

Part 6: System supporting capacities

**Chapter 18:**

Court clinical services

## Chapter 18: Court clinical services

### Key points

- A statutory clinical service that provides expert advice during child protection proceedings has an important role in assisting vulnerable children and their families, carers and decision-makers to understand the child's health and wellbeing needs during a traumatic time in their lives.
- There is an ongoing need for a statutory clinical service; however the current clinical service model should be reformed. The current governance, quality assurance, structure, statutory processes and location of the Children's Court Clinic does not meet the needs of vulnerable children and their families. In particular, the current model is failing children and families from regional Victoria.
- There are divided views as to the quality of current clinical assessments and the performance of the current Children's Court Clinic, but there is insufficient research or data to support an Inquiry finding on this aspect.
- A newly created statutory clinic should consist of a clinic board of eminently qualified professionals with a range of expertise to coordinate and monitor the provision of future clinical services. The Inquiry considers the new board should determine the most effective arrangements for the delivery of services.
- The ultimate goal is for the new statutory clinical service to undertake a broader role within the statutory child protection system by assisting the Department of Human Services and parents to reach agreement early on proposed interventions by the Department of Human Services without first requiring a court order.
- As an immediate priority a statutory board should be established and responsibility for the current Clinic transferred from the Department of Justice to the Department of Health. The current Clinic should be physically relocated from the Melbourne Children's Court to another location to remove it from a litigious environment to one that is more child and family friendly.
- Under the guidance of the new board, there should be an increase in the level of statutory clinical services provided in rural and regional Victoria either at the child's home or from easily accessible, child-friendly facilities.

### 18.1 Introduction

The Children’s Court of Victoria (the Children’s Court) deals with some of Victoria’s most vulnerable children, both in the Family and Criminal Divisions.

Within the Family Division, the Court’s decision making process is focused on what is in the best interests of the child. Once protection matters reach the Court, very serious decisions may be made, such as whether a child should be removed from their parents, or the setting of contact hours between children and parents. Like any decision which requires the application of clear and distinct rules to complex, changeable and opaque situations, the Court’s decision will be assisted by expert evidence.

The evidence of expert clinicians will often be provided by the parties. However, in considering the best interests of the child, the Court may also wish to seek psychological and psychiatric assessments and advice on the circumstances of the child and their families or carers that are independent of any clinical assessments or evidence provided by the parties. Since 1994, the Children’s Court Clinic (the Clinic), in its current form, has provided this advice to the Court.

This chapter considers whether the current clinic model, as the current system for providing assessments, advice and recommendations to the Court, is the best model for assisting parties to make care decisions that meet the needs of children and young people. The chapter considers comments provided to the Inquiry through consultations and submissions, and the *Review of the Children’s Court Clinic: Report to the Secretary* prepared by Mr Peter Acton (DOJ Report) on behalf of the Department of Justice (DOJ).

### 18.2 Status and structure of the Children’s Court Clinic

The Clinic, which sits within DOJ, is established by section 546(1) of the *Children, Youth and Families Act 2005* (CYF Act). The Clinic has operated in one form or another for over 60 years (Clinic 2010a, p. 4). The Clinic was formally recognised by statute by section 37 of the *Children and Young Persons Act 1989* (CYP Act). At that point, the Clinic was located within the Department of Health (DOH). In 1993 the Clinic was moved into the Protective Services Division of the amalgamated Department of Health and Community Services - now the Department of Human Services (DHS).

Following debate about the positioning of the Clinic within DHS, the Clinic was relocated to the Courts Administration division of DOJ. The Clinic is physically located in the Melbourne Children’s Court, and is funded from the court’s budget (Children’s Court submission no. 2, p. 46). The Clinic operates on a budget of approximately \$1.2 million per annum. The Clinic presents an annual report on their business as an addendum to the Children’s Court annual report.

