(s) have not protected, or are unlikely to protect, the child from harm of that type
  - (f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parent(s) have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange, or allow the provision of, basic care or effective medical, surgical or other remedial care.
- (2) For the purposes of sub-sections (1)(c) to (1)(e), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances.

## Queensland

In Queensland, the *Child Protection Act 1999* defines a child 'in need of protection' as 'a child who has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and does not have a parent able and willing to protect the child from the harm.'

The Act uses several definitions of 'parent', depending on the part of the Act the definition applies to. During an investigation and assessment, parent is defined broadly to include persons 'having or exercising parental responsibility for the child' and includes a person 'who, under Aboriginal or Torres Strait Islander tradition or custom, is regarded as a parent of the child'. When applying for a court order, the definition of parent is limited to those people with legal parental responsibility for the child including 'the child's mother or father; a person whose favour a residence order or contact order for the child is in operation under the *Family Law Act 1975*; as a person having custody or guardianship; and a long-term guardian of the child'.

A 'child' is an individual aged under 18.

'Harm' is defined as 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing'.

It is immaterial how the harm is caused. Harm to a child may include: physical, psychological, or emotional abuse; or neglect; or sexual abuse or exploitation and can be singular or a series or combination of acts, omissions or circumstances.

## Western Australia

In Western Australia, the *Children and Community Services Act 2004* (s.28) states that a child is 'in need of protection' if:

- (a) the child has been abandoned by his or her parents and, after reasonable inquiries:
  - (i) the parents cannot be found; and
  - (ii) no suitable adult relative or other suitable adult can be found who is willing and able to care for the child; or
- (b) the child's parents are dead or incapacitated and, after reasonable inquiries, no suitable adult relative or other suitable adult can be found who is willing and able to care for the child; or
- (c) the child has suffered, or is likely to suffer, harm as a result of any one or more of the following:
  - (i) physical abuse
  - (ii) sexual abuse
  - (iii) emotional abuse
  - (iv) psychological abuse
  - (v) neglect

and the child's parents have not protected, or are unlikely or unable to protect, the child from harm, or further harm, of that kind; or

- (d) the child has suffered, or is likely to suffer, harm as a result of:
  - (i) the child's parents being unable to provide, or arrange the provision of, adequate care for the child; or
  - (ii) the child's parents being unable to provide, or arrange the provision of, effective medical, therapeutic or other remedial treatment for the child.

For the purpose of section 28, 'harm', in relation to a child, means 'any detrimental effect of a significant nature on the child's wellbeing'; and 'neglect' includes 'failure by a child's parents to provide, arrange or allow the provision of:

- (a) adequate care for the child; or
- (b) effective medical, therapeutic or remedial treatment for the child'.

## South Australia

In South Australia, under the *Children's Protection Act 1993* (Part 5, Division 2, s. 37) a variety of circumstances may trigger an application to the Youth Court for a care and protection order

- (1) If the Minister is of the opinion that the child is at risk and an order should be made to secure the child's care and protection:

- (1a) an application for an order may be made if the Minister knows or suspects on reasonable grounds that:
  - (i) the a child is at risk as a result of drug abuse by a parent, guardian or other person; and
  - (ii) the cause of the child being at risk is not being adequately addressed;
- (1b) an application for an order must be made if the Minister is of the opinion that the most appropriate response is an order under this Division for one or more of the following purposes:
  - (i) to ensure that the parent, guardian or other person undergoes appropriate treatment for drug abuse
  - (ii) to ensure that the parent, guardian or other person submits to periodic testing for drug abuse
  - (iii) to authorise or require the release of information regarding the treatment or the results of the test to the Chief Executive.
- (2) An application may be made if the Minister is of the opinion that:
  - (a) proper arrangements exist for the care and protection of a child; and
  - (b) the child would be likely to suffer significant psychological injury if the arrangements were to be disturbed; and
  - (c) it would be in the best interests of the child for the arrangement to be the subject of a care and protection order.

Under Part 1, Section 6 (2) of the Act, a child is at risk if:

- (aa) there is a significant risk that the child will suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have, but does not have, proper protection; or
- (a) the child has been, or is being, abused or neglected; or
- (b) a person with whom the child resides (whether a guardian of the child or not):
  - (i) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or
  - (ii) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (c) the guardians of the child:
  - (i) are unable to care for and protect the child, or are unable to exercise adequate supervision and control over the child; or
  - (ii) are unwilling to care for and protect the child, or are unwilling to exercise adequate supervision and control over the child; or
  - (iii) are dead, have abandoned the child, or cannot, after reasonable inquiry, be found; or
- (d) the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence; or
- (e) the child is aged under 15 and of no fixed address.

## Tasmania

In Tasmania, the *Children, Young Persons and Their Families Act 1997*, Part 1, s. 3 defines abuse or neglect as:

- (a) sexual abuse; or
- (b) physical or emotional injury or other abuse, or neglect, to the extent that:
  - (i) the injured, abused or neglected person has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's wellbeing; or
  - (ii) the injured, abused or neglected person's physical or psychological development is in jeopardy.

The Act provides the following definition of a child at risk:

- (a) the child has been, is being, or is likely to be, abused or neglected; or
- (b) any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child):
  - (i) has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or
  - (ii) has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
- (ba) the child is an affected child within the meaning of the *Family Violence Act 2004*: or
- (c) the guardians of the child are:
  - (i) unable to maintain the child; or
  - (ii) unable to exercise adequate supervision and control over the child; or
  - (iii) unwilling to maintain the child; or
  - (iv) unwilling to exercise adequate supervision and control over the child: or
  - (v) dead, have abandoned the child or cannot be found after reasonable inquiry; or
  - (vi) are unwilling or unable to prevent the child from suffering abuse or neglect; or
- (d) the child is under 16 years of age and does not, without lawful excuse, attend a school, or other educational or training institution, regularly.

Child Protection staff make a decision about whether a child is at risk through a process of gathering, confirming and analysing information, and using their expertise and, where necessary, that of other professional people.

The *Family Violence Act 2004* was proclaimed on 30 March 2005. The introduction of this legislation has significantly increased child protection notifications from Tasmania Police because it has amended the definition of a child at risk of abuse and neglect to include a child affected by family violence (defined as a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence).

## Australian Capital Territory

In the Australian Capital Territory, Section 345 of the *Children and Young People Act 2008* states that:

- (1) a child is in need of care and protection if:
  - (a) the child or young person:
    - (i) has been abused or neglected; or
    - (ii) is being abused or neglected; or
    - (iii) is at risk of abuse or neglect; and
  - (b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from the abuse and neglect or the risk of abuse or neglect.
- (2) Without limiting subsection (1), a child or young person is in need of care and protection if:
  - (a) there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the Director-General) to the extent that the care arrangements for the child or young person are, or are likely to be, seriously disrupted; or
  - (b) the people with parental responsibility for the child or young person are dead, have abandoned the child or young person or cannot be found after reasonable inquiry; or
  - (c) the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or not willing and able to keep him or her from being sexually or financially exploited.

