A study of advocacy and legal representation for children and young people in care in the UK and USA

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Dated: 16/09/2010

Signed: [Signature]
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1. Acknowledgements

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I would like to particularly acknowledge the significant peer support I have received over many years from my friends and fellow child rights lawyers Jen Glover and Damian Bartholomew.

I am indebted to:

- Peter Lucas at Qantas and Meg Gilmartin at the Churchill Trust for their assistance in the planning process,
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I would like to thank friends and family for their support in my time away and in the application, travel, research and report writing phases. Special thanks to Kelly for minding my house and taking great care of my dog.

I dedicate this report to my mother Lorraine whose life taught me much of what I know about the importance of sticking up for the underdog and who is sorely missed.

And finally to all the brave children and young people in care whose lives navigate flawed systems- thank you for everything you have taught me over the years and for all the lessons your lives, stories, struggles and voices will continue to teach me in the years to come.
2. Executive Summary

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Project Description

A study of advocacy and legal representation for children and young people in the child protection systems in the UK and USA.

Highlights

My fellowship program provided me with a useful blend of advocacy and legal agencies that worked on both an individual and systemic level for children and young people in care. In both jurisdictions I discovered significant funding from government and many philanthropic sources invested in general advocacy and dedicated legal service provision for children and young people in care. The legal advocacy agencies I visited were employing a range of litigation strategies that linked to broader systemic advocacy agendas. In both jurisdictions there is an identifiable professional lawyer base that practice a specialist career as child protection lawyers and they are supported by professional training and development opportunities that acknowledge this as an area of legal expertise.

The key findings that have influenced my recommendations include:

- Finding a policy discussion in the UK about the right to an advocate for children and young people in care that has been on going for the last 10 years. This policy discussion has led to the establishment of a right to an advocate in complaints, the development of specialist training courses in advocacy and also the creation of the Independent Person advocacy position to assist young people in care to make complaints. There is work being done to extend that right to an advocate to other areas such as family group meetings and case planning discussions;

- Attendance at NYAS’s Advocacy Training and observation of the Guardian ad litem role in private family law proceedings;

- Reading the “Lost Children of Wilder” over the course of my journey which is the story of a test case run by New York’s Child Rights and realising that the
frustrations in the child protection system predate my birth and in many senses are never-ending. But also discovering that there are still those willing to fight for the rights of marginalised and disadvantaged care populations and to continue to advocate for systemic improvements that are sorely needed;

- Learning that most of the agencies were employing a range of approaches to law reform by using litigation strategies such as Judicial Review, amicus curiae briefs and class action strategies to review administrative decision making and effect policy change. There was an unquestioned acceptance that this was a necessary part of their legal work including an understanding that not all challenges would be successful and a divergence of views about what approach to take;

- Discovering that both jurisdictions had a healthy level of professional interaction between lawyers and social scientists and that the role for lawyers and the legal system was an accepted one in child protection law. These systems had given recognition to the fundamental human rights interference and the inherent power imbalance in child protection proceedings. Broader advocacy agencies were building referral relationships to legal agencies because the rights of this client base were considered worth fighting for;

- Finding that there was a wealth of professional development opportunities and support for lawyers working in child protection law including my attendance at a 3 day conference dedicated to dependency and delinquency law (child protection law and youth justice law in the Queensland context) in San Diego where judicial officers as well as other professionals were there to learn and exchange professional knowledge and expertise;

- Visiting the Edelman Children’s Court in LA a purpose built courthouse with space for children and young people to wait with a range of activities to pass the time. Children and young people in this court were given an opportunity to sit face to face with the judicial decision maker whose job it is to decide what should happen to them. In Edelman Children’s Court legal representation for all children, young people and parents was the established practice.

**Recommendations:**
It is obvious that these recommendations have funding implications that are difficult in the current economic climate. However these suggestions for reform are also about shifting cultural attitudes to participation, advocacy and legal representation
and can be incorporated in a range of reform processes that already exist. The Department of Communities Child Safety Services Youth Participation Strategy and the resources attached were an exciting development in this regard but still require high level commitment and promotion across the child protection sector which to date has not been visible in day to day practice.

Advocacy and Legal Representation for children and young people in care

Recommendation 1: A right to an advocate should be established for children and young people in care for case planning, family group meetings and complaints processes. There should also be systemic monitoring of compliance with section 74 of the Child Protection Act 1999 about children and young people’s knowledge of and access to the Charter of Rights.

Recommendation 2: The complaints process for children and young people should have clearly articulated phases for the resolution of complaints and issues of accessibility for children and young people should be addressed by relevant stakeholders.

Recommendation 3: Create Foundation at a National and State level should advocate for and receive dedicated government or other sources of funding to provide for individual advocacy for children and young people in care that links to their broader systemic advocacy goals. Create should also broaden their current sectoral training to include an Advocacy Training Package to support the right to an advocate and compulsory training for all child protection officers within the Department on the Charter of Rights, participation, advocacy and legal representation for children and young people.

Recommendation 4: Transition from care planning should have a stronger legislative basis supported by implementation strategies in practice with established review mechanisms.

Recommendation 5: Legal Service Providers should receive adequate and appropriate levels of funding to ensure that children, young people and their parents are legally represented in care proceedings.
**Recommendation 6:** The models for legal representation for children and young people should be reviewed and Queensland should consider enhancing the current models of Separate and Direct Representation in the spirit of Article 12 of the Convention on the Rights of the Child. Consideration could also be given to whether a Counsel assisting model should exist in the Children’s Court.

**Recommendation 7:** Lawyers for children and young people in care could consider a range of litigation strategies to drive legislative, policy and practice reforms in the area of child protection law.

**Legal Profession and Legal System Responses**

**Recommendation 8:** The legal profession should establish and support professional development opportunities for lawyers at all levels of child protection law with a view to building professional standards and expertise for this work.

**Recommendation 9:** A review of the child protection proceedings, court and tribunal processes should be conducted to establish clearly articulated timeline and phases of legal proceedings involving children and young people.

**Recommendation 10:** The Children’s Court of Queensland could consider the recommendations of the Pew Commission and the Blue Ribbon Commission of Foster Care to guide leadership and the progression of child protection law as a specialist area for judicial decision makers and to improve court practice in this area.

I plan to work on the incorporation of my Churchill fellowship into my professional practice in a variety of ways:

- Development of a presentation for lawyers working for children and young people and parents and giving ongoing consideration to how the training needs of lawyers doing child protection work can be met;

- Presentation of my Fellowship to the Queensland Law Society’s Children’s Law Section and to a range of government and non-government stakeholders in the child protection sector;

- Sharing my report with all the people I met across the world during my research;
• Influencing my own professional practice as a child protection lawyer working with children and young people.

3. Consideration of Rob Ryan's Fellowship

I endorse the findings of Rob Ryan's 2009 Churchill Fellowship Report to investigate training models for professional staff in statutory child protection. All of the recommendations made in that report are of benefit to the child protection sector but of particular relevance to my Churchill:

• All jurisdictions involved in training staff to work in the field of child protection should consider the implementation and use of mock houses to practice interviews with children and their families and the use of mock Court rooms to practice witness examination;

• Further international work needs to occur between Indigenous communities and advocacy agencies to learn from each other and to ensure the implementation of cultural competencies is prioritised in the child protection area;

• There is a need in Queensland to implement and trial child advocacy centres.

I was also very impressed with the Child Stat model from New York and its focus on practice improvement. There is no doubt that the work of frontline child protection workers is extremely difficult and that staff need to have access to training and development opportunities supportive to the work that they do. Improving understanding across the professionals involved in child protection is essential along with building better links across research-policy-practice. I would see that there are opportunities for a two way professional exchange between child protection workers and the legal profession which should be considered fundamentally linked to systems improvements.
My Voice, My Life, My Future

Nothing worth knowing, nowhere worth going
Solutions to problems coming, but coming too slow
Told that failure is who I am
and all I could be
Decisions made for me, not respecting who I am
or want to be
Voicing words not just to be said,
but to be heard
Words not just of sound but of thoughts
Speaking knowledge, spirit, and fact
Keeping faith, heart, and soul intact
Thinking of my future, who and where will I be
Rage hidden inside unable to see
I faced my fears and drove them out
That’s what this poem and I are really about
Also about something called courage,
don’t you know
I have it, and I take it with me wherever I go
Whether things go my way or things
move real slow
I have no plans on ever letting go
Day after day, going through pain
Always asking, who’s fault, who’s really
to blame
Looking for help, but who is the one
Glancing left and right, I stand alone,
there is no one
Endless possibilities in an endless sea
I needed help, and hoped I had it in me
Facing ruin but now I rejoice,
To trust in “My Life, Future and Voice.”

Paul Foster Youth
Children’s Law Center Los Angeles Art Project
4. Summary of My Fellowship Program

My fellowship program included:

- Court observations with NYAS, Children’s Law Center of Los Angeles and Legal Services for Children San Francisco;
- Attendance at training on “How to be an advocate” with NYAS;
- Attendance at the Annual Beyond the Bench Conference;
- Agency visits, individual interviews and observations of agency meetings in the following places:

**United Kingdom**

Children’s Legal Centre (Colchester and London Office):
http://www.childrenslegalcentre.com/
Rachel Harvey, Head of International Policy and Programmes
Alison Fiddy, Deputy Legal Practice Manager
Clare Frazer, Solicitor
Robin Donaldson, Paralegal
Kirsten Anderson, Head of Research/Policy and Communications
Carolyn Hamilton, Director

Voice (London Office):
http://www.voiceyp.org/ngen_public/default.asp
John Kemmis, Chief Executive
Nicola Wyld, Legal and Policy Manager
Rachel Levy, Mental Health Specialist Advocate
Jane Chevous, Learning and Development Manager

National Youth Advocacy Service (Wirral Office):
http://www.nyas.net/
Sheila Culshaw, National Training Officer
Debbie Singleton, Director of Legal Services
Elena Fowler, Chief Executive

**United States**

**New York City**

Children’s Rights NYC:
http://www.childrensrights.org/
Marcia Robinson Lowry, Director
Susan Lambiase, Associate Director
Ira Lustbader, Associate Director
**Washington DC:**
Child Welfare League of America:
http://www.cwla.org/
Linda Spears, Vice President Policy and Public Affairs
Tim Briceland-Betts, Co Director of Government Affairs

**San Diego:**
Child Advocacy Institute San Diego:
http://www.caichildlaw.org/
Robert Fellmouth, CPIL/CAI Executive Director
Elisa Weichel, CAI Administrative Director / Staff Attorney
Christina Riehl, CAI Staff Attorney
Kriste Draper, CAI Staff Attorney

**Casey Family Programs San Diego Field Office:**
http://www.casey.org/
Jorge Cabrera Director San Diego Field Office

**Los Angeles:**
Children's Law Center of Los Angeles:
http://www.clcla.org/
Leslie Starr Heimov Executive Director
David Estep, Firm Director CLC 1
Carol Richardson, Children's
Nancy Aspaturian, Supervising Attorney, CLC 1 Conflict Panel Administrator
Jenny Cheung, Supervising Attorney, CLC 1
Barbara Duey, Supervising Attorney, CLC 1
Martha Matthews, Supervising Attorney, CLC 2

**Los Angeles Dependency Lawyers Inc:**
http://www.ladlincl.org/
Kenneth Krekorian, Executive Director

**Office of the County Council (County of Los Angeles):**
http://counsel.lacounty.gov/
Mr James Owens Assistant County Counsel
Mr Bill Roth, Trial Section 1 Section Head

**Edelman Children’s Court of Los Angeles**
Sherri Sobel ,Juvenile Court Referee
Judge Henry, Superior Court Judge
Susel B. Orellana, Research Attorney of Presiding Judge
San Francisco:
Judicial Council of California- Administrative Office of the Courts/Center for Families, Children and the Courts:
http://www.courtinfo.ca.gov/courtadmin/aoc/
http://www.courtinfo.ca.gov/programs/cfcc/
Christopher Wu, Executive Director
Deborah Chase, Senior Attorney
Nanette Zavala, Attorney
Sidney Hollar, Attorney
Maggie Cimino, Special Consultant
LaRonn Hogg, Attorney

Californian Blue Ribbon Commission on Children in Foster Care
http://www.courtinfo.ca.gov/jc/tflists/bluerib.htm
Judge Carlos Moreno Associate Justice Supreme Court of California

Legal Services for Children San Francisco:
http://www.lsc-sf.org/
Shannan Wilber, Executive Director
Abigail Trillin, Managing Attorney
Carolyn Reyes, Senior Staff Attorney
Eliza Patten, Senior Staff Attorney

Youth Law Center:
http://www.ylc.org/
Corene Kendrick, Staff Attorney
Damon King, Skadden Fellow
4. An Overview: The grass isn’t greener and no silver bullets to be found

“If there is no struggle there is no progress” Fredrick Douglas

For the final week of my fellowship I found myself in the city of San Francisco. After 2 countries, 8 cities and towns, 15 agencies and numerous interviews, meetings and observations in court and attendance at training and conferences my amazing Churchill odyssey was coming to an end. I found myself in the Tenderloin District of the city visiting the agencies located there. For those who haven’t been to San Francisco this is an area described by the guidebooks as the place to be avoided where the city’s down and outs congregate lying in wait for unsuspecting tourists. As I moved through this area I was confronted with a sea of humanity, the product of social exclusion and limited social service provision. I wondered how many of these people had experienced abuse as a child?