The Clinic is headed by a Director, who is a Senior Technical (Child Clinical/Forensic) Specialist. The Director oversees the work of three full-time senior clinical psychologists and three drug clinicians. The Clinic also engages approximately 50 private clinicians on a ‘sessional’ basis to assist with case work as necessary (Children’s Court Clinic 2010a, p. 7). The Director reports to the Chief Executive Officer (CEO) of the Magistrates’ Court (who is also, at present, the CEO of the Court). The current organisational structure of the Clinic is set out in Figure 18.1.

Figure 18.1 Children’s Court Clinic: organisational structure



Source: Adapted from Acton 2011, p. 16

### Independent status of the Clinic

The Inquiry notes that the Clinic's work remit is perceived as being activated solely through the jurisdiction of the Court:

The Clinic ... sees its role as working only for the judges and magistrates and not for any party in proceedings before the Court (Children's Court of Victoria 2007, chapter 12.2).

Under section 560(b) of the CYF Act in relation to protection matters in the Family Division, a Clinic report is formally a report from the Secretary of DOJ to the Children's Court and is made on the order of the Court. However, as noted in the DOJ Report, it is not clear from the legislation that the Clinic should be reporting exclusively to the Court, that it be independent of the parties to the proceeding, or whether such independence can only be achieved if the Clinic is part of the Court (Acton 2011, p. 14).

The focus of court processes and clinical services should be on the best interests of the child or young person. The idea that the Clinic must be independent (in the sense that it works only for the Court) assumes that their expert reports are more impartial than those expert reports provided by DHS or families, and is anchored in a traditional, adversarial approach to Family Division court proceedings. The Inquiry notes that a strictly adversarial approach to court processes and clinical services is inconsistent with the new direction for proceedings before the Family Division promoted by the Victorian Law Reform Commission (VLRC) and by key stakeholders including the Court.

In Chapter 15, the Inquiry canvasses a new, less adversarial model for resolving disputes arising from protection applications based on the findings of the VLRC's *Protection Applications in the Children's Court: Final Report 19*. The shift away from court-centred outcomes means a broader role for any clinical service provided as part of the statutory child protection system. For example, in the interests of an early solutions focus, it should not be necessary for parties to first seek a court order to obtain a clinical assessment.

Clinical services provided in the course of protection applications should be directly engaged with DHS and families. Subject to appropriate safeguards, clinic services should be available to assist DHS and families to reach an early resolution of their differences.

Under the new model, clinical services will demonstrate independence through a clear governance structure and by the capacity to provide frank assessments to a requesting party, even where those assessments might be prejudicial to the requesting party's case.

The Inquiry sets out its recommendations regarding the future provision of clinical services at section 18.7. It is not contemplated that a 'user pays' arrangement

would apply for clinical services in the proposed new system nor is it considered appropriate to do so.

### 18.3 Clinic assessments and treatment

The Clinic's functions are stated in section 546(2) of the CYF Act to: make clinical assessments of children; submit reports to courts and other bodies; provide clinical services to children and their families; and carry out any other functions prescribed by regulations. No additional functions are currently prescribed under the Act. The Clinic also offers treatment services in selected cases. The court also describes the Clinic as a teaching facility (Children's Court of Victoria 2010, p. 32).

#### Assessments for the Criminal Division of the Court

In the Criminal Division of the Court, if ordered by the Court under section 571 of the CYF Act, the Clinic provides pre-sentence reports to the Court under section 572 of the Act. The Inquiry understands from its consultation with the Court and the Clinic that the Court does not refer to the section under which it is making a referral to the Clinic in its order. However, the Clinic deems referrals from the Criminal Division as 'assessments' under section 546(2) of the CYF Act. In 2009-10, the Clinic made 337 assessments and in 2010-11, the Clinic made 300 assessments.

Although the Inquiry has received some comments on the role of the Clinic as it relates to the criminal jurisdiction of the Court, the focus of this chapter is the provision of clinical services within the Family Division of the Court. As was noted in the DOJ Report, 'views on the Clinic's contribution to Criminal Division cases are generally positive and criticisms are minor' (Acton 2011, p. 12).

#### Assessments for the Family Division of the Court

The Clinic, through the Secretary of DOJ, provides reports to the Family Division of the Court as an 'additional report' under section 560(b) of the Act. An additional report is provided when a disposition report is required to be provided by the Secretary of DHS under section 557(1) of the CYF Act and the Court is of the opinion that an additional report is necessary to enable it to determine the proceeding.