Abuse in relation to a child or young person is defined in Section 345 as:

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) emotional abuse (including psychological abuse) if the child or young person has experienced the abuse or is experiencing the abuse in a way that has caused or is causing significant harm to his or her wellbeing or development; or
- (d) emotional abuse (including psychological abuse) if:
  - (i) the child or young person has seen or heard the physical, sexual or psychological abuse of a person with whom the child or young person has a domestic relationship, the exposure to which has caused or is causing significant harm to the wellbeing or development of the child or young person; or
  - (ii) the child or young person has been put at risk of seeing or hearing abuse mentioned in subparagraph (i), the exposure to which would cause significant harm to the wellbeing or development of the child or young person.

Neglect of a child or a young person means a failure to provide the child or young person with a necessity of life if the failure has been caused or is causing significant harm to the

wellbeing or development of the child or young person. Examples of necessities of life include food, shelter, clothing or health-care treatment.

## Northern Territory

In the Northern Territory, Section 20 of the *Care and Protection of Children Act 2007* states that a child is in need of care and protection if:

- (a) the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child; or
- (b) the child is abandoned and no family member of the child is willing and able to care for the child; or
- (c) the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or
- (d) the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.

Section 15 defines 'harm to a child' as:

- (1) any significant detrimental effect caused by an act, omission or circumstance on:
  - (a) the physical, psychological or emotional wellbeing of the child; or
  - (b) the physical, psychological or emotional development of the child.
- (2) Without limiting subsection (1), harm can be caused by the following:
  - (a) physical, psychological or emotional abuse or neglect of the child
  - (b) sexual abuse or other sexual exploitation of the child
  - (c) exposure of the child to physical violence.

Section 16 defines 'exploitation' as including:

- (1) sexual and any other forms of exploitation of the child
- (2) without limiting subsection (1), sexual exploitation of a child includes:
  - (a) sexual abuse of the child; and
  - (b) involving the child as a participant or spectator in any of the following:
    - (i) an act of a sexual nature
    - (ii) prostitution
    - (iii) a pornographic performance.

# Appendix F: Policy and practice differences in states and territories

## Notifications, investigations and substantiations

Although there are differences between states and territories that affect the comparability of the data on children in out-of-home care and on care and protection orders, the differences between jurisdictions are greatest in relation to child protection notifications, investigations and substantiations.

One of the main differences is in the policy frameworks that states and territories use for notifications. In some jurisdictions, such as New South Wales, under the *Children and Young Persons (Care and Protection) Act 1998*, reports to Family and Community Services relating to abuse by a stranger may be classified as a notification, but in other jurisdictions they are not.

- In New South Wales, all reports received at the Child Protection Helpline and classified as ‘child and young person concern’ reports are screened to whether or not they reach the ‘risk of significant harm’ (the statutory threshold) and to decide the appropriate action and response priority timeframe. Where a report does not meet the risk of significant harm threshold, information on alternative referral pathways will be offered where possible.
- The Northern Territory applies a similar system to New South Wales, with all reports that the Child Abuse Hotline receives screened to determine whether they reach the statutory threshold, the appropriate action and priority response time.
- In Victoria, a person may make a report if the person has a significant concern for the wellbeing of the child or believes, on reasonable grounds, that a child is in need of protection. This includes provisions to make a report regarding the wellbeing of the child after his/her birth. Reports are then classified as a ‘child wellbeing’ report or a ‘protective intervention’ report.
- Queensland and South Australia screen reports and can refer cases to other agencies or provide family support services if it is judged that a child protection investigation is not required to protect a child from abuse or neglect. This approach, which is referred to as a ‘differential response’, relies on voluntary participation from families. It seeks to consider lower-level needs and risks without the need for families to enter or further enter into the statutory child protection system.
- The above is also true for Western Australia, except for mandatory reports of child sexual abuse, which are classified as ‘child protection notifications’ without prior screening.
- Tasmania also has a differential response, with members of the public and prescribed persons (mandated reporters) being able to report care and protection concerns to Community Based Intake Services (known as Gateway Services) or to Child Protection Intake. All reports to Child Protection Intake about the safety or wellbeing of a child are recorded as notifications. Reports to the Gateway Services are not recorded as ‘notifications’ unless they are referred to Child Protection Intake for intervention.
- In 2002, the Australian Capital Territory screened reports in a similar manner to South Australia and Queensland, but in 2003 the process was changed to incorporate all contacts regarding concerns for children as child protection reports. With the

introduction of the *Children and Young People Act 2008*, notifications continue to include 'child concerns' and 'child protection' reports.

## Care and protection orders

There are large variations across states and territories in the types of care and protection orders that can be issued. Some of the major differences between jurisdictions, and recent changes to care and protection orders within jurisdictions, are outlined below.

### Finalised guardianship and custody orders

- In Western Australia, the *Children and Community Services Act 2004* enables the Children's Court to make 4 types of protection orders according to the needs and circumstances of the child or young person: protection order (supervision), protection order (time limited), protection order (until 18), and protection order (special guardianship). These orders have been in place since 1 March 2006, except for protection orders (special guardianship), which replaced protection orders (enduring parental responsibility) in legislative amendments that came into effect on 31 January 2011.
- With the introduction of the *Children and Community Services Act 2004* on 1 March 2006, the concept of 'guardianship' was replaced with 'parental responsibility', which is defined as all the duties, powers, responsibilities and authority, which, by law, parents have in relation to children. Protection orders (time limited) and protection orders (until 18) confer parental responsibility on the Chief Executive Officer (CEO) of the Department for Child Protection and Family Support, and protection orders (special guardianship) confer parental responsibility on a third party.
- In New South Wales, these types of orders relate to 'parental responsibility' rather than 'guardianship' and can be issued to individuals as well as to an officer of the state.
- For Queensland, this category includes finalised child protection orders and court assessment orders where custody or guardianship of the child has been granted to the Director-General.
- In Tasmania, guardianship and custody orders place children under the guardianship and/or custody of either the Secretary or a person or persons that a court approves. This category includes children under the guardianship of the Secretary or their delegate, children who have moved to Tasmania while on an order made in another state or territory, and children on a custody order where the custodian is the CEO of a non-government organisation or the Secretary of the department.
- In the Australian Capital Territory, under the *Children and Young People Act 2008*, these types of orders are also referred to as 'parental responsibility' orders and can be issued to the Director-General solely or shared between the Director-General and other parties.
- In South Australia, the Youth Court can make orders to place children under the Guardianship of either the Minister or a person or persons (not exceeding two) that the court thinks appropriate in the circumstances of the case. Guardianship orders can be made for a specified period not exceeding 12 months or until the child reaches the age of 18.

### Finalised third-party parental responsibility orders

- Orders that grant guardianship and custody of a child to a third party are issued in all jurisdictions, except the Northern Territory.