Over the course of my fellowship I had been reading Nina Berstein’s powerful, thought provoking and moving account of the life of a test case called “The Lost Children or Wilder: The Epic Struggle to Change Foster Care” given to me by Children’s Rights. It was the story of a case involving their founder Marcia Lowry Robinson. Much like one of my favourite books Truman Capote’s In Cold Blood, Wilder looks at the life of Shirley Wilder and her son Lamont from both a personal and systems perspective with tremendous compassion, empathy and understanding. It also tells the stories of many players involved in their respective journeys through the out of home care system- lawyers, judicial officers, socialworkers, carers, policy makers, community agencies and service providers.

My journey through the Tenderloin reminded me of the words of Justice Justine Wise Polier quoted in Wilder when she reflected on her role in sitting in judgment over delinquent children and neglectful parents:

“...she had always felt that she might herself have committed any of the offences they were charged with. That she had not...was “largely a matter of luck, privilege, and always feeling loved.”...We demand of poor people in this country more than we demand of ourselves...the self image of a child who feels his parents are not anything and that nothing good is going to happen to him, is probably the most destructive ethos to which any child can be exposed.' (Berstein 2001:p. 316-317)
When I began my fellowship tour I naively thought that the “answer” would be found in one of the agencies or in one of the systems that I visited. It was in equal measure heartening and disheartening to find that there were no magic solutions. The highlight of my journey was no doubt meeting a range of inspiring, overworked and committed child protection professionals who had carved out careers in this area of many decades standing. Ultimately my Churchill taught me a very powerful professional lesson which His Honour Len Edwards crystallised for me when he cautioned that there was no “silver bullet”. His Honour went on to say words to the effect that advocacy in this area was never ending and needed to occur at all different levels and that you needed to be prepared to fail. I certainly didn’t find a silver bullet but I found lots of ideas, debates and tensions involving lots of hardworking, dedicated and inspiring people all doing their part.

In January 2004 Queensland’s Crime and Misconduct Commission delivered the seminal report “Protecting Children: An Inquiry into Abuse in Foster Care” which lead to extensive legislative, policy and practice reforms in Queensland’s child protection sector. At the very heart of this inquiry was a collection of voices of children and young people. While this reform process has made many advances for the sector it has not focussed on (or indeed provided significant additional funding for) the direct provision of individual advocacy or specialised legal representation for children and young people in the out of home care system. In June 2010 the National Child Protection Framework released the Draft Standards for Children and Young People in Care with a view to settling the standards and considering implementation plans over the next 12 months. Whilst a positive development these Standards will remain inaccessible and unattainable to children and young people in out of home care if a right to an advocate is not established and they are not genuinely supported to access the rights they are meant to be afforded by the Standards and relevant State legislation like Queensland’s Child Protection Act 1999 through specialised advocacy and legal representation services.

For the last six years I have worked at Legal Aid Queensland as Coordinator of the Child Protection Unit and Youth Advocate. In both roles I have acted for children and young people as a direct and best interests representative. I have advocated on an individual and systemic basis. My work has taught me the importance of rights based advocacy and legal representation for children and young people in care. Fundamental to that is an understanding and acceptance of a rights based framework by all the adults (professional and nonprofessional) in the system and the
creation of a culture that recognises, supports and encourages rights based advocacy for children and young people.

The aim of my Churchill fellowship was to draw on the human rights framework to investigate ways in which to promote the legal right to participation for children and young people in the out of home system through advocacy and legal representation. I examined the acceptance, or lack thereof, of the right to participation and how that acceptance or recognition had been translated into better laws, policies and services that seek to protect the rights of children and young people in care.

My fellowship and research was motivated by three key areas of interest:

1) How do we ensure that our child protection and legal systems understand, acknowledge and entrench the Charter of Rights children and young people already have to information and participation?

2) How can impact litigation be used as a tool of systemic advocacy to influence change at an individual and systems level for children and young people in care?

3) What can the legal system do to ensure that children and young people have a voice in the child protection decisions made about their lives?

As I travelled from place to place I read newspaper stories that were sadly familiar. Like the 13 April 2010 Sunday Times piece which detailed criticisms by Lord Wall of social workers in the latest significant child death Baby Peter:

“What social workers do not appear to understand is that the public perception of their role in care proceedings is not a happy one. They are perceived by many as the arrogant and enthusiastic removers of children from their parents into an unsatisfactory care system, and as trampling on the rights of parents and children in the process. This case will do little to dispel that.”

Source: [http://business.timesonline.co.uk/tol/business/law/article7095791.ece](http://business.timesonline.co.uk/tol/business/law/article7095791.ece)

I was reminded of the words of Gail Slocombe from Queensland’s Peakcare when she opened the 2008 Child Protection Research Conference:

“All over the world and throughout time there appears to be an inevitability about how history unfolds…. As a student social worker in England we were stunned by the case of a young child called Maria Colwell. She died at the cruel hand of her step father after being returned to her mother from foster care. An inquiry was formed and in 1974 reported on what went wrong and what needed to be done to put it right. Still in
the UK, fast forward thirty years to the shocking death of Victoria Climbie and the sustained cruelty which led to it. This also resulted in a public inquiry which told us what went wrong and what was required to put it right.”

As I conducted agency visits I listened to interviewees detail their experiences of what goes wrong in the child protection systems they operate in:

- Crisis driven reformist agendas in response usually to the death of a child as a result of a removal that should have happened but didn’t or a reunification to natural parents gone wrong or a scandal related to the treatment of children in the out of home care system;
- Funding struggles including coordination between the different levels of government;
- The skills and competence, training and supervision of the child protection workforce;
- The capacity of the community sector to respond to the needs of the child protection sector across a range of areas of speciality and need such as parenting programs or specialist counselling services;
- The availability of diverse and individualised placement options for children and young people that are designed to meet their needs and address their trauma including foster care and group home based models;
- Adequacy of data collection with a view to building sound research foundations for reporting frameworks and evaluations.

In both the United Kingdom and United States public family law matters are clearly recognised as legal matters where the State interferes with the rights of the individual to be parented and to parent in their family of origin. As such the law, lawyers and the legal system have an entrenched role in child protection practice. There is a robust albeit tensioned professional exchange in these jurisdictions especially in the areas of consultation on systemic reform and professional development opportunities. There is government and philanthropic funding that is provided to do this work although the adequacy of levels of this funding is an issue for ongoing advocacy and fundraising efforts.

Australia’s National Child Protection Framework has a justifiable focus on primary and secondary intervention and I am supportive of the public health model approaches to child protection advocated for by NAPCAN (National Association for
Prevention of Child Abuse and Neglect), ARACY (Australian Research Alliance for Children and Young People) and Queensland’s Peakcare. However where the legal profession mostly operates is in the tertiary end of this system and there is still an acute need for reform and practice change in the legal system’s dealing with children and young people in care.

Over the course of my Churchill it was clear that in the United Kingdom and United States children’s rights lawyers practising in the area of child protection (known as childcare law in the UK and juvenile dependency law in the USA) had a range of professional development opportunities available to them to support their professional practice. These opportunities provided the foundation for building professionalism, expertise and standards for this area of work. There were also specialist dedicated agencies dealing in child protection law employing a range of litigation strategies linked to systemic reform agendas.
5. Lessons from the UK and USA - Advocacy and Legal Representation for children and young people in care

UK Agency Tour:
To set the scene Local Authorities are the agency equivalent of the Department of Communities (Child Safety Services). Child protection law is predominantly referred to as public family law as opposed to private family law (where two individuals are in dispute over the care of a child). The most common model of legal representation for children and young people is the Guardian ad litem model with provision centralised through Children and Family Court Advisory and Support Service (Cafcass).

The Children’s Legal Centre has offices in Colchester and London and an affiliation with the University of Essex. It was founded in 1981 the International Year of the Child with expansion occurring in 1995. It receives funding from a range of government contracts and charitable trusts. The Centre has built referral pathways with voluntary organisations working with children and young people such as Voice (another agency visited on my tour). The Centre’s research, policy and publications section produces a range of resources like guides on areas of law and ChildRIGHT a sectoral newsletter featuring a range of articles on topical areas of children’s law. The Centre runs two speciality projects in Disability Law and Refugee and Asylum Seeker Law which are focused on advocacy for these vulnerable client groups to ensure their access to a range of entitlements and programs. Its International Program provides advice to other jurisdictions in the construction of their own juvenile justice systems.

The Children’s Legal Centre provides legal advice to children and young people, parents, carers. It runs telephone advice lines and legal representation in child and family law and the burgeoning area of education law. Carolyn Hamilton Director of the Children’s Legal Centre considers Judicial Review can be a limited yet effective remedy when pursuing review of administrative decision making by government that affects marginalised young people. It is a relatively simple and timely exercise that pushes the decision maker into action. The Children’s Legal Centre conducts test case litigation using Judicial Review particularly for looked after children and children experiencing homelessness focused on the duties of care owed by Local Authorities. The Children’s Legal Centre has pursued a number of cases successfully challenging decisions by Local Authorities who were refusing to accommodate young
people who were then left homeless as a result. The Children’s Legal Centre has used Judicial Review to challenge administrative decision making by Local Authorities under section 20 of the Children Act 1989 which provides that every Local Authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:

“(a) there being no person who has parental responsibility for him;
(b) his being lost or having been abandoned; or
(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.”

The Children’s Legal Centre champions complaints for children and young people in care to the Local Authority Ombudsman. The Children’s Legal Centre has built a constructive professional relationship with the Ombudsman’s Office which itself is active in its investigation of complaints by young people including the provision of information about how the complaint process should be expected to work and offers an investigation process that results in local settlements and can produce reports with recommendations about how disputes should be resolved.

