

Submission to Victorian Law Reform Commission Regarding a Review of Children's Court Procedures

Responses from Anchor Foster Care

Option 1: New processes that may assist the resolution of child protection matters by agreement rather than by adjudication.

Do you think that the current dispute resolution conference procedure in the Family Division of the Children's Court operates effectively?

There is room for improvement. If a family has requested the Case Manager should be present at a meeting, this should be arranged in order for the Case Manager to advocate on behalf of the child.

How could the current dispute resolution procedure be improved?

Either the Case Manager or an independent advocate for the child should be present to represent the child's interests.

What other appropriate or alternative dispute resolution (ADR) processes could be used for child protection matters?

No response.

Are there some matters that are better suited to ADR than others, such as questions concerning conditions that should be attached to any final order?

Yes, at the point of dispute resolution questions concerning conditions on the order are better suited to ADR.

When is ADR inappropriate for child protection matters? What protections need to be incorporated into the processes to protect vulnerable parties?

ADR is inappropriate when there is a serious risk to the child. There needs to be an independent advocate for the child who would remove the child if there is any risk.

At what stage(s) should ADR processes be used in child protection matters?

Each time there is a new order a family group conference should be held which is chaired by someone independent of DHS.

Who should conduct ADR processes? What qualifications and standards of practice should ADR facilitators be held to?

The person who conducts ADR processes should be an independent person who is informed about best interest and cumulative harm with qualifications in social welfare and mediation rather than legal training.

Who should be present during ADR processes?

Present at the ADR processes should be a support person for the birth parents, with understanding of the process from a welfare rather than a legal point of view.

What role (if any) should lawyers play in ADR processes?

The role of lawyers should be to take instruction from clients, but not attempt to change their minds or influence them.

Where should ADR processes in child protection matters take place?

The location should be neutral and not intimidating, e.g., not a DHS office or a court building. It could be regionally based rather than in the city.

To what extent should ADR processes be confidential?

The conference should not exclude the family from having someone there who can advise and support them, and confidentiality issues should not get in the way of helping the child.

Submission to Victorian Law Reform Commission Regarding a Review of Children's Court Procedures

Responses from Anchor Foster Care (Continued)

Option 2: New grounds upon which State intervention in the care of a child may be authorized and reform of the procedures followed by the Children's Court when deciding whether to provide this authorisation.

New Grounds

Are the existing grounds for finding that 'a child is in need of protection' in section 162 of the *Children, Youth and Families Act 2005* adequate?

The existing grounds should be broadened out to encompass kinship care, and also cumulative harm.

Should there be additional grounds for finding that 'a child is in need of protection' which do not involve proof of fault on the part of a child's parent or other primary carer?

Yes, additional grounds should be 'cumulative harm'.

Should there be a new set of grounds for earlier state intervention in the life of a child where removal of a child is not necessary but where some state supervision or assistance is appropriate?

There is nothing wrong with the existing ground rules, however, this Agency has concerns about the ways in which they are interpreted and acted upon.

Could such a basis for state intervention, authorised by the court, be that 'a child is in need of assistance' or 'at risk of harm'?

Yes, definitely a basis for state intervention could be that 'a child is in need of assistance' because this concentrates on the best interests of the child without alienating the birth parent/s.

Should it be possible for there to be formal parental responsibility contracts, approved by the Court, in circumstances where the parties agree that a child is in need of assistance?

Yes, because hopefully this would lead to greater parental accountability.

If 'yes', what sanctions should apply if a contract is breached?

This depends upon the severity of the breach. The sanctions should be factored into a proactive approach that is in the child's best interests rather than being presented as a threat to the parents.

Should it be possible to have parental responsibility contracts or orders by consent at any stage of proceedings?

Yes, and these contracts need to be able to be reviewed and updated with relevant timelines.

Specific Court Processes

Should the present time requirement that protection applications commenced by taking the child into safe custody be brought to Court (or before a bail justice) within 24 hours be retained?

Yes. There are already far too many delays in every other step of the process, and these delays are not in the best interests of the child.

If not, what period of time should apply before Children's Court authorisation of this state intervention is required?

Not applicable.

Should children be required to attend Court when a safe custody application first comes before the Court?

No, the Court system is very confusing for children, and they see their birth parents in an adversarial environment.