- Victoria separately reported Permanent Care Orders in this category for the first time in 2013–14. Previously, these orders were included in the category ‘guardianship and custody orders’.
- In Western Australia and in the Australian Capital Territory, in the case of a protection order (special guardianship) and protection order (enduring parental responsibility), respectively, a person other than the Director-General of the relevant child protection authority (and other than the child’s parents) is named as the person who has parental responsibility for the child until they reach the age of 18.
- In Tasmania, the information system has allowed for reporting of third-party parental responsibility orders since August 2010. Previously, this feature was not available and children under the guardianship or custody of a person or persons that a court approved, who were not the Secretary or the child’s parents, were included under ‘guardianship or custody orders’.

### **Finalised supervisory orders**

- Data on supervisory and other finalised orders are not available from New South Wales.
- For Queensland, this category includes finalised orders requiring the Director-General to supervise matters, direct parents’ actions regarding the child’s protection or contact arrangements with the child.
- In Western Australia, the protection order (supervision) enables the Department for Child Protection and Family Support to provide supervision of the wellbeing of the child for a specified period, not exceeding 2 years. A protection order (supervision) does not affect the parental responsibility for the child, except to the extent necessary to give effect to the order.
- In Tasmania and South Australia, children on orders that require the children or their guardian to meet specified conditions for a period not greater than 12 months are included in this category.
- In the Australian Capital Territory, a supervision order places the child or young person, for the period stated in the order, under the supervision of the Director-General and allows Care and Protection Services to monitor and supervise the health and wellbeing of that child or young person during that period.

### **Interim and temporary orders**

- For Queensland, this category includes all interim orders made on the adjournment of a proceeding for a child protection order or a court assessment order.
- In Western Australia, this category includes all pending protection applications for children, regardless of what type of order is sought. It includes where the child has been taken into, or placed in, provisional protection and care either by the Department for Child Protection and Family Support or pursuant to an interim order made by the Court.
- In Tasmania, this category covers children who require a response while a substantive order is being processed. This includes children who have been named in a requirement, a warrant, or an order, such as an assessment order, interim assessment order, or interim care and protection order.
- In the Australian Capital Territory, an interim order is issued when an application for a care and protection order for the child or young person has been made to the court but not finally decided, and the court believes, on reasonable grounds, that the child or

young person is in need of care and protection or would be in need of care and protection if the interim care and protection order was not made.

- In the Northern Territory, the Court can issue a Temporary Protection Order if the CEO reasonably believes the child is in need of protection, and the proposed order is urgently needed to safeguard the wellbeing of the child.

### **Administrative arrangements**

- In Tasmania, 'administrative arrangements' include children under a voluntary care agreement between the guardian of the child and the Secretary for a period of up to 3 months, and longer by extension.
- In South Australia, this category also includes children who are placed under a voluntary custody agreement between the guardian of the child and the Minister, for a period of up to 3 months. This agreement may be extended, but only for a further period of 3 months.
- This category is also applicable for voluntary care agreements in the Australian Capital Territory where parental responsibility is shared between the parent/guardian of the child and the Director-General for a period of up to 6 months within any 12-month period. The voluntary agreement can be extended for a longer period if the young person is 15 or over.

### **Out-of-home care**

#### **Out-of-home care and court orders**

Children can be placed in out-of-home care voluntarily or through some type of court order (with the exception of the Northern Territory where all children in out-of-home care are on a court order). Such orders include care and protection orders, including formal administrative arrangements and other legal orders such as juvenile justice orders (see Chapter 5 of *Child protection Australia 2013–14*). There is considerable variety between the jurisdictions:

- In Western Australia, under the *Children and Community Services Act 2004*, children in out-of-home care may either be subject to a court order or another form of authority such as a negotiated placement agreement or placement services provided when social services are arranged for a child.
- In South Australia, all children in out-of-home care were on a court order or some other form of legal authority.
- In the Northern Territory, where the family voluntarily agrees to departmental intervention, the child can be placed under a temporary protection agreement, without the need for the department to make an application to the Family Matters Jurisdiction of the Local Court for a protection order.

Although a child may be in out-of-home care in conjunction with being on an order, the order does not necessarily specify where the child must reside or that the child be placed in care.

# Appendix G: Recent state and territory policy changes

This section outlines the major child protection policy changes that have occurred in recent years. The various child protection authorities in the states and territories have provided this information.

## New South Wales

*'Keep Them Safe: a shared approach to child well-being'* is an existing 5-year action plan that aims to reshape the way family and community services are provided to support vulnerable children, young people and their families. *Keep Them Safe* focuses on:

- strengthening early intervention services that will help prevent abuse and neglect and work to prevent the need for children to enter the child protection system
- the care and responsibility of children and young people as a shared responsibility among government and non-government partner agencies
- those who are most likely to need the intervention and protective powers of the state, which has included raising the threshold for both mandatory and voluntary reporting to Family and Community Services (FACS) from 'risk of harm' to 'risk of significant harm'. The legislative changes to the *Children and Young Persons (Care and Protection) Act 1998*, which gave effect to the new reporting threshold, came into effect on 24 January 2010.

The New South Wales Government believes a greater focus on prevention and early intervention is essential in reducing the number of reports of children at risk and the number of children entering the out-of-home care system in New South Wales. This commitment has seen considerable advances in this area:

- FACS and partner agencies initially delivered the 'Brighter Futures' program in NSW. In January 2012, key program changes included the delivery of the whole program by 16 non-government agencies; streamlined referral pathways; and refocusing the program to target families with children (aged 0–8) at high risk of entering the statutory child protection system. These decisions are consistent with outcomes of the Social Policy Research Centre's Brighter Futures final evaluation (September 2010) and subsequent FACS data analysis, which indicate that Brighter Futures can improve the safety of children in high-risk families with complex needs.
- The department continued delivery of the Early Intervention Placement Prevention Program, which aims to reduce the likelihood of children and young people entering or remaining in out-of-home care. This program provides services along a continuum from lower-level parenting and youth support to intensive family and youth interventions.
- Significant work is being undertaken to develop targeted responses to protect disengaged teenagers whose needs are not being met at home, school or by the child protection system as it is currently configured. Child Protection Adolescent Responses have been established with specialist adolescent caseworkers providing support and child protection case management services to adolescents aged 12–17 years who are at risk of significant harm, or are the subject of a request for assistance.
- The New South Wales Government's out-of-home care reform strategy will significantly boost the number of children and young people being cared for by non-government

agencies. In March 2012, a tender invited new and existing non-government organisations to deliver more out-of-home care services from 2012–13. As at 31 October 2014 a total of 5,057 children have transitioned from FACS to non-government agencies resulting in a total of 7,012 children and young people or 56 per cent of the statutory out-of-home care population. As at 31 October 2014, 5,569 children and young people or 44 per cent of the statutory out-of-home care population are with FACS. FACS continues to transition children and young people in statutory out-of-home care to non-government agencies.