Voice has grown to national prominence from its humble beginnings when founder Gwen James and some other concerned social workers started up a phone line and a voluntary advocacy group in response to the death of Maria Caldwell. Maria was an 8 year child who died in 1973 as a result of injuries sustained from treatment at the hands of her step father. In 2010 Voice has 60 staff and over 180 freelance workers based centrally in London with regional offices and contracts for service provision with all the local authority areas in England. John Kimmis CEO of Voice views individual advocacy for children and young people as an essential link to Voice’s broader systemic advocacy. Under his leadership Voice has quite deliberately taken an approach to maintain direct connection between the two otherwise he fears a loss of legitimacy. The core service provision by Voice is a national free phone advocacy helpline service, local advocacy and participation services for children and young people in a range of out of home care settings and independent services for agencies. This includes the provision of Independents Persons and Investigating Officers for complaints procedures, review panels and Independent Visitors (similar to the Community Visitors program run by the Children’s Commission in Queensland) to befriend children in care who have no family or other support.
In its broader systemic work Voice works hard to establish strategic alliances to bolster advocacy positions. For example Voice and the Children’s Society on behalf of the National Children’s Advocacy Consortium organised a successful lobbying campaign during the passage of amendments to the Children and Young Person’s Act aimed at extending a child or young person’s right to an advocate to their care planning and reviews in addition to complaints. Voice is also a member of the Alliance for Child Centred Care incorporating over 20 statutory and voluntary organisations including representatives from the Association of Directors of Children’s Services and the British Association of Adoption and Fostering. The Alliance holds policy forums and also plans to coordinate responses to Government consultations. Voice’s Legal and Policy Unit develops responses to government reform proposals and also collaborates with legal service providers where test case opportunities arise.

Voice also develops consultancies with participation from young people themselves. Voice’s “Start with the Child-Stay with the Child: A blueprint for a child centred approach to children and young people in public care” or the Blueprint Project was a resourced community development project that was supported by the National Children’s Bureau drawing on the views of children and young people, research and policy and practice. The Blueprint aims to outline a guideline for child centred approaches to children and young people’s care experience in the entering, during and exiting phases.

Voice’s Learning and Development Team has developed a comprehensive set of training packages for in-house Voice advocates and external service providers such as Local Authorities and community agencies. These highly regarded training packages cover specialist legal content and broader advocacy skills with a child rights focus. Voice worked on developing Nationally Accredited Training for a new Certificate in Independent Advocacy which includes skill development through the use of online resources available at a Virtual Learning Centre.

National Youth Advisory Service (NYAS) is a charity providing children’s rights and socio-legal services. It offers information, advice, advocacy and legal representation to children and young people up to the age of 25, through a network of advocates throughout England and Wales. NYAS is also a community legal service. It was the result of two charities merging in 1998:
- IRCHIN (Independent Representation for Children in Need) set up in 1979 by Judith Timmins OBE and a group of independent social workers who were providing independent reports to the Courts; and
- The Advice, Advocacy and Representation Service for Children and Young People which coincided with the introduction of the *Children Act 1989* and was providing independent representation to children in public law proceedings.

Today NYAS employs staff from a variety of professional backgrounds including social work, child protection Guardians ad Litem and Family Court Welfare Officers in addition to its own legal staff. It offers a range of services for children and young people:

- **Children's Services**- independent and confidential information, advice, support and advocacy to children and young people who want their wishes and feelings heard in administrative or judicial procedures such as telephone information service, Independent Persons in complaint processes and Visiting Advocates and Independent Persons to Residential and Secure Units
- **Legal Services**- performing the role of Guardian ad litem in private family law proceedings.

To support the professional skills needed in their individual advocacy NYAS's training section offers training packages for Advocates who are going to be employed by NYAS or by other agencies. I attended part of the Advocacy Training Module as part of my Churchill. The Advocacy Training Module explored the barriers to advocacy, the different types of advocacy and issues underpinning the ongoing maintenance of the advocacy relationship such as confidentiality.

**Key observations from my time in the United Kingdom:**

Rights based advocacy for this vulnerable client group has been driven by service user organisations since the 1970s. However the most recent conceptualisation of advocacy rights for this vulnerable client group has been a feature of the UK policy landscape since the *Children Act 1989* placed a duty on Local Authorities in England and Wales to establish representation and complaints for looked after children and children in need. In 2004 further legislative amendments extended that to considerations of children and young people's views and wishes and their involvement in decision making. In the United Kingdom policy developments in this
area made a direct connection between the vulnerability of abused children given their experience of abuse and its impact and their reluctance to make complaints. The advocacy groups that have developed over time have made a direct link between making complaints as a means for advocating for the client group. Boylan and Dalrymple (2009:p.23-24) identify “two significant landmarks” in independent advocacy as being the progressive, proactive, educative and adversarial advocacy of Mike Lindsay in the late 1980s as the first UK Children’s Rights Officer and the early 1990s emergence of a national advocacy service which was to become NYAS. In the United Kingdom the Local Authorities moved to set up advocacy services or enter into service agreements with community based child advocacy agencies for coverage of the geographical areas they dealt with. There has been confusion over time between the roles of an Independent Advocate and an Independent Visitor (which in the Queensland context is a role similar to the Community Visitor). This strong advocacy culture has also linked into a clear complaints process that leads to proactive investigations and access to Independent Persons to assist young people with negotiating the complaints process.

In late 2002 the Department of Health released the National Standards for the Provision of Children’s Advocacy Services which are firmly founded in Article 12 of the Convention of the Rights of the Child which says that:

1. Where a child is capable of forming their own views they have a right to express those views freely in all matters affecting them and that those views will be given due weight in accordance with the age and maturity of the child;
2. In particular they will be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

There are 10 National Standards that those delivering advocacy services subscribe to in their practice:

**Standard 1:** Advocacy is led by the views and wishes of children and young people;

**Standard 2:** Advocacy champions the rights and needs of children and young people;

**Standard 3:** All Advocacy Services have clear policies to promote equalities issues and monitor services to ensure that no young person is discriminated against due to age, gender, race, culture, religion, language, disability or sexual orientation;

**Standard 4:** Advocacy is well-publicised, accessible and easy to use;
**Standard 5:** Advocacy gives help and advice quickly when they are requested;

**Standard 6:** Advocacy works exclusively for children and young people;

**Standard 7:** The Advocacy Service operates to a high level of confidentiality and ensures that children, young people and other agencies are aware of its confidentiality policies;

**Standard 8:** Advocacy listens to the views and ideas of children and young people in order to improve the service provided;

**Standard 9:** The advocacy service has an effective and easy to use complaints procedure;

**Standard 10:** Advocacy is well managed and gives value for money.


In the United Kingdom the **Association of Lawyers for Children** was the result of a proposal and resolution taken to a National conference for childcare lawyers. The Association has a paid membership and is from across the profession including Local Authorities and the private profession (solicitors and barristers). This Association has a Committee, produces a biannual newsletter, runs an Annual Conference and promotes relevant training opportunities. The Association has 4 main goals:

- “A pressure group which lobbies in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice and lobbies against the diminution of such mechanisms,
- A provider of high quality legal training focusing on the needs of lawyers concerned with the cases relating to the welfare of children,
- A forum for the exchange of information and views in relation to the development of the law in relation to children and young people,
- A reference point for members of the profession, Governmental organizations and pressure groups upon excellence in legal practice in the field of child law and the best thinking of lawyers upon the development of law and practice in relation to cases involving children.”

Source: [http://www.alc.org.uk/ALC_About_the_ALC.htm](http://www.alc.org.uk/ALC_About_the_ALC.htm)

The UK Law Society runs a self nominated Child Panel Accreditation Scheme for all lawyers offering advice and representation for:

- children, in all family matters
- adults, when their children are ‘at risk’, or have been taken into care
- local authorities, in care proceedings under the *Children Act 1989*
An application process involves a training course where there are a range of training providers available, knowledge and expertise in the area of law, a willingness to sign an ethical undertaking:


In the United Kingdom the Public Law Outline or PLO (which replaced a 2003 Judicial Protocol) is a Judicial Practice Direction used to guide child protection proceedings issued by the President of the Family Law Division. The PLO has been developed out of a collaborative process between a range of key stakeholders led by the Judiciary with input from an inter agency group including the Ministry of Justice, Association of Directors for Children’s Services, children’s legal representative groups and the Welsh Assembly Government. The PLO’s objectives recognise the inherent power imbalance in public family law proceedings.

The PLO emphasises the importance of strong judicial case management throughout the life of a case such as:

- “narrowing the issues in dispute and seeking to resolve these at a much earlier stage;
- reducing the amount of written material and oral evidence so that practitioners can focus on the big issues in a case;
- introducing a pre-proceedings gate-keeping regime to ensure local authority cases are better assessed prior to an application to court being made. “

The PLO establishes a court management process for child protection proceedings with 4 stages:

- **Stage 1: Issue of proceedings and First Appointment**
- **Stage 2: Case Management Conference**
- **Stage 3: Issues Resolution Hearing**
- **Stage 4: Hearing**

There are also further Practice Directions on the Use of Experts and Court Bundles that includes the concept of Position Statements from the parties about the key issues for litigation.

There are a range of interesting features of the PLO including:
• the *Letter Before Proceedings* to the parents about why their child is in care and what the Local Authority is doing. In a local setting to define in plain English why there are child protection concerns and what needs to be done about them is important to set the scene for any legal proceedings and is a document that could guide casework practice and litigation alike across the life of a matter;

• the *Pre-Proceedings Checklist* of what needs to be filed to support an application including:
  (1) Social Work Chronology,
  (2) Initial Social Work Statement,
  (3) Initial and Core Assessments,
  (4) Letters before Proceedings,
  (5) Schedule of Proposed Findings, and
  (6) Care Plan.

• The Court has checklists about how to manage each stage of the proceedings including establishing a Timetable for the Child.

It is essential to recognise that in the UK context the Local Authority social workers get access to legal advice and support from the early stages of proceedings all the way through to hearing. Whilst there is access to legal advice and representation in the Queensland jurisdiction it is not as well established or resourced as the UK Local Authorities and often critical advice does not occur until the final stages of a matter just prior to the final hearing.

The most common model of representation for children and young people in the UK is the Guardian Ad Litem model where the Court appoints a social worker on behalf of the child who instructs a lawyer to act on their behalf. The Guardian will meet all concerned, review relevant case files and talk to the children. They will also submit a report to the Court outlining views and recommendations to the Court and where the child is of an age and ability to express a view will include their views and wishes. In this model the Guardian may be called as an expert witness to give evidence. The solicitor is responsible for presenting the child’s case in court, including calling witnesses for the child. The Guardian is responsible for telling the solicitor what the Guardian thinks should happen with the child and what information should be put before the court. If the child’s lawyer considers that the child is old enough to express a view then the solicitor must tell the court where that differs from the
Guardian’s recommendations. Generally the same lawyer represents the guardian and the child but the model does anticipate a potential conflict between the views of the Guardian and the child. This is a best interests model of advocacy. In 2001 the Children and Family Court Advisory and Support Service (Cafcass) was set up which brought together the family court services previously provided by the Family Court Welfare Service, the Guardian ad Litem Service and the Children’s Division of the Official Solicitor’s Office. It is the main agency providing Guardian Ad Litem services to the Courts now. In recent time there has been issues about the capacity of Cafcass to meet the demand for Guardian appointments.


**USA Agency Tour:**

To set the scene each of the 50 States has its own Child Welfare Authority which is the equivalent of the Department of Communities (Child Safety Services). Child protection law is predominantly referred to as dependency law while youth justice law is referred to as delinquency law. The models of representation for children and young people and indeed parents are varied across the country. There is the use of lay advocates known as CASAs (Court Appointed Attorneys). Some models of representation run in entirely independent agencies others are located in Public Defender Offices.