It is understood, following consultation with the Court and the Clinic, that the Court does not refer to the section under which it is making a referral to the Clinic in its order and that the Clinic deems Family Division referrals as 'assessments' under section 560(b).

In 2009-10 the Clinic made 725 assessments (approximately 7 per cent) from a total 9,915 protection applications before the Family Division and in 2010-11, the Clinic made 613 (approximately 6 per cent) of a total 10,483 protection applications.

As demonstrated in Figure 18.2, the number of Clinic referrals from the Family Division over a 10 year period from 2000-01 to 2010-11 has generally been steady but has decreased in proportion to the total number of applications before the Court.

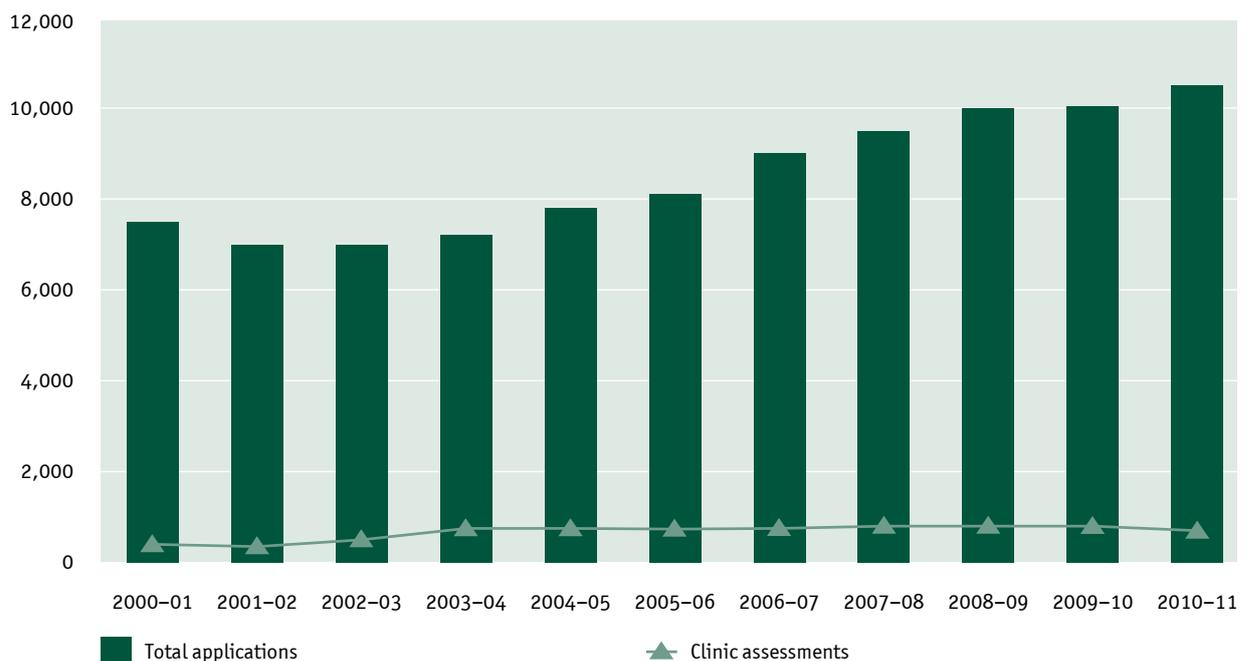
### 18.3.1 The use of clinical assessments in the Family Division

Within the Family Division, clinical assessment of a child will typically include an assessment of his or her parents and family. The purpose of an assessment is to give the Court a more informed view of the child's circumstances, including any factors that may affect their emotional and psychological wellbeing, such as parental drug or alcohol abuse, the presence of any protective factors within the family, the willingness of parents or caregivers to engage in therapeutic intervention, and the relative risk to the child's long-term emotional and psychological wellbeing if she or he is removed from the family home. Assessments may also be used to gauge what degree of contact between a child and his or her parents is in that child's best interests. The Clinic also makes disposition recommendations to the Court and this is considered further in section 18.6.