In addition, from 1 July 2012, the government has provided support payments to some non-government agencies to improve permanent outcomes (such as family restoration and open adoption) for children and young people currently in out-of-home care when it is in their best interest. The restoration support payment was developed to support non-government out-of-home care providers to consider, plan for and support the restoration of children and young people in their care to their birth parents, where it is safe to do so. The payment is being trialled in the former FACS region of Hunter and Central Coast. Payments to support non-government agencies to progress open adoptions for children and young people under their case management for whom open adoption is the case plan goal are available across NSW.

To promote innovation and provide additional resources for social services, the New South Wales Government is undertaking a trial of social benefit bonds – a first of its kind in Australia. A social benefit bond is a financial instrument in which private investors provide up-front funding to service providers to deliver improved social benefits. If these outcomes are delivered, the government will be able to redirect funds away from acute services towards early intervention and prevention programs and provide a return on the original investment.

The focus of the social benefit bond pilots for out-of-home care will be to offer parents support to take care of their children without the need for foster care.

## Victoria

Victoria's legislative foundation for child protection is provided by the *Children, Youth and Families Act 2005*, *Child Wellbeing and Safety Act 2005* (which is the framework legislation for services for all children) and the *Commission for Children and Young Peoples Act 2012*, which established an independent commission for children and young people.

The *Children, Youth and Families Act*, which commenced operation in April 2007, provides a unifying framework for:

- family and placement services that community service organisations delivers
- child protection services that the Department of Health & Human Services delivers
- decision making by the Children's Court.

The Act explicitly places children's best interests at the heart of all decision making and service delivery.

The *Commission for Children and Young People Act 2012* established an independent commission to promote continuous improvement and innovation in policies and practices relating to the safety and wellbeing of vulnerable children and young people, and of young people generally, and in the provision of out-of-home care services for children.

The Department of Health & Human Services works in partnership with community service organisations and Aboriginal services to strengthen support services for vulnerable families. Strong focus is given to keeping Aboriginal children connected to their culture and community.

The department is currently in the process of working with Aboriginal organisations to develop the policy model and service capacity to enable the transfer of responsibility for Aboriginal children subject to court orders from the Secretary to the principal officer of an Aboriginal organisation under Section 18 of the Act.

Although front-end child protection demand has exhibited real growth in recent years, the enhanced availability of diversionary services, especially through referrals to Child FIRST (Child and Family Information, Referral and Support Teams), has meant that the number of children subject to court orders has remained relatively stable.

A new child protection operating model, set out in *Protecting children, changing lives – a new way of working* (Department of Human Services 2012) commenced in November 2012, aims to achieve the following outcomes:

- a more experienced and skilled workforce
- better supported staff benefiting from more supervision, co-working and mentoring
- putting case practice at the centre of work with children, young people and families
- reduced case transitions and devolved decision making to better support outcomes
- improved career pathways and staff retention.

Under the model, child protection is delivered through 4 divisions consisting of 21 child protection areas across Victoria that are aligned with local Child FIRST catchments.

In February 2012, the Protecting Victoria's Vulnerable Children Inquiry (PVVCI) report was tabled in parliament. The inquiry, established in January 2011, was tasked with investigating systemic problems in Victoria's child protection system and to make recommendations to strengthen and improve the protection and support of vulnerable young Victorians.

The report contained 90 recommendations. It focused on major system reforms, with the aim of reducing both the incidence and impact of child abuse and neglect; reducing the number of children and young people in out-of-home care; and achieving clearer and more transparent public accountability.

An important reform agenda was initiated in relation to vulnerable children as a result of this report. The directions paper, *Victoria's vulnerable children: our shared responsibility*, released in May 2012, detailed the Victorian Government's first-year proposals, longer-term commitments and areas requiring further consideration as a result of the recommendations of the PVVCI (Victorian Government 2012). The paper detailed an extensive reform agenda, with the key action areas of building effective and connected services; enhancing education and building capacity; making the legal system child-friendly; providing safe, stable and supportive out-of-home care; and introducing accountability and transparency.

In May 2013, Victoria launched the whole-of-government Vulnerable Children Strategy 2013–2022 with the aspiration that 'Vulnerable children are kept safe from harm and have every opportunity to succeed in life'. The strategy sets out the overriding strategic direction, governance, performance framework, information-sharing and accountability arrangements to improve the lives of Victoria's vulnerable children. The strategic intentions are high level and interconnected:

- 1: Prevent abuse and neglect

- 2: Act earlier when children are vulnerable
- 3: Improve outcomes for children in statutory care.

The circumstances of vulnerable children and families are a shared responsibility. Accordingly, this strategy represents a shared commitment across Victorian Government departments, including the Departments of Education and Training; Health & Human Services; Justice & Regulation; Premier and Cabinet; and Victorian Police. It was developed by relevant Ministers, with the support of the Children's Services Coordination Board – all of whom will continue to oversee its implementation.

The strategy puts in place the system framework to drive sustained change. It gives equal weight to prevention, early intervention and providing support for 'at risk' children, as it does to improving outcomes for those in the statutory system. In doing so, it draws together all parts of government that have a responsibility for the health, social and economic determinants of vulnerability. It identifies the interdependencies between these drivers and enables clear linkages to be made between the myriad of programs, plans and services that have a role in protecting vulnerable children.

The Vulnerable Children Strategy highlights what needs to be done differently and articulates a clear commitment to achieve change and to strengthen the accountability of departments and the practice of adult service providers.

The *'Out-of-home care: a five year plan'* was released in March 2014, delivering on a commitment made in the 2012 directions paper. The plan sets out the Victorian Government's intention to reform the way the out-of-home care system operates, to drive better personal, social and economic outcomes for children and young people in care. The plan was a direct recommendation of the PVVCI and was developed with considerable input from community service organisations.

The 2014–15 Victorian Budget set out a range of initiatives that will protect, support and assist vulnerable and disadvantaged Victorians, including:

- continuing a program supporting Aboriginal kinship carers
- increasing the number of Child FIRST, family services and child protection workers to expand the child protection system and respond to families who are the subjects of family violence and multiple child protection reports
- introducing additional therapeutic residential and home-based care placements, along with financial assistance for education, health and other client expenses.
- funding additional places to provide support services to victims of sexual assault, which will reduce waiting times. Training in the Common Risk Assessment Framework will be expanded to improve consistent identification and responses for women and children who are affected. The Strengthening Risk Management project will be expanded to 8 sites.

Victoria is a signatory to the COAG-endorsed National Framework for Protecting Australia's Children. A range of work is under way to support the actions described in this framework.

In addition to developments specific to child protection, the Victorian Department of Health & Human Services has a new model for providing integrated human services, called Services Connect. It is designed to connect people with the right support, address the whole range of a person's or family's needs, and help people build their capabilities to improve their lives.

Over the coming years Services Connect will integrate and improve the way that human services work together and shift the focus of service delivery so that services are built around people and tailored to their unique needs and goals.

The Services Connect model will continue to roll out over the next 2 years, extending to sites in the non-government community services sector. These sites will test the model's client support approach and how clients access the service system.

Pilot sites are exploring ways of effectively integrating child protection services within the Services Connect model.