**Children’s Rights** was founded by lawyer Marcia Robinson Lowry and began as a project of the New York Civil Liberties Union and, later, the American Civil Liberties Union. In 1995 it became an independent non profit organisation. The Civil Rights Attorney’s Fees Award Act of 1976 is a law of the United States which allows a Federal Court to award reasonable attorneys’ fees to a prevailing party in certain civil rights cases. This Act was designed to create an enforcement mechanism for the nation’s civil rights laws without creating an enforcement bureaucracy. It also provides for the cost of experts reports. State Attorney’s Fees is how Children’s Rights funds its test case litigation.

In conversation with Marcia Robinson Lowry she agreed a class action can be a blunt instrument that can have unintended negative consequences. However she still saw them as a critical tool for keeping the system in check. Ms Robinson Lowry commented that **Children’s Rights** remains involved to monitor the law suit and work with other stakeholders in the community to ensure the recommendations are implemented. She observed that it was Churchill who once opined that “it has been said that democracy is the worst form of government except all the others that have
been tried.” She thought that what democracy offered was oversight by the legal system so that when the majority doesn't protect the minority the legal system offers somewhere to go.

Ira Lustbader and Susan Lambiese gave me an overview of how *Children’s Rights* test case litigation worked. *Children’s Rights* sustain attention on the systems issues through class action law suits and on occasions publicity campaigns surrounding the law suit which highlights issues for this client group in the media. A key challenge in the litigation involved the tension between Federal interference in the rights of the States. Sometimes Judges involved in the test case litigation are not sympathetic to the Federal law intervening in States rights which determines whether the class action even gets off the starting block.

To date *Children’s Rights* have been involved in over 15 class actions in a number of State jurisdictions. Only a few have been unsuccessful and losses often relate to when the States rights concept have led to the dismissal of actions. The process for litigation is generally:

- **Investigation of the case:** through fact finding and local investigations referrals are made from agencies and *Children’s Rights* conducts research from publicly available sources and on a local level interviews those concerned,

- **Building the case:** a class action will be filed in Federal court and the legal team will do all that is necessary to build the case including relevant discovery, witness interviews and seeking expert witness testimony,

- **Mapping the road to reform:** Settlement discussions will focus on what needs to happen to address the issues raised by the litigation,

- **Monitoring the results:** This can take years and has court oversight and may involve the use of contempt proceedings.

**Source:** [http://www.childrensrights.org/](http://www.childrensrights.org/)

A class action will result in a consent decree that technically remains open in the court and goes back to court (roughly every 6 months) for review to determine whether the consent decrees have been actioned. The court monitors compliance. A public report is prepared on compliance 3-4 times a year. Typically these negotiations involve *Children’s Rights* for the plaintiffs with Counsel, the Court Monitor, the Commissioner for the Department and lawyers for State (which are usually private firm lawyers).
The approach taken for this is collaborative however where necessary they may advocate for additional orders to allow for enforcement. And there are contempt proceedings. Consent decrees will often identify 5-7 reform areas for attention in response to the class action. Children’s Rights will take matters back to court to keep child welfare agencies accountable. Sometimes the life of the negotiated court orders and the successes in relation to their compliance can be derailed by changes in leadership teams in the relevant child welfare agencies. Also challenges of compliance may not work when the basics of the system, service delivery and the front end issues are flawed or problematic. They lamented that in some ways getting the court order is the easy part the compliance with it is the difficult part.

A case example of a class action:

**District of Columbia L’Shawn A. v Fenty**

Children’s Rights filed this federal class action in 1989, charging the District of Columbia with jeopardizing the health and safety of thousands of abused and neglected children in its custody. Following a 1991 trial on the merits and a finding by the trial court that the District’s child welfare system violated federal law, Children’s Rights and defendants reached agreement on the terms of a court-ordered reform plan in 1993.

In the years that followed, the District made only minimal progress toward achieving court-mandated reforms, prompting the court to impose the unprecedented remedy of a federal takeover of the child welfare system’s management in 1995. The District regained control of the beleaguered agency in 2000, after establishing a cabinet-level Child and Family Services Agency (CFSA) and committing to major reform. Though CFSA initially made strides to improve the quality of services and outcomes for abused and neglected children in the District, it remained in violation of the court-ordered reform plan.

In recent years, the advances previously achieved by CFSA deteriorated, and CFSA’s overall performance declined sharply, prompting Children’s Rights to file a motion for a finding of contempt against the District in July of 2008. The motion cites chronic problems including a large backlog of unresolved abuse and neglect investigations, failure to move children into permanent homes on a timely basis, and frequent moves for children in foster care. In an attempt to resolve these and other glaring problems, the parties negotiated a stipulated order, which was entered by the Court on October 7, 2008. The order set forth a number of requirements that CFSA must meet in order to move toward compliance with the court-ordered reform plan in the District.

On January 5, 2009, the court-ordered monitor issued a report indicating that CFSA has made adequate progress in meeting the requirements set forth in the October 7 order, and
The parties are currently negotiating a longer term strategy plan for reform.


Litigation is the primary focus of Children’s Rights advocacy agenda and it helps focus the policy and research agenda which is difficult to maintain given limited resources. Children’s Rights has been involved in collaborative research projects such as:

- In 2007 Children’s Rights was part of a collaboration with National Foster Parent Association and the University of Maryland School of Social Work Hitting the MARC (Establishing Minimum Rates for Children). This research and report related to the first ever calculation of the real expenses of caring for a child in foster care in USA. It systemically demonstrated that the rates of support of children in foster care are far below what is needed to provide basic care for these children in nearly every state. This piece of work gave a base for systemic advocacy lobbying for increases to foster care payments. It also lead to spin off law suits.

  (Source: http://www.childrensrights.org/publications-multimedia/policy-reports/)

- In 2009 Children’s Rights was part of an in-depth report on the New York City child welfare system detailing problems that delay the progress of children in New York City foster care toward reunification with their parents, adoption, or permanency through legal guardianship called The Long Road Home: A Study of Children Stranded in New York Foster Care which made concrete recommendations about how these problems can be solved.

  (Source: http://www.childrensrights.org/publications-multimedia/policy-reports/)

Child Welfare League of America (CWLA) emerged in 1920 as the result of the White House Conference on Children and Youth. CWLA’s advocacy is focused on efforts to change, improve, create national policies impacting children and families including changes to legislation and policies/procedures. Recently with the economic downturn the research capacity has been downscaled. The CWLA liaises with Program and Practice experts in a variety of specialised aspects of child welfare e.g. adoption, housing. Juvenile Justice is a focus. The work of the CWLA has a number of key features:

  Membership Services: There are due paying members from both private non profits and public sector agencies this mix is a unique feature.
Advisory Committees: These committees are made up of representatives from direct service agencies with a focus on a particular area of expertise. They meet periodically to discuss trends/developments/innovations in the field and may prepare position papers for consultation. CWLA has developed Standards for Excellence in Child Welfare Services which outline the goals for continuing improvement of services for children and families and represent those practices considered to be most desirable in providing services (http://www.cwla.org/programs/standards/cwsstandardsgroupcare.htm). New approaches are constantly being considered as part of the work of these Advisory Committees.

Conferences: These provide an opportunity to network and share innovative approaches and best practice developments for example the 2009 Conference concentrated on data and data collection.

Data: Issues explored have included what data is collected, what should be collected and how should it be used. There is a National Resource Center for Data funded by the Federal Government. This resource centre is like a National Clearinghouse. They assist with conferences, training, webinars, consultations. Recent discussions have included debates about what is the definition of child protection given there are so many different jurisdictional definitions.

Each State has a Child Welfare Office or Department and there are private non profits operating in each jurisdiction to provide services such as placement to the sector. There are 50 Child Welfare Systems and the Federal/State divide can be extremely problematic to securing adequate and appropriate funding and resourcing. I met with Tim Briceland-Betts CoDirector of Government Affairs who explained that the main function of the Government Affairs Unit is to interact with Capitol Hill and directly with the Hill staff of both House and Senate members. CWLA operates in a Federal system with Federal law from the 1930s social security system. The origin of advocacy on the Hill is the Social Security Act which was about imposing a social security tax on all Americans. In the present day program funding from that Act goes to the Senate’s Finance Committee and to the House’s Wages and Means Committee. The briefings prepared by the CWLA inform and educate the legislature about the critical issues that impact on the care population with respect to funding allocations. There are also a number of Coalitions that CWLA participates in that review legislation, provide analysis and information and briefings for non government organisation and sectoral consultations. They assist in developing strategic
advocacy focus for particular States if necessary. For example in 2007 the CWLA submitted Testimony Submitted to the Hearing on Challenges Facing the Child Welfare System to the House Appropriations Subcommittee on Income Security and Family Support. The CWLA took an advocacy position around how federal funding should be structured and allocated and opposed moves by the Bush administration to implement block funding.

The Child Advocacy Institute (CAI) was founded in 1989 as part of the Center for Public Interest Law at the University of San Diego (USD) School of Law. I met with its Director Robert Fellmouth. CAI’s work is an interesting combination of research, education and systemic and impact litigation advocacy aimed at improving all children’s wellbeing but with a particular focus on foster youth, those aging out of care and homeless young people. CAI’s advocacy tackles legislation, litigation, budget and regulatory frameworks. CAI’s current impact litigation includes targeting caseloads for dependency lawyers and the rates of funding for foster carers. The CAI also submits amicus curiae briefs (or friend to the court briefs) in litigation for example:

“In Sinaiko v. Superior Court, CAI submitted an amicus curiae brief to present its concerns regarding the treatment of children diagnosed with attention-deficit/ hyperactive disorder (ADHD), including reflexive and excessive Ritalin and other amphetamine therapy, and related concerns. The case involved the Medical Board of California’s discipline of a physician who explored allergy-based problems without effecting any other treatment preferred.”
(Source: http://www.caichildlaw.org/litigation.htm)

CAI links any research to its policy and systemic advocacy. In January 2010 CAI released a report that graded Californian counties on the extent to which they are using Proposition 63 funds to benefit transition age foster youth. These funds were provided under the Mental Health Services Act to direct program funding for mental health services to address the needs of transition age youth aged 16-25. This report found that over 90 % of Californian Counties were not delivering under the legislative commitment made by Proposition 63 namely:

- 26 counties, home to over 78% of California’s Transition Age Foster Youth, received a failing grade.
- Seven more counties, home to an additional 15% of the state’s Transition Age Foster Youth, received a D.

(Source: http://www.caichildlaw.org/Misc/Proposition_63_Report_FINAL_Master.pdf)
Mr Fellmouth is passionately advocating for his Transition Life Coach Plan where a Transition Life Coach would be appointed to assist a young person transitioning from foster care to manage that transition and monitor access to funds held in trust for that young person. Under his proposal this would involve Court oversight through the management of this process. The overall aim is to ensure access to appropriate supports for transition such as mental health services. There is a similar concept for an Educational Representative to ensure that a child or young person can access their educational rights.


The CAI runs student clinics for law students at San Diego University. This program is an effective strategy to recruit, educate and train future child advocacy lawyers. The law students have to undertake a subject Child Rights and Remedies the principal text for which was developed by Mr Fellmouth. They can also gain practical experience by participating in student clinics on dependency and delinquency law or policy. The clinics offer placements where students can gain access to casework experience in dependency and delinquency law under supervision. The students generally dedicate 2 days a week to shadowing an attorney working in the dependency or delinquency courts and assist with their caseloads. Then once a week they meet back in the CAI which provides an invaluable opportunity for CAI to hear what is happening in the court systems for children and young people which links to its systemic advocacy agenda. The policy clinic gives students an opportunity to work on policy or advocacy projects with CAI professional staff or leading professionals in the community. An example from recent years focused on the lack of school nurses and related health care professionals in Californian schools. This report was linked to legislative advocacy on the issue.