Should children be required to attend Court at later stages?

No, there may be exposure to undesirable behaviours or influences, together with a lot of waiting around. Courts are not an appropriate place for children.

How should children be represented in proceedings before the Family Division of the Court?

They should have an independent representative who will advocate for their best interests from a developmental perspective rather than a legal point of view.

Do directions hearings serve their intended function or are there better ways of identifying contested issues and managing cases?

Yes, they serve their intended function.

To what extent (if any) should the Children's Court adopt an administrative case management approach to child protection matters?

It could be adopted for certain cases involving 'at risk' families that keep returning to court.

Should all (or some) of the provisions of Division 12A of Part VII of the *Family Law Act* 1975 (Cth) which seek to encourage Less Adversarial Trials be adopted in the Children's Court?

This Agency is not familiar with the precise wording of the Act, however, we support any processes that are adopted with a view to ensuring the best interests of children and result in less adversarial trials in the Children's Court.

Submission to Victorian Law Reform Commission Regarding a Review of Children's Court Procedures

Responses from Anchor Foster Care (Continued)

Option 3: The creation of an independent statutory commissioner who would have some of the functions currently performed by the Department of Human Services

Does the Secretary of the Department of Human Services have too many functions under the *Children, Youth and Families Act 2005*?

It is not clear whether the Secretary has too many functions, however, some of the processes under that delegation could be achieved in a more timely fashion, e.g., requests for passports, immunizations, medical treatments etc.

If yes, should some of those functions be given to an independent statutory commissioner?

Not unless it would simplify issues that currently impede children's lives.

Could the commissioner have a role to play in any pre-court ADR mechanisms?

No, because this would only create another layer of bureaucracy with no visible benefit.

Could the commissioner be responsible for the carriage of proceedings before the Children's Court?

Yes, because to our knowledge there is no other person undertaking that role.

Could the commissioner have the 'first instance' capacity to authorise State intervention in 'safe custody' cases?

No response.

Could the commissioner be capable of appointment as the guardian or custodian of a child in need of protection if there is no other suitable person?

No, because this would create a conflict of interest if the commissioner were to be responsible for the carriage of proceedings before the Children's Court.

If the commissioner is appointed as the guardian or custodian of a child, could the commissioner have the authority to exercise some functions currently fulfilled by the Children's Court such as issues of access?

No, because this would create too onerous and unrealistic a workload given the need to be familiar with the details of each individual case.

Should decisions of the commissioner be subject to merits review in the Children's Court?

No, because this would render the role powerless, and we already have enough toothless tigers in the system.

How should the independence of any new statutory commissioner be secured?

A new commissioner should have no links with DHS or the courts, or any other party in each individual case.

Submission to Victorian Law Reform Commission Regarding a Review of Children's Court Procedures

Responses from Anchor Foster Care (Continued)

Option 4: Changing the nature of the body which decides whether there should be State intervention in the care of a child so that it includes non-judicial as well as judicial members.

Is the function of deciding whether 'a child is in need of protection' an exercise of judicial power?

Yes.

Is it desirable to change the composition of the Family Division of the Children's Court to include people other than judicial officers in decision-making panels?

Yes, provided this achieves the best interests of the child.

What people other than judicial officers should comprise decision-making panels?

The panel should comprise a multi-disciplinary team, including personnel with extensive knowledge of the welfare sector, legal backgrounds and medical expertise.

What qualifications, if any, should they have?

Those representing the welfare sector should have qualifications in social work, psychology, education and other aspects of children's development.

Upon what terms should any non-judicial members of the Family Division of the Children's Court be appointed?

They should be appointed on the basis that they are currently working in the welfare sector and have the purpose of making decisions as well as providing advice.

If some or all of the functions currently performed by the Family Division of the Children's Court are to be performed by panels of people should those functions be retained by the Children's Court or should they be exercised by a tribunal?

Those functions should be retained by the Children's Court because the outcomes will be taken more seriously and be perceived to be more binding.

If these functions are to be exercised by a tribunal should that tribunal be a division or specialist list of VCAT?

No comment.

If these functions are to be exercised by a tribunal should a new Protective Tribunal be established to deal with a range of matters where the state intervenes in the lives of people for their protection?

No comment.