## Queensland

The Queensland Child Protection Commission of Inquiry report *Taking Responsibility: A Roadmap for Queensland Child Protection* was released on 1 July 2013. On 16 December 2013, the Queensland Government committed to implementing the Inquiry's reform roadmap by accepting all of the report's recommendations, 115 in full and 6 in principle. As a first step in implementing the recommendations the Queensland Government has passed a package of legislation that includes:

- *The Public Guardian Act 2014*
- *The Family and Child Commission Act 2014*
- *The Child Protection Reform Amendment Act 2014.*

The legislative package is targeted to build a new child and family support system in Queensland over the next 10 years that will strengthen families and communities, making Queensland the safest place to raise a child.

From 1 July 2014, the reforms will set new oversight structures for the new child protection system that will result in better outcomes for children that include:

- a new Office of the Public Guardian to provide individual advocacy services for vulnerable children and young people. The Office of the Public Guardian retains the functions of the current Adult Guardian, as well as new child advocacy functions that focus on individual support for children in the child protection system and a community visitor regime
- a new Family and Child Commission to provide systemic leadership, research and oversight
- changes to the *Child Protection Act 1999* to clarify when a report may be made to Child Safety about a child and to consolidate current mandatory reporting requirements in one piece of legislation. This is one step towards reducing unsustainable demand on the child protection system, so that children and families can access the right services at the right time.

The government is committed to implementing the next stages of reform over future years to comprehensively change the way Queensland protects, cares for and supports its most vulnerable children.

The reforms encourage everyone in the community to take responsibility for protecting children and place appropriate responsibility on each government department providing human services to take responsibility for whole-of-government outcomes for children. Implementation will require a fundamental shift in the way government agencies, child

safety professionals and community organisations work with vulnerable families, and with each other.

The changes are aimed to establish a new framework that cuts red tape and bureaucracy, avoids duplication and uses resources efficiently, enabling an affordable, sustainable and effective child protection system. They also provide referral pathways for families to family support services and other secondary services where needed, instead of investigation by Child Safety.

Representatives from non-government organisations are key to the governance arrangements, demonstrating the Queensland Government's commitment to working in partnership in order to embed widespread and sustainable reforms. The Queensland Government committed \$406 million additional investment over 5 years to enact the recommendations that will help vulnerable children, young people and families, including the prioritisation of the needs of Aboriginal and Torres Strait Islander families.

The over-representation of Aboriginal and Torres Strait Islander children and young people is one of the most pressing and challenging concerns facing all jurisdictions, including Queensland's child protection system. The Aboriginal and Torres Strait Islander Child Protection Service project of reform is an important part of the Queensland Government's Stronger Families program of reform which focuses on Aboriginal and Torres Strait Islander children and families having access to culturally appropriate, Indigenous-specific and mainstream services and care.

Given the high rate of over-representation and the increasing level of need, Aboriginal and Torres Strait Islander families will be a top priority across all initiatives associated with the reform of the child protection system. The Queensland Government has accepted a suite of new strategies for implementation to address over-representation including:

- setting up a network of 10 Indigenous practice leaders across the state
- working in collaboration with Aboriginal and Torres Strait Islander communities and other key stakeholders, to develop a trial of an Aboriginal and Torres Strait Islander family decision-making model
- working collaboratively with the Indigenous child protection peak body and the sector, to develop and deliver an integrated Aboriginal and Torres Strait Islander Child Protection and Family Support service model
- funding a peak body to plan and develop the capacity of Aboriginal and Torres Strait Islander-controlled organisations, to provide regional Aboriginal and Torres Strait child and family services
- setting up a network of 20 Community Based Intake and Referral services, plus additional Intensive Family Support services and Domestic and Family Violence services, which will respond in particular to the needs of Aboriginal and Torres Strait Islander families
- delivering a more meaningful role for Recognised Entities by providing additional training in child protection processes and court procedures.

The Queensland Government is committed to expanding and improving family and parenting support that the non-government sector provides, including integrated and intensive family intervention services across Queensland. The 2014–2015 State Budget provides funding of \$6.5 million as the first instalment of a major new investment in Intensive Family Support Services for Queensland families, poised to be the most significant

investment in Intensive Family Support services ever seen in Queensland. A further \$188.6 million will be committed to implementing Family Support Services and subsequently increasing the capacity of the non-government sector in Queensland through to 2018–2019.

The 'Helping Out Families' initiative continued in 2013–2014 to provide support services to vulnerable families at risk of entering or re-entering the statutory system who do not require tertiary intervention at this stage. An evaluation of this initiative was completed in June 2014 and provided solid evidence of benefits including: improved outcomes for families (if families engaged with an Intensive Family Support service for 7 months or longer, more than two-thirds showed improvement in most or all of their risk factors for child abuse or neglect) and reduced risk of entry or re-entry to the child protection system. The findings of the evaluation are being used to inform government investment in new models of intensive family support.

Also progressed in 2013–2014, the \$4 million Fostering Families 2-year trial is the first family support program to target neglect. After commencing in January 2013, it provides intensive, in-home and out-of-hours family support services to at-risk Queensland families with a focus on developing practical skills in the family home to improve parenting skills and family functioning. Fostering Families is currently being trialled in 3 sites: Brisbane South, Toowoomba/Darling Downs and Maryborough/Hervey Bay, all of which are operating at capacity. Initial results from the trial are positive, with support through the program helping to keep families together safely wherever possible and decreasing re-reporting rates of child protection concerns to the department. The department is proposing to extend these services.

In 2013–2014, Queensland continued to streamline quality standards for human services, after the introduction in February 2013 of an organisation-level licensing process for NGOs licenced under the *Child Protection Act (Qld) 1999*. The new process enables NGOs to spend more time on service delivery and less time on paperwork. At 30 June 2014, 13 organisations were each granted an organisational-level licence; previously they collectively held 41.

## Western Australia

Since 2007, the Department for Child Protection and Family Support (the Department) has undergone major reform, particularly the implementation of the *Signs of Safety Child Protection Practice Framework* (Signs of Safety). Signs of Safety is an approach developed in Western Australia and now in use in 10 other countries including the United Kingdom, Europe, the United States of America, Canada, Japan and New Zealand. It is an holistic, theoretical and practical framework, encompassing principles, disciplines, processes and tools, based on what child protection workers do that is effective in the most challenging cases.

The reorientation of work with families is resulting in a more inclusive and practice-based approach that builds safety around the child, with support networks, to enable children to remain at home, where possible. Additionally, the views of the child/young person are actively sought through the use of Signs of Safety tools. Other achievements in child protection services include:

- Family and domestic violence is one of the most common presenting issues in child protection cases. In December 2013, the electronic information exchange of incident notifications from WA Police was successfully integrated into the Department's client

system, enabling more timely and effective responses to children who have been exposed to family and domestic violence.