Casey Family Services (CFS) was founded by Jim Casey (founder of United Parcel Service). The work of the foundation is focused on top down/bottom up advocacy for children and young people in foster care. The work of CFS includes educating the legislature and policy makers, service delivery of a range of programs and strategic consultancy services (e.g. at Edelman Childrens’ Court in LA I saw Casey involved in the facilitation of its ‘Undoing Racism’ project). CFS is an excellent example of the strength of the US’s well renowned philanthropic spirit with 4 allied organisations established by the Casey Foundation including the:
I met with Jorge Cabrera of Casey Family Programs’ San Diego field office which has supported a largely urban county of 3 million people since 1993. Most of the children they deal with live with foster families or in kinship care. How Are The Children 2009 provides a review of the range of work done by Casey Family Programs (Source: http://www.casey.org/resources/publications/children/)

In Mr Cabrera's view there is a knowledge base already of what works and advocacy and reform should be about making that happen. He provided examples of CFS’s work in this area:

- **Advocacy on appropriate and adequate funding of foster care:** Overall the goal of CFS is to reduce the number of children in foster care but when they are in the system those caring for them should be adequately funded and supported to do so. Casey’s Finance Reform Agenda is around Federal funding under the Social Security Act (Title 4 E). This advocacy agenda is about reviewing the concepts of eligibility to update the eligibility criteria to current day from the outdated 1996 criteria and allowing for flexibility in the entitlement process to allow for adequate funding of prevention/early intervention, post reunification/ transition addition to children in the care system. This is also about supporting the concept of “subsided guardianship” for kinship placements.

- **Alternative Responses:** The aim of this program response is on early intervention and prevention to try to support the family so their child/ren doesn’t enter the system at all.

- **Family Group Conferencing:** this model from New Zealand is about empowering the family and their support network to come up with their own solutions to the child protection concerns.

- **Family to family:** this program is about keeping children in family or kinship places and where possible still linked into their established school and community networks so there is minimal disruption for the time that they are in care.
- **Signs of Safety:** another model from New Zealand this is about training workers in the system to use a family engagement approach to honour and privilege the voice of the family in the case planning process which looks not just at the deficient but also the strengths of the family in the risk assessment process to try to build on those in addressing the child protection concerns.

- **Permanency Roundtables:** these are a case consultation or case review that look at the history of the case and try to determine whether it is time to restore the parental role because circumstances have changed and the parents have addressed the child protection concerns or to identify other family members who should be considered as a kinship placement but the system may have lost touch with them and the child has lost contact. It is also an opportunity to identify potential family resources that can support the child and young person while in the out of home care system. This process compiles information then a facilitator brings together the appropriate people to workshop options. The first session is about investigation and assessment of options. A second session may bring in more players including the young person.

- **Finding Family and Family Contact:** these approaches work with established databases to try to find lost family and go on to review family contact options for children and young people.

Mr Cabrera saw the focus of Casey’s advocacy in the near future to be on:

- implementation responses to the Fostering Connections legislation including the key reforms related to subsided guardianship and increasing the transition age from 18 to 21,

- reduction of the numbers of children and young people in foster care,

- increased focus on the wellbeing of children and young people in care mainly education and health with a particular focus on mental health responses and the treatment of the trauma related to child abuse- CFS’s Alumni Study follows young people out of the foster care system and finds that they have considerable Post Traumatic Stress Disorder greater than that experienced by Vietnam Vets. How does the system work out how to assess, treat and support young people with these issues?,

- addressing racial disparity- the *Indian Child Welfare Act 1978* in spirit has good foundations but has not translated well into practice.
While in Los Angeles I spent time at the *Edmund D. Edelman Children’s Court*. When I was initially developing the Churchill proposal Amanda Donnelly from the National Association of Children’s Counsel mentioned this court in glowing terms and I was to hear similar stories from lawyers I met along the way. When I arrived there it looked much like any other courthouse however my time revealed a progressive and what would be considered a quite radical court by Australian standards.

For the time I was in the Monterey Park court complex I was hosted by the *Children’s Law Center of Los Angeles (CLC)*. CLC was founded in 1990. It began with 6 lawyers in an environment where there were no recognised standards of representation, no right to counsel for children and no multidisciplinary practice collaboration with social workers, mental health professionals and education law experts. This was when dependency law was viewed as simplistic and unsophisticated. I arrived a week after a successful fundraising art show to find a much changed CLC from those early years. In 2010 CLC operates 3 dedicated law firms that specialise solely in children’s representation in dependency law. CLC employs a staff of 15 Supervising Attorneys, 110 Attorneys, 7 Investigator Supervisors, 55 Social Work Investigators and a Mental Health Unit featuring 1 Psychologist, 1 Mental Health Specialist and specialised Education, Crossover (between dependency and delinquency) and Mental Health Attorneys. It services a client base of approximately 24,000 across 20 courtrooms and has strong involvement in policy and law reform advocacy and the development of professional development and training opportunities for children’s representatives in dependency law.

From the outside *Edelman’s Children’s Court* it is an unremarkable court building. Inside the waiting areas a vast sea of humanity waits for their case to be called. For those children that are with parents they will be waiting outside with their family and while they wait they may be involved in art projects to pass the time. The truly remarkable feature of this court is the child friendly waiting areas that await those children and young people who are in out of home care. This expansive waiting area includes an outdoor play area with jungle gym and basketball court, indoor dvd theatres divided into teenagers and younger children, a dress up area, a reading area, air hockey and pinball games.
Picture: Indoor Play Areas, Edelman Children’s Court
Picture: Outdoor Play Areas, Edelman Children’s Court
Over the week that I was in this court I observed courtrooms where it was considered a norm that children and young people would be in attendance. The court has a motto that every child who attends court receives a teddy bear which they certainly did while I was there. Referee Sherry Sobel has a massive polar bear that oversees proceedings in the back of her courtroom which she announced was for any young person who attains entry into a 3-4 year course after finishing high school. It was still confronting to watch children and young people enter, stay and leave for mentions of their care proceedings. In *Edelman Children’s Court* every child over 4 attends court proceedings. What I liked about what I saw in these courtrooms was the sense of accountability for a young person’s life that the Judicial Officers had to take from the very presence of the children and young people involved. A 13 year old asked the court what their parents had to do to get the Department out of their lives and was answered directly by the Judicial Officer.

As I sat and watched proceedings unfold I wondered how this court would answer those critics who say that court was no place for children and young people as they may hear something upsetting. It gave me time to reflect on the experience of many children and young people who enter the care system and what they have already seen by the time they enter a sterile court room. Such as dealing with a parent’s psychotic episode but not being told why their mother behaves the way she does or cleaning up after a parent’s drug use. An issue for this client group is how does the child protection system inform them in a constructive way of the child protection issues in their family of origin as part of casework intervention and properly support them to deal with this legacy and build their own protections over the longer term? Especially when the research tells us that many will return to their family after their care experience. Leslie Heimov, CLC’s Director, confirmed that she had heard all the criticisms of the legal representation of children before and agreed that the main ones as children and young people seeing or hearing something upsetting or wanting something that wasn’t good for them. She didn’t see either as a barrier to participation and agreed that lawyers and Judicial Officers with specialist skills in this area were critical to supporting children and young people in the court environment.

In *Edelman Children’s Court* all parents are legally represented. The *Los Angeles Dependency Lawyers (LADL)* is a non-profit organisation made up of its executive office and four law firms. Kenneth Krekorian is the Executive Director of LADL who explained the origin of parents representation. Originally individual lawyers making up a panel developed in the LADL model after changes to funding arrangements.
The LADL model is based on the CLC model with firms of lawyers, supervising lawyer, casework lawyers, social workers and investigators. The firm’s mission statement is:

“Care, custody and control of a child are fundamental parental liberty interests. Courts must provide a parent with fundamentally fair proceedings wherein the parent has a fair and reasonable opportunity to retain or regain care, custody and control of his/her child. It is our mission to assure that parents receive their substantive and procedural rights and that they are provided legal representation at low or no cost affording them a fair and reasonable opportunity to parent their child. Too many children are lost to the foster care system, and it is our goal to provide legal assistance to our clients to preserve the family and, in those instances where required, reunify the family through the use of innovative, effective, affirmative, and ethical legal principles and skills.”

In Californian law there is a requirement placed on the child welfare authorities to demonstrate to the judicial decision maker that reasonable efforts to prevent or eliminate the need for removal were made and the court is required to make findings that they either have or have not been made. The law provides that if the court finds that the child or young person should be detained that the court must order reunification services to begin as soon as possible to reunify the child to their family of origin if appropriate. These services do not require any admission of guilt by the parent. There are circumstances where reunification services are not to be ordered. There is also the termination of parental rights.

The Edelman’s Children Court also has interesting projects led by Judicial Officers:

- His Honour Judge Michael Nash was championing a project to reduce the overrepresentation of children of colour called “Undoing Racism”. This project had run workshops for child welfare workers and court staff (including Judicial Officers) and implemented judicial bench cards designed to assist decision makers when dealing with dependency issues involving children of colour. A component of this program was also to review data on overrepresentation to determine whether the program was having an impact. Initial data collection was encouraging. It had been going for 12 months by the time of my visit,

- Juvenile Court Referee Sherri Sobel has led the implementation of a program through which education law attorneys, working pro bono, represent dependency court children before the public school system. These lawyers
“take on” the school system to ensure these children’s educational needs are being met, and share their experience with the court.

**Legal Services for Children San Francisco** was founded in 1975 as one of the first non-profit law firms to provide free direct legal and social services to children and young people. **LSC** uses a multidisciplinary lawyer/social worker team model to assist at-risk youth in the Bay Area who need to access the legal system. **LSC’s** mission is clearly founded in Article 12 of the Convention on the Rights of the Child and is to empower children and youth by increasing their active participation in making decisions about their own lives. Individual casework is the focus for **LSC** and they run a range of projects targeted at particular target groups such as:

- **Guardianship Project** which assists children in obtaining legal guardianship with a family member or other committed adult when they are unable to continue living with a parent.

- **Education Project** representing students facing expulsion, and provides workshops for parents and youth on school discipline, special education, and bilingual education to help parents make more informed decisions about their child’s education.

- **Dependency Project** Appointed by the Juvenile Court, **LSC** represents children in the foster care system, and helps them with education, immigration, public benefits and placement issues.

- **Detained Immigrant Children Project** **LSC** represents unaccompanied immigrant children and youth detained by the Department of Homeland Security and facing deportation proceedings.

*Source:* [www.lsc-sf.org](http://www.lsc-sf.org)

While I was in San Francisco with **LSC** I observed a mention in a hearing for the termination of parental rights. The matter needed to be adjourned because the biological mother wished to be heard in the proceedings. Whilst only a short time was spent in the courtroom it really brought home to me the competing tensions faced in this litigation. A biological mother who did not want to give up on her children and foster parents ready to adopt them. It was hard not to be moved by the emotions involved or to be reminded of the enormity of the decision making involved in otherwise sterile court room settings. Later that day in conversation with Shannan Wilber Director of **LSC** she confirmed that the inherent tensions in child advocacy
between those practising best interests models versus client directed advocacy remained a prominent issue for child rights lawyers in the US.

The **Youth Law Center (YLC)** has been in existence since 1978 and works on a collaborative basis with local lawyers to drive impact litigation with a focus on the nation's foster care and juvenile justice systems. Its mission: "The Youth Law Center is a public interest law firm that works to protect children in the nation’s foster care and juvenile justice systems from abuse and neglect and to ensure that they receive the necessary support and services to become healthy and productive adults." **YLC**'s systemic advocacy agenda is focussed on

- reducing the use of out-of-home care and incarceration,
- ensuring safe and humane conditions in out-of home placements,
- keeping children out of adult jails,
- securing equitable treatment for children in both systems,
- advocating for education, medical and mental health, legal support, and transition services needed to assure children's success in care and in the community,
- increasing accountability of the juvenile justice and child welfare systems.