Section 562(2) of the CYF Act permits the Clinic, if it is of the opinion that information contained in a Clinic report could be prejudicial to the physical or mental health of a child or a parent of the child, to forward a statement to that effect to the Court with the report. Section 562(3) requires the Court to release a copy of the report to the child, the parent, DHS, a party to the proceeding or any other person specified by the Court. However, under section 562(4)(a), the Court may refuse to release all or part of the report to DHS, if satisfied the release of the report could cause significant psychological harm to the child.

The Inquiry notes that the restriction on the release of information was introduced with the CYF Act. The Inquiry is concerned that this provision presumes that DHS' knowledge of a child's assessment could cause psychological harm to a child without any explanation as to its purpose and effect and, that in some way, sharing the knowledge with DHS would not be in the child's best interest. From the extrinsic material attached to the legislation (and its predecessor) it is unclear in what types of circumstances the Court would make a finding that issuing all or part of a report to DHS would cause psychological harm to a child. The Inquiry also understands following consultation with the Court that the Court is not aware of any application having ever been made under section 562(4)(a) at least at the Melbourne Children's Court and at the Moorabbin Children's Court. The Court also noted it is extremely unlikely to make such a determination of its own accord without some form of trigger – such as a statement from the Clinic under section 562(2) of the Act.

**Figure 18.2 Total applications in the Children's Court and Children's Court Clinic assessments, 2000-01 to 2010-11**



Source: Information provided by the Children's Court of Victoria

This provision appears inconsistent with the obligation on DHS under section 8 of the CYF Act to make decisions in accordance with the best interest principles, and particularly when full access by DHS to clinical reports would best assist DHS to fulfil its responsibility under section 8 of the Act. Moreover, this prohibition would be made redundant by the new model for the provision of clinical services that is discussed in in the following sections of this chapter.

#### Recommendation 72

Section 562(4)(a) of the *Children, Youth and Families Act 2005*, which confers a discretion on the Children's Court to not release all or part of a clinical report to the Department of Human Services if satisfied that the release of the report could cause significant psychological harm to a child, should be repealed.

### 18.3.2 Clinical treatment services to children, young people and their families

The Clinic is empowered to provide clinical services to children, young people and their families under section 546(2)(c) of the CYF Act. Where a child or young person is in the Criminal Division of the Children's Court and presents with substance misuse the Court may order the Clinic to provide therapeutic treatment through its Children's Court Clinic Drug Program (CCCDP). This program provides treatment services either in conjunction with the Australian Community Support Organisation or a local community drug treatment agency (Children's Court of Victoria 2007, chapter 12.4.6). In 2009-10 there were 55 referrals to the CCCDP from the Criminal Division (Children's Court Clinic 2010b, p. 1).

The Inquiry notes that in the Family Division the Clinic also provides a short-term treatment service where the Court, on the recommendation of the Clinic, believes it is an appropriate condition of an interim order. This includes treatment services to parents with drug problems (Children's Court of Victoria 2007, chapter 12.3.4) and in 2009-10 there were 45 referrals from the Family Division (Inquiry consultation with Clinic).

### 18.4 Comments to the Inquiry on the Clinic's role

In addition to submissions that were made to the Inquiry on the Clinic, the Inquiry also met with the Director and the Acting Director of the Clinic and the CEO of the Magistrates' Court of Victoria and discussed its role. The Inquiry has also received comments on the Clinic from DHS. Stakeholder perceptions of and experience with the Clinic are varied.