- The Department reviewed its policy on child sexual abuse and strengthened its practice guidance in areas such as assessing grooming behaviours and responding to sexualised behaviours in children.
- The Department and Legal Aid WA worked together to improve outcomes for Aboriginal children and their families by undertaking more pre-hearing conferences with parents and including appropriate extended family members to establish better safety for children.
- The roll-out of Signs of Safety pre-hearing conferences in child protection proceedings was extended to regional courts.
- The Department, Legal Aid WA and lawyers in private practice incorporated Signs of Safety practice principles in legal documentation presented to the Children's Court of WA to enable parents to clearly understand the Department's concerns about their children's safety.
- The continued operation of a Signs of Safety research program, conducted in partnership with the Australian Centre of Child Protection at the University of South Australia.

For those children who are in the care of the Chief Executive Officer (CEO), the *Foster Care Partnership Practice Framework* guides the Department to work with carers based on the ethos of mutual respect and joint decision making. The Department's *Residential Care (Sanctuary) Framework* also provides a sound theoretical and practical base to guide work with children whose trauma severely impacts their behaviour and development. Other areas relating to children in the CEO's care include:

- The Department, in partnership with the community service sector, has commenced the development of an *Out-Of-Home Care Five Year Strategic Plan* to increase its focus on resourcing care arrangements that meet the specific needs of children. Outcomes for children through reinforcing stability and certainty will also be a focus. This is occurring in parallel with an in-depth review of the permanency planning policy and practice guidance.
- The recruitment and retention of foster carers remains a priority. The current foster carer recruitment campaign has seen over 120 new general foster carers approved.
- In line with *Delivering Community Services in Partnership Policy*, the number of out-of-home care placements in the community service sector has grown by an average of 16 per cent in the last 3 years.
- Contact centres are being established to enhance the frequency and quality of contact arrangements and to assist in reunifying children with their families.
- Health-care planning for children in the CEO's care, including prioritised access to services, continues to be a focus area for child protection workers and health practitioners.
- Ongoing partnership work with the community sector around the delegation of case management for those children in the care of the CEO who are on a permanent order and in long-term community sector-managed placements.

The Department has continued to pursue service integration and resource efficiency with the community sector in supporting children and families at risk or in crisis through the revised *Family Support (Responsible Parenting) Framework*, the Community Sector Roundtable and the

*Delivering Community Services in Partnership Policy*. Achievements relating to children and families at risk or in crisis include the successful integration of the Family Support Network in Armadale, with two more networks established in Mirrabooka and the Midwest region. The expansion of these networks is an effective strategy to reduce demand on statutory child protection services, improve integration of services and more effectively meet the needs of at-risk families in these communities.

The Department's *Aboriginal Services Framework* continues to support work with Aboriginal children and families. The new *Remote Services Framework* also describes how the Department works with remote Aboriginal communities.

## South Australia

The Parliament of South Australia passed the *Statutes Amendment (Assessment of Relevant History) Act 2013* in November 2013. The Act makes changes to the child safe environments provisions of the *Children's Protection Act 1993*. Changes which started on 1 July 2014 include the expansion of the range of information to be taken into account by an authorised screening unit when assessing a person's relevant history.

Further changes to commence in early 2015 will broaden the range of organisations captured by the child-safe environments provisions of the *Children's Protection Act 1993* to include all organisations providing cultural, party and entertainment services wholly or partly for children. The new laws will also prohibit sole traders and people working in partnerships from performing a prescribed function unless they have obtained prescribed evidence relating to their relevant history. In preparation for the commencement of these provisions, child-safe environments information and resources are being reviewed and updated to support organisations in developing a child-safe and child-friendly environment, adopting a preventative approach to child abuse and neglect and ensuring relevant history assessments are conducted for all people working with children in prescribed positions.

Child protection and health services collaboratively developed new Health Standards for Children and Young People under Guardianship of the Minister. These standards incorporate national policy developments of importance to both sectors, including the National Out of Home Care Standards and the National Clinical Assessment Framework. They specify agreed roles, responsibilities and standards to guide workers in health and child protection in a shared endeavour to improve health outcomes and opportunities in life for children and young people under Guardianship.

For many years the South Australian child protection system has not been meeting the needs of children, families and carers. There are an ever-increasing number of notifications coming into the system. South Australia has experienced significant growth in the number of children coming into out-of-home care, with the number nearly doubling over the last decade. There are now almost 2,700 children living in out-of-home care.

As a result of these challenges, in 2012 Families SA examined its operations as an agency, scrutinising its structures, system, processes, workforce configuration and practice to gain a baseline of where the agency was and what was needed to be done to improve. By doing this it was clear that over the years not enough was done to invest in practice development and staff learning, so services will be delivered in a way that meets the changing needs of families and evolving community expectations.

The aim of the redesign is to transform the operating model to deliver a family-focused child protection system by supporting children and young people to remain in the care of their

families whenever it is safe to do so. Where this is not possible, a nurturing family environment for children in care will be provided so that children can flourish and reach their potential.

System, structure and processes are being rebuilt so that staff have the confidence, competence and specialised skills that they need to do their work. First and foremost, a consistent practice model 'Solution Based Casework' (SBC) is being implemented across the agency.

As the guiding practice model, SBC will be used to inform and aid the case management process of families and children. Staff will focus on 3 key elements when working with families:

- creating a partnership based on problem consensus in language the family understands
- focusing that partnership on the patterns of everyday family life that directly relate to threats to safety
- targeting solutions specific to the prevention skills needed to create safety and reduce risk in those family situations.

The practice model allows for families to be held accountable for their individual and family development through family-owned and worker-owned case planning. Embedded in this new practice model are Structured Decision Making® and Complexity Assessment Tool (CAT) assessment tools to guide assessment, case planning, case work and decision making within the SBC practice model.

All Families SA staff have been inducted into the practice model, and have undertaken training in SBC dependent upon their classification level. SBC training will be an essential requirement for all caseworkers providing case management services to children.

The roll-out of SBC began in September 2014 for non-government organisations. Initial training in SBC has also occurred with community service provider partners.

Families SA has restructured its workforce to help deliver more timely services and better support the needs of children and families. This change allows the agency to focus on 3 key aspects, namely Assessment and Support, Protective Intervention (incorporating Family Preservation and Reunification), and Guardianship.

New procedures have been commissioned for protective intervention work in the areas of family preservation and reunification. The emphasis is on working with vulnerable families to increase their strengths and resilience in order to care for their children. This will enable more children to remain safe in their own homes.

The Government of South Australia is also focused on improving outcomes for Aboriginal children and families. As shown in the data cited previously, Aboriginal children are over-represented in our services.

Throughout 2013–14, Families SA has continued to strengthen the cultural proficiency of its practice and improve its cultural competency through a range of measures focusing on practice, staff knowledge, service improvements and community engagement.

Senior Aboriginal staff continue to assess, review and refine the practice tools and resources that are being developed through SBC to ensure that they are meaningful and appropriate for South Australia's diverse Aboriginal communities.

Aboriginal staff have engaged with the developer of SBC in a 2-way learning environment where staff become better equipped with the knowledge and skills to implement SBC; and the developer of SBC is able to learn from Aboriginal staff and adjust the model of practice to align with the needs of Aboriginal families.