**YLC** uses a range of techniques to support its advocacy agenda including litigation, policy advocacy at all levels and community education. The systemic impact litigation conducted by **YLC** is targeted litigation to review particular areas of the system using the writ of mandate process to review administrative decision making by child welfare authorities. The **YLC** was running a complaints project with respect to residential care facilities for children and young people with the assistance of a Skadden Fellow (a fellowship supporting law students to gain experience in public interest legal work with disadvantaged client bases: [http://www.skaddenfellowships.org/sitecontent.cfm?page=about](http://www.skaddenfellowships.org/sitecontent.cfm?page=about))

“This lawsuit was filed by the Youth Law Center challenging the failure of the California Youth Authority to license its inpatient medical and mental health services as required by State law. At the time the lawsuit was filed, in May 2000, Youth Authority was more than four years beyond the date the licensing requirements took effect, even though there was clear evidence that inpatient services were being provided at each of the correctional facilities. Youth Authority’s own reports established serious deficiencies in staffing, policies and procedures, record keeping, administrative oversight, and treatment protocols that would necessarily have to be addressed in the licensing process. In addition, particularly with respect to mental health care, there was evidence that many Youth Authority wards required inpatient services.

On November 28, 2000, Judge Ronald Quidachay of the Superior Court for the City and County of San Francisco granted the petition for writ of mandate. The judgment required Youth Authority to complete licensing at the three facilities where efforts were already under way, and to comply with the law either through licensing or alternative means of providing for inpatient needs at the other eight facilities. Youth Authority appealed.

On October 31, 2001, the California Court of Appeal for the First District, Division Two, emphatically affirmed the trial court judgment. The strongly worded opinion stated: "We cannot agree that this level of inaction can be characterized as a good faith effort to comply with the law. Indeed, the lack of any justifiable reason for the protracted delay is, at best, gross indifference to, if not outright defiance of, the mandates of the Legislature and the judiciary. That this apparent intransigence comes at the expense of the health of at-risk juvenile wards in this state is appalling. We trust that our displeasure at this state of affairs at CYA will be communicated to those in whom this important public trust is reposed. Morris v. Harper (2001) 94 Cal.App.4th 52, 60-61."

The parties entered into a stipulated agreement in June 2002, setting new dates for compliance with the judgment, and detailing Youth Authority's plans for handling inpatient services at the facilities where licensing will not occur; with a completion date of April 30, 2004. The case name changed from Morris v. Harper to Wilber v. Warner.

The case remains active in 2010. Although the negotiated agreement called for the State to develop four correctional treatment centers – at the Northern California Youth Correctional Center, Heman G. Stark, Ventura and Southern Youth Correctional Center and Clinic, CYA (now renamed Division of Juvenile Justice) obtained a license for only two inpatient programs. This left the system without on site inpatient bed capacity in Northern California, and without a dedicated on- site inpatient unit for girls. YLC filed a new motion to enforce the judgment but agreed to continue the motion to determine whether the state’s response to Farrell v. Cate which calls for an overhaul of the entire DJJ mental health system, will adequately address the need for inpatient services. YLC has continued to monitor the progress of the Farrell
mental health remedial efforts, with the understanding that if those efforts adequately addressed inpatient needs, YLC would hold off on enforcement in Wilber. As of Fall 2009, the experts in Farrell found that inpatient mental health care needs are not adequately addressed by the system, and the case remains open.”

Source: http://www.ylc.org/viewDetails.php?id=56

In Californian I attended the 3 day Beyond the Bench Conference and also visited the Administrative Office of the Courts- Center for Families, Children and the Courts.

Beyond the Bench is generally (subject to funding constraints) an annual conference with a focus on juvenile dependency and delinquency law (known as child protection and youth justice in Queensland). At the 2010 conference His Honour Len Edwards was presented with an award for his contribution to the conference which began some 20 years ago. At the presentation he shared a story about how the Conference came about. Essentially he had invited some Judicial officers to meet with the then head of the Department of Communities Director General equivalent. He said he had watched in dismay as the Judges interrogated the bureaucrats about how their cases were presented in court. As he escorted the public servants out he said to one of them that he would like to try to work on improving professional understanding between lawyers and child protection workers. And so Beyond the Bench was born. The Conference is supported by the Judicial Council of California and the Administrative Office of the Courts which has an extremely impressive professional development support component for all levels of the legal profession.

The Conference was attended by approximately 1300 professionals working in the areas including judicial officers, lawyers, social workers, probation officers and policy makers. Most startlingly to me was the ease and comfort with which this mix of professionals were able to sit down and robustly debate their different perspectives. The conference program itself was a comprehensive review of a range of topical issues in these areas of law:


One of my favourite sessions was an exploration by parent’s lawyers of the professional challenges of working collaboratively while maintaining a commitment to zealous advocacy.
The **Administrative Office of the Courts (AOC)** is the staff agency of the Judicial Council, which has policymaking authority over the state court system and serves “the courts and the public by advancing excellence, leadership, and service in the administration of justice.” The **AOC’s Center for Families, Children & the Courts (CFCC)** works specifically to improve the quality of justice and services to meet the diverse needs of families, youth, children, and self-represented litigants in the California courts. Christopher Wu at the AOC (who is also the Executive Director of the **Blue Ribbon Commission on Children in Foster Care**) was my host when I visited the AOC and the **Blue Ribbon Commission**.

The **AOC** offer considerable support for judicial officers working in dependency courts including resources for judicial officers such as checklists and guidelines for dependency proceedings. Judicial Officers also have considerable professional development opportunities and can attend their own National Council of Juvenile and Family Court Judges Conference as well as Beyond the Bench where they can mix with lawyers and social workers. The **CFCC** produces an enviable resource called the Dependency Quick Guide (also known as the Red Dog Book) which has now gone online. You must be a subscriber to access all the features of this service but it offers practitioners information on:

- Californian law and case law
- Conferences and training opportunities
- Precedents, factsheets and tip guides
- Relevant articles, publications and reports
- Details of service providers and experts


The Pew Commission was a national review of child welfare policy and practice that began in May 2003 and released a final report in May 2004. It was an independent, non partisan entity dedicated to developing effective and practical policy recommendations to improve the foster care system. It was funded through a charitable trust grant and was in partnership with the Georgetown University Public Policy Institute in Washington, D.C. The composition of this Commission was impressive and included researchers, policy makers, frontline service deliverers, the legal profession and consumers including foster and adoptive parents and former foster youth. The Commission main aims were to investigate and offer comprehensive recommendations in the following targeted areas:
• improving existing federal financing mechanisms to facilitate faster movement of children from foster care into safe, permanent families and to reduce the need to place children in foster care;
• improving court oversight of child welfare cases to facilitate better and more timely decisions related to children's safety, permanence, and well-being.

(Source: http://pewfostercare.org/about/)

In 2006 California created the California Blue Ribbon Commission on Children in Foster Care to continue work on the recommendations that came from the Pew Commission. In the Commission’s May 2009 Final Report and Action Plan Jennifer Rodriquez (Staff Attorney, Youth Law Center, former member of the California Blue Ribbon Commission on Children in Foster Care) laments:

“When I was 12 years old- in a court hearing I was not invited to, and that I did not even know about- a decision was made that I was not appropriate for a foster family but needed to be in group homes. That decision was made in only a few minutes, with most of the people in the room having never met me, not knowing my hopes and dreams, only knowing one or two of the facts that represented 1 percent of the 100 percent child I was.”

I met with the Chair of this Commission Justice Carlos Moreno who is himself a relative caregiver and foster parent. This Blue Ribbon Commission demonstrated an impressive cross sectoral relationship mostly notably between the Judiciary, legal profession and other child welfare professionals. The Blue Ribbon Commission’s mandate was to develop recommendations and a plan for action focused on 4 main areas:

1. “How courts and their partners can improve the child welfare system,
2. Improved court performance and accountability in achieving safety, permanency, wellbeing and fairness for all children and families in the child welfare system,
3. Improved collaboration and communication among courts and child welfare agencies and others, including the development of permanent local county commissions that support ongoing efforts,
4. Greater public awareness of the court’s role in the foster care system and the need for adequate and flexible funding.”

Justice Moreno explained that the Commission wanted local responses developed and led by local communities around the Action Plan developed by the Blue Ribbon Commission:
The National Association of Counsel for Children (NACC) was founded in 1977 and is a non-profit child advocacy and professional membership association. The NACC's mission is to improve the lives of children and families through legal advocacy. The NACC:

- has 2,500 members representing all 50 states and several foreign countries including attorneys and judges, although the fields of medicine, social work, mental health, education, and law enforcement are also represented,
- provides training and technical assistance to attorneys and other professionals,
- serves as a public and professional information referral centre, and
- engages in public policy and legislative advocacy and works to improve the child welfare, juvenile justice and private custody systems.
Its training and professional development opportunities for lawyers include:

- Child Welfare Attorney Specialisation is a program whereby the NACC certifies qualified attorneys as Child Welfare Law Specialists (CWLS) by showing their proficiency in child welfare law through a child welfare law competency process;

- professional publications such as the quarterly newsletter The Guardian; The Children's Legal Rights Journal and annual children's law manuals;

- an annual national children's law conference each fall as well as a trial skills training each spring.

(Source: http://www.naccchildlaw.org/)

The National Council of Juvenile and Family Court Judges has existed since 1937 and today has a membership of more than 2000 judicial officers. Its mission is to improve courts and systems practice and raised awareness and it provides leadership in continuing education opportunities, research, policy development in juvenile and family law. Source: http://www.ncjfcj.org/
**Key Observations from my time in the USA:**
A keen focus of advocacy in the States is on securing adequate funding streams in Federal and State money for resourcing the foster care system. Agencies I visited had as part of their advocacy agenda established a position on the *Fostering Connections to Success and Increasing Adoptions Act of 2008:*

1) support for kinship care and family connections,
2) support for older youth,
3) coordinated health services,
4) improved educational stability and opportunities,
5) incentives and assistance for adoption, and
6) direct access to federal resources for Indian Tribes.

(Source: [http://www.fosteringconnections.org/about_the_law?id=0001](http://www.fosteringconnections.org/about_the_law?id=0001))

I was impressed by the size of the youth specialist legal service sector doing work specifically focused on foster youth or in combination with juvenile justice. Agencies used a combination of methods such as litigation, policy and law reform advocacy and community education. They also used a combination of litigation techniques with some focusing on systemic litigation while others were focused on individual client based representation. The types of systemic litigation varied including federally based class actions, amicus curie briefs or targeted reviews of administrative decision making through writs of mandate. The USA’s entrenched rights frameworks are the foundation for systemic litigation and there is considerable case law in the area of child dependency law. Litigation is seen as a critical tool for policy, law reform and systems change.

With 50 states the models for individual advocacy for children and young people vary greatly. I visited agencies practising client directed or what was referred to as “hybrid model”, which was client directed or substituted decision making operating in a best interests framework. **Court Appointed Special Advocates or CASAs** are another model of advocacy in the USA. CASAs are lay advocates appointed by the Court in juvenile dependency proceedings:

> “In 1977, a Seattle Superior Court Judge named David Soukup was concerned about trying to make decisions on behalf of abused and neglected children without enough information. He conceived the idea of appointing community volunteers to speak up for the best interests of these children in court. He made a request for volunteers; 50 citizens responded, and that was the start of the CASA movement. Today, there are more than 70,900 advocates serving in 1,055 state and local program offices nationwide. CASA programs across the country are
known by several different names, including Guardian ad Litem, Child Advocates and Voices for Children. Since the inception of CASA advocacy, volunteers have helped more than 2 million children find safe, permanent homes in which they can thrive.”
(Source: http://www.casaforchildren.org)

There was a core group of lawyers in these agencies who were also members of the NACC and worked tirelessly for the client group as well as improving the professionalism of those representing children and young people. The access to professional development opportunities for the legal profession including the Judiciary was impressive. As was the multidisciplinary communication and collaborative relationships between stakeholders. Both the NACC and American Bar Association have developed guidelines for lawyers acting for children and young people in dependency law: http://www.naccchildlaw.org/?page=PracticeStandards

Californian dependency law has a defined process for litigation with clear time frames.