DHS raised the following with the Inquiry:

- The Clinic makes recommendations without consulting DHS. This means that the Clinic sometimes makes assessments that miss crucial information. The processes by which the Clinic accesses and uses relevant information from child protection practitioners and other professionals to inform their assessments and recommendations should be clear and publicly available;
- The Clinic is not perceived as having a consistent approach to assessments and recommendations. A framework that outlines the clinical service approach to assessments and recommendations would assist in addressing this perception. A framework would include guiding principles consistent with the best interest principles outlined by section 10 of the CYF Act;
- The Clinic would benefit from a formal clinical governance structure comprising mental health experts and other experienced professionals who would provide some clinical oversight of the Clinic's work;
- There is currently no formal mechanism to issue a complaint about the professional practice of the Clinic. A formal clinical governance structure could support and oversee a formal complaints mechanism whereby clinical practice by clinicians could be subject to scrutiny and review; and
- The Clinic, being located at the Children's Court, is not an ideal environment for children. Presently, children and families and child protection workers from regional areas are required to travel to Melbourne to participate in assessments as there is little use of local area-based professionals. Clinical services should be flexible and, where appropriate, assess children and families in their home environment.

### Submissions and comments made in Public Sitings

It was also asserted to the Inquiry that the Clinic does not appear to approve of, or accept, permanent care as an option for children and the Clinic often adopts a position that there is a relationship between birth parents and children that should be promoted and preserved notwithstanding the evidence of its destructiveness in some situations (Ms Smith submission, p. 5).

The Victorian Forensic Paediatric Medical Service (VFPMS) contended that reports from the Clinic should be subject to the same level of scrutiny and cross-examination by parties as is the case with other professional reports produced by parties and that magistrates should not be 'quasi-delegating' their decision making to the Clinic in protection matters (VFPMS submission, p. 19).

Berry Street raised concerns about the quality of the information and advice from the Clinic and suggested that Clinic advice was unreliable and often based on a less complete understanding of a child's trauma experiences, circumstances and development than could be obtained from the collaborative input of agencies, the Take Two program and child protection (Berry Street submission, p. 119).

On the other hand, the Inquiry also received favourable feedback on the work of the Clinic. For instance, the Law Institute of Victoria noted the Clinic provided vital support to children and families in the Family Division and recommended the possibility of tasking DHS with sourcing funding for the Clinic and overseeing its maintenance and expansion (Law Institute of Victoria submission, p. 11). Others commended the need for independent mechanisms such as the Clinic to strengthen the more inquisitorial approach needed to get to the heart of a dispute (Mr Noble, Bendigo Public Sitting).

The Court acknowledged the work of the Clinic in providing expert reports and its independence of all the parties involved with the case (Children's Court submission no. 1, p. 6) and noted that the Clinic required additional resources to maintain its ability to provide high-quality services to the Court (Children's Court submission no. 2, p. 46).

### **Inquiry consultation with the Clinic**

At a meeting with the Acting Director of the Clinic and the CEO of the Magistrates' Court of Victoria, it was put to the Inquiry that there have been a number of assertions and anecdotal comments about the Clinic and the quality of its service. These should be evidence based and properly tested. The Inquiry has viewed preliminary independent research commissioned by the Court indicating that the allegation that magistrates are somehow quasi-delegating or adopting Clinic recommendations without independent judicial consideration is unfounded (Children's Court submission no. 2, pp. 45-46).

The Clinic and the Courts Administration Division note that current funding constraints do not allow the Clinic to conduct in-home assessments and provide regional outreach services. This results in traumatised children and their families from regional areas having to travel considerable distances into Melbourne in order to obtain a clinic assessment. This is an aspect of the current clinic model that is of particular concern to the Inquiry as it clearly does not meet the needs of children and young people in regional Victoria, nor does the Inquiry consider that this is in the child's best interests.

The Inquiry also sought and has been assisted by additional materials provided by the Court and DOJ but acknowledges that aside from the DOJ Report, there is little available longitudinal research or commentary on the role and performance of the current Clinic. This means the Inquiry is unable to make any conclusive findings on the quality of current clinical assessments without first undertaking, or having recourse to, a detailed review of Clinic case files and its reports over a period of time.

### **18.5 Review of the Clinic**

Two reviews preceding this Inquiry in 2010 by the Child Protection Proceedings Taskforce and by the VLRC did not comment in detail on the Clinic, but both reports noted a separate internal review was being undertaken by DOJ (Child Protection Proceedings Taskforce 2010, p.18; VLRC 2010, p. 30). The DOJ Report was provided to the Inquiry on 17 October 2011.