Culturally appropriate resources for families have been developed to build their capacity to provide safe and supportive environments. A suite of resources has been developed to assist non-Aboriginal staff to effectively engage with Aboriginal families and improve their knowledge and understanding of Aboriginal child protection issues.

In September 2014, Families SA launched the reprint of 'A brief history of laws, policies and practices in South Australia that led to The Removal of Many Aboriginal Children: We took the Children'. This resource will be widely distributed to assist staff, other agencies and the wider community to improve their knowledge of past issues, policies, laws and practices which related to the history of Aboriginal child protection in South Australia. Making this resource widely available will assist in the future development and implementation of effective and culturally appropriate child protection policies and practices, as well as support reconciliation through a greater understanding of the impact these policies and practices had on Aboriginal people, their communities and their culture.

## Tasmania

A number of initiatives during 2013–14 have been planned and/or implemented to improve practice and service provision in the child protection and out-of-home care in Tasmania, some of these include:

- Implementation of the Signs of Safety approach, supporting a consistent and comprehensive risk assessment which is child centred and family focused, commenced across Children and Youth Services in 2012–13, with training, practice development and system review occurring throughout 2013–14 to support the ongoing implementation.
- The Out-of-Home Care Reform Project commenced in late-2013, and has focused on reviewing service provision across the out-of-home care continuum, with a view to realigning service delivery and out-of-home care options to meet better the needs of children. This project is also examining the interconnection of services required to support children and young people in the out-of-home care system in Tasmania.
- Amendments to the *Children, Young Persons and Their Families Act 1997* reflect the Government's response to the first stage recommendations of the Legislative Amendment Review Reference Committee (LARRC), established by the previous Government to advise it on the Principal Act. The Committee provided a detailed report on the need for amendments to some 21 areas of the Act. The LARRC report provided detailed advice on the preferred policy direction to support the amendments. These amendments are aimed at a less adversarial way of working with families, which aligns and supports the Signs of Safety approach. The commencement dates for the majority of the amendments are still being finalised.
- The Advocacy for Children in Tasmania Committee (ACTC) was established as a result of one of the LARRC recommendations, which was to conduct a second stage process to clarify the expectations of the role, function and powers of the Commissioner for Children. The ACTC made 15 recommendations relating to advocacy services for Tasmanian children, including the function and role of the Commissioner. One of these

recommendations was the development of standalone legislation, this has been endorsed by Cabinet and drafting instructions are currently being prepared.

- Children and Youth Services entered into a 3-year funding agreement with the Australian Red Cross Society for the provision of an advocacy service specifically for parents and families involved with the Child Protection Service. The new alliance brings with it the opportunity to build on our commitment to working in partnership with families.

## Australian Capital Territory

A key priority for the ACT Government is to maintain and continually improve a responsive and high performing child protection and out-of-home care system. Reforms are being progressed under the banner of 'Refreshing the Service Culture'. The change agenda incorporates strategies to implement recommendations from reviews that the ACT Public Advocate undertook in 2011 and 2012 and the ACT Auditor-General's performance audit in 2013. These include:

- progression of the development of a 5-year Out-of-Home Care Strategy to guide the purchase and delivery of out-of-home care services from July 2015 to June 2020. The main aim of the strategy is to ensure the supply and quality of out-of-home care placements for children and young people in the care of the Director-General.
- improved services and supports for kinship carers, including engaging specialist services to provide therapeutic services for children, young people and carers in their care environment
- enhanced early intervention services and supports for pregnant women, as well as for young people, through the implementation of case conferencing
- a strengthened approach to developing Cultural Plans that are relevant and meaningful for Aboriginal and Torres Strait Islander children and young people in care
- development of a dual referral system, the Child, Youth and Family Gateway, as a point of contact for information, initial support and engagement with vulnerable children, young people and their families. A consortium of community sector partners operates the Gateway and 2 Gateway staff are co-located with Care and Protection Services (CPS).
- a key change management program that embeds an integrated management system (IMS) in CPS. The IMS aligns the strategic direction, policies and procedures, risk management and compliance activities of CPS.
- formation of a centralised Policy, Data and Research unit in the Office for Children, Youth and Family Support (OCYFS) with a mandate of improving data collection and building a greater evidence base for policy development and service delivery.
- establishment of a complaints unit in OCYFS to streamline and improve the coordination of complaints across OCYFS and the formation of an OCYFS Decision Review Panel.
- creation of an ACT Carers Roundtable and a Carer's Consultation Group, to hear from and consult with foster, kinship and permanent carers about the issues that affect them.

## Northern Territory

The 2013–14 financial year has been marked by a system that continues to grow significantly. The number of child protection notifications that the Northern Territory Department of

Children and Families (DCF) received rose by 30 per cent, with the number of children in out-of-home care increasing by 25 per cent.

In response to continued growth in demand for services, DCF implemented a number of key reforms designed to enhance its corporate governance and improve the organisational accountability for performance. Key foundational documents focusing on practice performance and client outcomes were established. Changes were designed to improve operational accountability and performance, by connecting work units with shared outcomes and providing higher levels of executive management of key functional areas.

The Child Protection Practice Framework and the Standards of Professional Practice were launched in March 2014. The Standards of Professional Practice communicates the essential requirements for delivering effective, professional and accountable care and protection to vulnerable children.

In January 2014, a range of legislative amendments took effect, including the Charter of Rights for Children in Out-of-Home Care. This Charter was introduced to provide clearer and stronger statements of the quality of service children in care must receive. The Charter binds DCF and care providers to improved quality of care.

DCF also introduced Divisional Performance Assurance and Compliance (DPAC) meetings in 2013–14. DPAC involves Executive Directors in operational areas appearing before a panel, including the CEO and other senior staff members, to answer questions about various operational matters to demonstrate an understanding of business activities; maintain accountability in relation to the use of financial and human resources; and show compliance with statutory and policy obligations and other processes.

# Appendix H: Jurisdictions' data systems

## Key differences

### Notifications, investigations and substantiations

#### Abuse in care

Cases of alleged abuse in care are included in the data for the number of notifications, investigations and substantiations for New South Wales, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

- The standard reporting of cases of alleged abuse in care formally commenced in Tasmania in December 2005.
- In Victoria and South Australia, cases of alleged abuse in care are not included in the data.
- In Queensland, cases of abuse in care where there is custody or guardianship to the Director-General are not reported in the count of notifications, investigations and substantiations, but recorded separately as Matters of Concern.

#### No suitable caregiver

In some cases where the department responsible for child protection conducts an investigation, they may record an outcome of 'no suitable caregiver' (that is, no suitable parent or other legal guardian). This can include situations where a child's parent(s) have died, been incapacitated due to illness/injury or are otherwise unavailable (for example, due to being imprisoned).