6. A reflection on key observations and recommendations

**Advocacy Recommendations**

| Recommendation 1: A right to an advocate should be established for children and young people in care for case planning, family group meetings and complaints processes. There should also be systemic monitoring of compliance with section 74 of the Child Protection Act 1999 about children and young people's knowledge of and access to the Charter of Rights. |
| Recommendation 2: The complaints process for children and young people should have clearly articulated phases for the resolution of complaints and issues of accessibility for children and young people should be addressed by relevant stakeholders. |
| Recommendation 3: Create Foundation at a National and State level should advocate for and receive dedicated government or other sources of funding to provide for individual advocacy for children and young people in care that links to their broader systemic advocacy goals. Create should also broaden their current sectoral training to include a Advocacy Training Package to support the right to an advocate and compulsory training for all child protection officers within the Department on the Charter of Rights, participation, advocacy and legal representation for children and young people. |
| Recommendation 4: Transition from care planning should have a stronger legislative basis supported by implementation strategies in practice with established review mechanisms |
Currently in Queensland section 7 (1) (m) of the Child Protection Act 1999 provides that the Department of Communities (Child Safety Services) has a statutory function to ensure access by children in care to advocacy services and then to cooperate with those services to ensure that the children’s concerns are dealt with. Section 17 (1) (g) of the Commission for Children and Young People Child Guardian Act 2000 provides that the Children Commission’s functions include advocating for children and, in advocating for children, to seek help from advocacy entities, service providers and other entities. Both the Department and the Commission have worked to address children’s participation in decision making through such initiatives as:

- the Youth Participation Strategy and practice resources (Department)
- Community Visitor Program (Children’s Commission)
- Surveys of Views and Wishes (Children’s Commission)

There are also legislative amendments soon to commence which provide greater detail about children and young people’s participation in expressing their views.

Cashmore and O’Brien (2001 Children Australia Vol 26 No. 4 p. 12) observe that:

“Genuine participation by children and young people in decisions and in processes that affect their lives depends on several conditions. These include:

- the opportunity and choice of ways to participate;
- access to information;
- the availability of trusted advocates;
- resourcing and supporting children’s and young people’s participation;
- the availability of appropriate processes and structures which allow children and young people to contribute to service and system development;
- accessible complaints handling processes.”

Adult professionals working with this client base understand that those children and young people who have experienced abuse in their family of origin or in the out of home care system will need all of those things to find their voice and be able to express their views. However whilst agencies will advocate for children and young people as part of their work there are no dedicated community based individual advocacy services instructed by children and young people that work specifically for children and young people to assist their participation. These recommendations are focussed on individual advocacy for children and young people in care with a link to the broader systemic advocacy frameworks already established. Transition from care would benefit from stronger articulation in legislation of the Department’s duties, access to advocates for young people transitioning and review and monitoring mechanisms to ensure transition plans are developed and implemented.
Legal Representation Recommendations

Recommendation 5: Legal Service Providers should receive adequate and appropriate levels of funding to ensure that children, young people and their parents are legally represented in care proceedings.

Recommendation 6: The models for legal representation for children and young people should be reviewed and Queensland should consider enhancing the current models of Separate and Direct Representation in the spirit of Article 12 of the Convention on the Rights of the Child. Consideration could also be given to whether a Counsel assisting model should exist in the Children’s Court.

Recommendation 7: Lawyers for children and young people in care should consider a range of litigation strategies to drive legislative, policy and practice reforms in the area of child protection law.

The National Child Protection Framework and the policy agendas at a Federal level on reducing violence against women and children give the Commonwealth an opportunity to increase funding for legal service provision in child protection law. Adequate levels of funding for legal representation are a critical need for the sector. In Queensland the most common model of legal representation for children and young people in care is the best interests model of Separate Representation. Direct representation is only offered and practised by a small number of lawyers across the State with a concentration in the South East corner. Decisions on contact and placement are currently reviewable to the Queensland Civil and Administrative Tribunal (QCAT) but this can leave children and young people (and indeed their parents) dealing with proceedings on the same issues in two separate jurisdictions. Contact is also the cornerstone of reunification plans and should be a significant issue in child protection proceedings before the Children’s Court. The Child Protection Act 1999 provides for expert help for the Children’s Court in child protection proceedings however resourcing for this expert help has not been available. Impact litigation such as Judicial Review could be considered in conjunction with broader policy/law reform agendas that also involve direct engagement with the Department to work on collaborative responses to rights based advocacy agendas. The child protection sector should consider the involvement of legal professionals in broader sector policy and law reform agendas alongside other child welfare professionals to promote professional exchanges. This does happen but a greater sectoral commitment would build a strong foundation for systems change.
**Legal Profession and Legal System Responses**

**Recommendation 8:** The legal profession should establish and support professional development opportunities for lawyers practising at all levels of child protection law with a view to building professional standards and expertise for this work.

**Recommendation 9:** A review of the child protection proceedings, court and tribunal processes should be conducted to establish a clearly articulated process and timeframe for legal proceedings involving children and young people.

**Recommendation 10:** The Children’s Court of Queensland could consider the recommendations of the Pew Commission and the Blue Ribbon Commission of Foster Care to guide leadership and the progression of child protection law as a specialist area for judicial decision makers and to allow for innovation in court practice.

The Children’s Court of Queensland is a court in its own right comprising of District Court and Magistrates Court judicial officers. In practice the hearing and determination of child protection proceedings is done at the Magistrates Court level. There is one specialist Children's Court Magistrate for Queensland based in Brisbane. In all other Magistrates Courts the approach of the local court will depend on that Court’s workload and the availability of Magistrates. It is often the case in the bigger of these Courts that particular Magistrates will be found to rotate regularly through the child protection jurisdiction. In smaller Courts there may not be regular but rather circuit sitting days for the child protection jurisdiction.

The Children’s Court determines whether or not assessment orders or child protection orders should be granted on an application from the Department of Communities Child Safety Services. There are essentially 5 main elements of a child protection proceedings where a child protection order is sought namely that:
1. The child is a child in need of protection from harm,
2. There is no parent willing and able to protect the child from that harm,
3. There is a case plan developed that is appropriate for meeting the child’s assessed protection and care needs,
4. The order asked for is appropriate and desirable for their protection and that their protection is unlikely to be achieved by an order on less intrusive terms,
5. Where appropriate the child’s views and wishes are made known to the Court.

The process for these proceedings will start with an application being filed and served on the parents. Young people should be given notice of their ability to be a party to the proceedings. If the parent does not agree to the order there will be a
Court Ordered Conference which is an alternative dispute resolution process that is facilitated by the Department of Justice and Attorney General. Currently that process only has 3 mediators for the entire State.

There are a range of practice issues that currently exist in child protection proceedings:

- There is no established process or timeline for how proceedings should proceed to resolution before the courts,
- The Department rarely receives legal advice in the early stages of a matter to assist in the identification of what evidence to gather and how relevant it is to its application in a timely manner or how to present it in a convincing way (it should be noted that this is in stark contrast to the UK and US systems I visited),
- Parents, children and young people do not automatically receive legal advice and representation. Legal Aid funding is limited and at many stages is merit tested. It is not unusual for parents to receive no legal aid funding for a final hearing,
- There may be no court process to consider clear findings of fact in relation to harm for a significant period of time. This means that parents (who may or may not be legally represented) will disagree with the child protection concerns yet have no forum for the determination of the case they have to answer or to put the Department to proof on the allegations made,
- The entrenched conflict in court proceedings can mean that the Department and the parents have no working relationship to address the child protection concerns that have been raised, and critical issues, like the identification of family members for potential placement and contact are missed,
- Whilst the Queensland Civil and Administrative Tribunal (QCAT) exists to review decisions made about placement and contact this leads to matters that should also be properly considered in the context of child protection proceedings are dealt with in another forum. Parents are left to attempt to argue their case in two processes, in some instances, without legal representation in either. Children and young people are confused as to why there is another decision making body involved in what is happening to them. This is not to say that there is no considerable benefit in another professionals being involved in decision making in this jurisdiction however there is an issue as to whether this should be made available to the
Children’s Court through expert help which is provided for section 107 of the Child Protection Act 1999 already but has not been resourced or funded to date to be given any meaningful effect,

- Over the course of proceedings numerous family group meetings can be held where evidentiary issues are hotly contested but not clearly articulated or evidence based, which can mean the same issues are raised again and again but never actually resolved. More importantly a wonderful process that has strong foundations in restorative justice concepts from Maori culture is coopted into the legal proceedings,

- The Children’s Court Rules offer little guidance to practitioners about the process, including subpoenas or getting matters ready for final hearing. There can be numerous mentions that lead to adjournments without really progressing the issues for consideration before the court,

- Matters can involve numerous assessments that do not necessarily link directly to case management and case plan development,

- Social Assessment Reports by Separate Representatives can seen by the parties to the proceedings as a means of establishing the Department’s case and developing the casework intervention rather than a piece of evidence guiding the decision maker on determining what is in the best interests of the child the subject of the proceedings,

- Matters can be before the court for over 12 months, finally be set for hearing only to settle. Settlement may seem the only option for parents when they self represent. The settlement process will often mean no findings of fact. There will be no clear guidance for the next judicial decision maker about what actually happened. In the time that the matter takes to litigate the order originally sought could have run its course. This process can mean there will be no clear guidance for the next judicial decision maker about what actually happened in relation to the previous proceedings leaving open the same issues for contest all over again.

- There is limited case law.

These issues are a problem for all the professionals involved in these proceedings from the judicial decision makers to the frontline child protection workers and others like doctors, teachers and counsellors, expert report writers and lawyers. The parents and families in proceedings go through a confusing and time consuming
legal process that deals with a highly emotive issue— a system saying they can not parent their children.

But at the heart of it all is a child or young person who may:

- say their first words or learn to walk in that time,
- enter primary school or high school,
- change placements numerous times,
- find a placement that is right for them and express a strong desire to stay in care, lose contact with family members,
- get in trouble for running away and end up in the criminal justice system.
- experience significant trauma associated with the abuse they experienced in their family of origin and may continue to experience from the system in their care experience.

In both the United Kingdom and United States there are clearly articulated processes and timeframes for child protection legal proceedings. There is also early involvement of lawyers and legal advice available to the respective Department equivalents. This generally results in identification of the key evidentiary issues for consideration by the decision maker. It does not mean that these systems are perfect, and certainly those lawyers I spoke to in each system all expressed frustrations, but it does give a structure to proceedings to guide participants in how the litigation should be run.

Child protection law is a speciality area of practice that needs professional development. Child protection proceedings in the Children’s Court would benefit from Practice Directions for case management to support the judicial officers doing this important work. Ideally more specialist Magistrates to do this area of work would be eventually recruited and funded. It is very encouraging that the Magistrate’s Court has developed a Children’s Committee. Case Management approaches from the UK and USA could be considered. At local levels we know that Children’s Courts are engaging with community stakeholders in child protection issues through stakeholder groups and this should be encouraged. Models like the Blue Ribbon Commission offer support for this work (refer back to p.45-46).
An example of a litigation process from the Californian Courts is shown below:
BACKGROUND
California Dependency Courts and the Hearing Process

DEPENDENCY COURT
- Decides allegations of abuse and neglect.
- Seeks safety, well-being, and permanence for children and families who come before the court.
- Orders services for every child who enters or leaves foster care, including placement, education, medication, and visitation.
- Is a department of the Superior Court of California in each county.
- Is one of two branches of Juvenile Court; the other is Delinquency Court.