All jurisdictions, except the Northern Territory, include cases of 'no suitable caregiver' in the data for notifications. However, the subsequent reporting of these cases differs, for example:

- Victoria, South Australia and Tasmania report these cases as substantiated neglect.
- In Western Australia, all cases of 'no suitable caregiver' are recorded in the 'dealt with by other means' category, as are deceased parents in the Australian Capital Territory.
- In the Northern Territory, cases of 'no suitable caregiver' are not part of the child protection intake system – they are streamed directly into substitute care.
- In Queensland, cases of 'no suitable caregiver' are reported as substantiated neglect if no other harm type was identified during the investigation and assessment.

### Relevant changes in data systems

#### New South Wales

The New South Wales Government response to the *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (Wood Commission) recommendations and reform program effectively went live on 24 January 2010, with the proclamation of legislation to introduce a series of key reforms. The legislation sets a new mandatory reporting threshold: 'risk of significant harm'. Other major changes to the child protection system in New South Wales aim to share the responsibility for the safety and wellbeing of children across the

government and non-government sectors, allowing Family and Community Services caseworkers to concentrate on the most serious cases. Indications are that these are beginning to reduce the high level of reporting to the 24-hour Child Protection Helpline.

Following the NSW *Keep Them Safe* reforms, the 2010–11 data reflect the first full year of reporting under legislative changes to the NSW *Children and Young Persons (Care and Protection) Act 1998*, proclaimed on 24 January 2010. This includes raising the reporting threshold from ‘risk of harm’ to the new ‘risk of significant harm’. Data are not comparable with previous years.

Changes to business practice in New South Wales, designed to assist caseworkers in focusing on the most urgent cases, have required changes to counting rules. These changes mean that the counts for ‘Notifications investigated’, ‘Notifications resolved without investigations’ and ‘Notifications dealt with by other means’ for 2011–12 and beyond are not comparable with previous years.

## **Victoria**

During 2006–07, Victoria introduced a major new data system, which was rolled out across the state in mid-2008. In parallel, the *Children, Youth and Families Act 2005*, which started in April 2007, introduced new service pathways and processes in Victorian child protection and family services to support earlier intervention and prevention for vulnerable children and their families. Due to these new service and data reporting arrangements, the Victorian child protection data for 2006–07 onwards may not be fully comparable with data from previous years.

## **Queensland**

In Queensland, all notifications will require an investigation response, unless determined otherwise by a differential response. Any new child protection concerns received by the department, that relate to an open notification or to an investigation and assessment, are recorded in the Integrated Client Management System (ICMS) as an additional concern and linked to the open notification or investigation and assessment. Prior to the introduction of the ICMS in March 2007, any new child protection concerns that the department received were recorded as an additional notification. This change in recording practice has had the effect of decreasing the number of notifications recorded in Queensland.

## **Western Australia**

In March 2010, Western Australia implemented a new client information system; however, the delivery of the associated reporting data warehouse was delayed. The delay affected data for 2009–10 (a March snapshot of data was provided); as such, 2009–10 data are not comparable with other years. As of March 2014, notifications can directly proceed to an investigation and bypass initial assessment if the Department has a clear ongoing role in relation to a concern for a child.

## **South Australia**

The Connected Client Case Management System continues to be developed to support child protection case work and case management, with associated enhancements in data collection and reporting.

## **Tasmania**

During 2007–08 and 2009–10, Tasmania implemented a new information system called the Child Protection Information System (CPIS) in 2 stages. CPIS consists of a single, centrally administered database to store, manage and provide state-wide access to child protection data. While stage 1 focused on improved support for intake and assessment functionality, stage 2 involved a complete redesign, and now CPIS supports intake, assessment, case-management, and out-of-home care functions. Other changes included decentralisation of intake services, and updated notification processes so that only the initial contact was counted as a notification, and any contacts received in relation to an open case of abuse or neglect are recorded as case notes.

During 2011–12, work was undertaken to comply with new National Minimum Data Set (NMDS) requirements, including the first run of the Child Protection NMDS Unit Record collection, and the first experimental collection for the Treatment and Support Services NMDS.

Additionally, in 2010–11 Tasmania developed and implemented a range of business intelligence dashboards and innovative reports to support management and front-line staff. In particular, this functionality aims to support staff working with clients who access multiple services and have complex needs.

## **Australian Capital Territory**

In the Australian Capital Territory, the introduction of a differential response system has resulted in a reduction in the number of reports recorded as investigations. Children and young people receiving a differential response are recorded as ‘receiving support’ rather than being appraised (investigated), and are provided with a range of support strategies, which may include ongoing contact with the directorate for a limited time on a voluntary basis.

## **Northern Territory**

There have been no major changes to the Department of Children and Families data system since the introduction of the Structured Decision Making assessment tools in 2010 and 2011.

# Appendix I: Inquiries into child protection services

Various inquiries into child protection services have been conducted in a number of jurisdictions in recent years. These include:

- New South Wales – Report of the Special Commission of Inquiry into Child Protection Services in NSW (Wood 2008).
- New South Wales – Keep Them Safe? A special report to Parliament under s31 of the Ombudsman Act 1974. Report tabled in Parliament on 30 August 2011 (New South Wales Ombudsman 2011).
- New South Wales – Responding to child sexual assault in Aboriginal communities report December 2012 (New South Wales Ombudsman 2012).
- New South Wales – Review of the NSW child protection system – Are things improving Special report to Parliament April 2014 (New South Wales Ombudsman 2014).
- Victoria – Report of the Protecting Victoria’s Vulnerable Children Inquiry 2012 (State Government of Victoria 2012).
- Queensland – Protecting children: an inquiry into the abuse of children in foster care (Crime and Misconduct Commission 2004).
- Queensland – Taking responsibility: a roadmap for Queensland Child Protection (Queensland Child Protection Commission of Inquiry 2013).
- South Australia – Children in state care: commission of inquiry (Mullighan 2008a).
- South Australia – Children on Anangu Pitjantjatjara Yankunytjatjara (APY) lands: commission of inquiry (Mullighan 2008b).
- South Australia – Select Committee on Statutory Child Protection and Care in South Australia (2014, ongoing).
- Tasmania – Report on child protection services in Tasmania (Jacob & Fanning 2006).
- Tasmania – Inquiry into the circumstances of a 12 year old child under guardianship of the Secretary (Commissioner for Children Tasmania 2010).
- Tasmania – Select Committee on Child Protection: final report (Parliament of Tasmania 2011).
- Australian Capital Territory – The Territory as a parent: a review of the safety of children in care in the ACT and of ACT Child Protection management (Commissioner for Public Administration 2004a).
- Australian Capital Territory – The Territory’s children: ensuring safety and quality care for children and young people. Report on the audit and case review (Commissioner for Public Administration 2004b).
- Northern Territory – Growing them strong, together: promoting the safety and wellbeing of the Northern Territory’s children. Report of the Board of Inquiry into the child protection system in the Northern Territory 2010 (Northern Territory Government 2010).

These inquiries generate much media interest, both locally and nationally, which heightens public interest, reinforces the need to protect children, and may, in turn, affect the willingness of the general public to report suspected instances of child abuse. They also can potentially affect the reported data, as departments often respond to inquiries by introducing new, or modifying existing, policies and practices.