If the court removes a child from the home, the court will:
- Order services for the family to improve the home conditions so the child can return home.
- Ensure that someone has custody of the child and that the child gets the care and structure needed to be safe and protected.

THE HEARING PROCESS
Dependency court judges and officials preside over at least four hearings in the course of an average case. Other hearings are also involved, depending on the nature of the case. The various hearings include:

Initial/Detention Hearing
This hearing takes place after a petition is filed following an investigation by a social worker which indicates the child’s safety is jeopardized. The worker files the petition to declare the child a dependent of the court. If the child is removed from parents or guardians, the hearing takes place the day after the petition is filed. The court must decide if:
- The child can stay safely at home or should live somewhere else temporarily.

Jurisdictional Hearing
If the child is removed, the court must decide within 15 days if the allegations of abuse or neglect are true. The county child welfare agency must prove the allegations are true. If the parents or guardians dispute or contest the allegations, the court holds a trial.

Dispositional Hearing
Within 10 days of the Jurisdictional Hearing, the court must decide what should happen with the child. The judge can:
- Dismiss the case and the child will remain at or return home.
- Let the child live with a parent on “family maintenance,” which means a social worker and the court supervise the child.
- Place the child with a nonoffending parent while offering the offending parent “family reunification” services.
- Remove the child from the parents’ care and place with a relative, foster parent, or group home, while offering the parents “family reunification” services.
- Not order reunification services and set a permanency hearing to determine the most appropriate permanent plan for the child.
The court may decide not to offer the parents family reunification services in a number of circumstances, including:

- The child or a brother or sister has been seriously abused or killed.
- The parent had another child taken away by the court.
- The parents tried family reunification services previously and they were unsuccessful.
- The parents have serious drug problems that are not being treated.

**Six-Month Review Hearing**

The court must review all cases every six months to see:

- How the child is doing.
- How the parents are doing with court-ordered services.
- If the child lives with a parent, the court can:
  1) Dismiss the case.
  2) Keep supervising the child with family maintenance.
- If the child does not live at home, the court can:
  1) Reunify the family while continuing family maintenance services or dismiss the case.
  2) Keep the child in placement and order continued family reunification services.

**Permanency Hearing**

Within 12 months of the date the child enters foster care, there must be a hearing in which the court decides:

- If the child will be able to return home safely in the near future or to continue reunification services for another six months.
- If the court determines the child cannot return home, reunification services will be terminated and a hearing will be set to determine the most appropriate permanent plan for the child, which may be adoption, legal guardianship, or another planned, permanent living arrangement.

**Selection and Implementation Hearing**

- If reunification services have been terminated, a selection and implementation hearing must be held within 120 days. This includes an assessment of whether the child is likely to be adopted and identifies any prospective adoptive parent or guardians.
- At this hearing, the court can terminate parental rights if the child is likely to be adopted.

**Ongoing Review Hearings**

The court must continue to review all open cases at least every six months to monitor the child’s progress and needs. This continues until the child is adopted, legal guardianship is established, or the case is dismissed for some other reason.


7. A Sample of Resources for Judicial Officers

Infant Visiting Checklist for Family Court Judges

Visiting Plan

- What is the current visiting arrangement? (Where? How frequent? How long? Who is present? Level of supervision?)
- Is this visiting plan frequent enough to build attachment between the infant and parent?
- Does this visiting arrangement allow the parent to parent? This includes changing and feeding the infant; learning about the infant’s cries, habits, and growth; and keeping the child safe in real-life situations.
- Was the purpose of visits clearly communicated to the parent (meet the infant’s needs, stimulate the child’s growth and development, communicate love for and enjoyment of the child to the child, ease the toddler’s adjustment to separation)?
- What are the beginning and the end of the visits like (infant’s response, parent’s response, source of this information, possible reasons for assessment if any negative reports, changes over time, efforts to ease the transition)?
- If there are other children living separately from the infant, have sibling visits been set up?

Evolution

- How long has this visiting arrangement been in place? If more than three months, why hasn’t the arrangement progressed? Answers should be child-related (e.g., safety or developmental concerns) or related to the parent’s ability to meet the child’s needs—not punitive (e.g., parent has not followed through with referrals or completed service plan, parent relapsed three months ago).

Permanency

- Is this visiting plan moving the court closer to achieving the permanency goal? Whenever possible, are the visits close to real-life situations that will allow the parent to address real-life parenting challenges?

Parental Participation in Child’s Life

- Is the parent participating in the infant’s medical appointments, early intervention services, and other activities?
- Has attention been paid to arranging visits on birthdays, holidays, anniversaries, and other special occasions that may be important to the child, parent, and family?
- Is mutual communication facilitated between the parent and the foster parent regarding the infant’s habits, routines, behavior, preferences, and development/growth?
Limiting, Suspending, or Terminating Visits

Unless there is imminent risk to the infant's safety or well-being or evidence of visit-based harm, before suspending or limiting visits, consider the following:

▷ What is the basis of this request?

▷ Has adequate time and explanation of attachment building been given to the parent? Has the parent been encouraged to persistently, actively, and patiently build attachment with the infant? Have efforts to slowly wean the foster parent out of the visits been tried?

▷ For parents with substance abuse issues: Has the caseworker or substance abuse counselor discussed the expectations, parameters, and purpose of visits with the parent? Have they discussed relapse prevention to address the difficult underlying issues visits may present?

▷ If due to the parent's inconsistent attendance at visits: What efforts have been made to identify the reasons for irregular attendance? Have there been efforts to engage and support the parent to build an attachment with and parent her/his infant?

▷ If parental ambivalence toward resuming full-time care of the infant is assessed (including cases where the parent has prior termination of parental rights), has a referral for counseling about options been made?

Source:

ENGAGING ADOLESCENTS (AGES 12-15) IN THE COURTROOM

JUDICIAL BENCH CARD

Document court actions

- Document in the court order:
  - If the youth is present, have him identify himself on the record.
  - OR if the youth is not present, address the reasons why the youth is not in attendance.
  - What efforts were made and the accommodations offered to encourage the youth's attendance.
  - Explore and encourage resolution of common reasons for nonattendance, including interference with the school schedule and transportation issues.
  - In the absence of exceptional circumstances, postpone the hearing until the youth can be present.
  - Request a current picture that will be introduced into the record.

Communicate with the youth during the court hearing

- Keep language simple and age appropriate.
- Talk with the youth about his interests, likes, and dislikes.
- If helpful, offer to have a conversation in chambers, making sure it complies with all procedural rules.
- Provide an age-appropriate list of legal terms to the child before court to which he may refer during the hearing.
- Avoid legal jargon and acronyms.
- Encourage the youth to ask questions, particularly if he doesn't understand a question or statement.
- Recognize cultural differences in language.
- Avoid abstract questions.
- Ask directed questions.
- Publicly praise the youth's accomplishments.

Observe the youth's behavior and appearance

- Observe the youth's interaction with caregivers, parents, and guardians.
  - Does the youth look to them for help, support, advice, etc.?
- Observe the youth's physical appearance and health.
  - Is the youth appropriately dressed?
  - Does the youth look well-nourished?
  - Does the youth have appropriate personal hygiene?

Preparations for court attendance

- Ensure that your courtroom is teen friendly.
- Ensure all children are accompanied by a support person at the hearing such as the foster parents, CASA, mentor, coach, or other adult role model.
- Provide the youth with a task (e.g., taking notes) during the hearing.
- Have the agency encourage the youth to submit report cards, letters, or other age-appropriate materials periodically. Refer to anything previously submitted.
- Read anything that the youth gives to the court while the youth is present.
- When appropriate, ask for the youth's input and opinions.
- Review the outcome of the hearing with the youth and answer any questions (or ensure that someone else will do so).
- Ensure the youth understands what was ordered and why.
- When appropriate, share court documents with the youth.
- Ask the youth what he wants to accomplish before the next hearing.
- Consult with the youth and his caregiver when scheduling the next hearing so it does not interfere with the youth's normal daily routine, including school.

1 This bench card was created to assist judges when a child is present in the courtroom. It does not include all the information the judge should require from additional parties, such as a report from the child's therapist about the child's mental health status.

2 The social worker or caregiver can provide the youth with a picture.

3 See Amanda Khosravi, With Me, No With Me: How to Involve Children in Court, Child Law Practitioner, Vol. 20, No. 9 (November 2007).

4 An example of an abstract question is "How well do you get along with your family?"

5 Where do you want to live? What do you like about your home? Do you know why you live away from home? Do you see your mom and dad? What things do you like to do with them? Do you wish you could see them more? For more information about questioning children, see Anne Graham Walker, Handbook on Questioning Children: A Linguistic Perspective (ABA Center on Children and the Law 2d ed. 1999).

Source: Checklists produced by American Bar Association, Center on Children and the Law, Bar-Youth Empowerment Project, National Child Welfare Resource Center on Legal and Judicial Issues
Every Child, Every Hearing

How to Ensure the Daily Well-Being of Children in Foster Care by Enforcing Their Rights

Transitioning a child into adulthood requires constant attention to all aspects of the child, including the child’s physical and mental health, social and cognitive development, and education. It is the responsibility of all court participants to help children who come before the juvenile court with their development and ultimately with their transition into adulthood. Whether you are a parent or guardian, a relative, a foster parent, an Indian custodian, a tribal member, a social worker, a probation officer, a Court Appointed Special Advocate, a mentor, an important individual in the child’s life, an attorney, a teacher, an educational representative, an employer, a doctor, a nurse, a therapist, or a judicial officer—whatever your role, our shared responsibilities are great.

This booklet will assist the court and other interested persons who have this responsibility. It offers key questions (with accompanying citations) that must be asked and followed up on for every child. For children served by the juvenile court, consistent inquiry into these questions is necessary to help transition them back to their home of origin or to another permanent plan when reunification is not possible.

Source: Resource produced by Administrative Office of the Courts – Center for Families, Children and the Courts
RESOURCE GUIDELINES

Improving Court Practice in Child Abuse & Neglect Cases

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
Reno, Nevada
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Children’s Legal Centre:  
http://www.childrenslegalcentre.com/  

Voice:  
http://www.voiceyp.org/ngen_public/default.asp  

National Youth Advocacy Service:  
http://www.nyas.net/  

Children’s Rights:  
http://www.childrensrights.org/  

Child Welfare League of America:  
http://www.cwla.org/  

Child Advocacy Institute San Diego:  
http://www.caichildlaw.org/  

Casey Family Programs San Diego Field Office:  
http://www.casey.org/  

Children’s Law Center of Los Angeles:  
http://www.clcla.org/  

Los Angeles Dependency Lawyers Inc:  
http://www.ladlinc.org/  

Office of the County Council (County of Los Angeles):  
http://counsel.lacounty.gov/  

Judicial Council of California- Administrative Office of the Courts/Center for Families, Children and the Courts:  
http://www.courtinfo.ca.gov/courtadmin/aoc/  
http://www.courtinfo.ca.gov/programs/cfcc/  

Californian Blue Ribbon Commission on Children in Foster Care:  
http://www.courtinfo.ca.gov/jc/tflists/bluerib.htm  

Legal Services for Children San Francisco:  
http://www.lsc-sf.org/  

Youth Law Center:  
http://www.ylc.org/
Berstein, N (2002) *The Lost Children of Wilder: An epic struggle to change foster care*

Boylan & Dalrymple (2009) *Understanding Advocacy for children and young people*
Open University Press

Cashmore and O'Brien (2001) *Children Australia* Vol 26 No. 4