The Inquiry highlights the following themes brought to light by the DOJ Report:

- The Clinic provides a service to the Children's Court that is highly regarded by Magistrates but contentious among others;
- There are several opportunities for the Clinic to adopt best practice in relation to governance, management and service delivery;
- The Clinic's role needs to be aligned with the new directions for conflict resolution identified by the VLRC;
- In the short term, the Clinic should not (organisationally) continue to be located within the Courts Administration Division but in the first instance become an independent unit within DOJ in the same way as the Office of the Public Advocate;
- In the short term, the Clinic should come under the direction of a board that includes at least one appropriately qualified psychiatrist and one psychologist;
- In the longer term, the Clinic could build formal arrangements with universities or teaching institutions for sharing resources and promoting research-based knowledge transfer and better peer group interaction with a view to the Clinic being incorporated into the academic faculty of a leading university. The Clinic's board could then be part of that larger peer organisation's board or council and could sit as a sub-committee;
- The Clinic could align with the Victorian Institute of Forensic Medicine and other forensic organisations such as Forensicare to strengthen its research collaborations and professional development but also to establish a comprehensive centre of forensic excellence in Victoria;

- The appointment responsibility of sessional experts for the Clinic should come under the Clinic board and there should be a board committee including external experts that define appropriate tests and protocols for selecting sessional experts;
- The current fee scale of \$44 per hour for sessional experts is significantly lower than that paid in the New South Wales (NSW) Children's Court Clinic (at \$130 per hour) and in other types of services such as for Medicare (at \$206 per hour) and Transport Accident Compensation or WorkCover assessments (at \$175 per hour);
- The Clinic board should either formalise a process for complaints to be directed to the Health Services Commissioner or other appropriate body, or establish its own complaints process involving a panel of respected professionals not connected with the Clinic;
- The Clinic lacks formal training and induction processes for clinical staff and sessional providers about assessment practices and should introduce a formal program including formal guidelines or a handbook;
- Clinical services should be involved early in the dispute resolution process. Consistent with the principles outlined by the VLRC for child-centred, agreement-focused outcomes at court, the Clinic should contribute its expertise earlier in the process, should make its assessment available to all parties, and except as agreed between the parties/their representatives, DHS should be empowered to release Clinic assessments to carers and to other organisations associated with case management;
- With the guidance of the Clinic board and subject to stringent recruitment criteria, clinical services should operate from four or five important centres from regional Victoria and recruit a number of clinicians in each area on a part-time basis to carry out at least 80 per cent of assessments expected from those regions; and
- The Clinic should be physically relocated from the Melbourne Children's Court to another location, preferably with access to parkland or playgrounds, or share premises with another facility that already provides an enjoyable and safe environment for children.

The Inquiry also considered comments in response to the DOJ Report from the Children's Court Clinic. While the Clinic disagreed with certain findings in, and the research methodology of the DOJ Report, the Clinic agreed that:

- A new governance board was required;

- It needed more funding to provide quality clinical services in regional Victoria; and
- There was the need to review the current salary and payment schedules for Clinic staff and sessional providers (Inquiry Children's Court Clinic consultation).

### Independent expert advice

When making far-reaching decisions that affect a child or young person and their families, it is appropriate for the Court to have recourse to independent sources of expert advice in order to assist the Court to determine what is in the best interests of the child. Indeed, no submissions to the Inquiry argued for the abolition of court clinical services, or that the Court should rely only on expert evidence provided by the parties to a protection matter.

The Inquiry considers the ability of the parties to access an independent service that provides expert clinical assessments would help avoid lengthy contested disputes between protective interveners and families over expert evidence called on behalf of each party during court proceedings and further damage relationships in an already tense environment. A clinical service that is accessible to the Court, as well as to DHS and families, is consistent with a problem solving and less adversarial approach to resolving protection matters. A clinical service should also assist the Court to work with parties to address the child or young person's needs. However, as discussed next, this does not mean acting as a 'third advocate' to the proceedings.

## 18.6 Disposition recommendations by the Clinic

Section 557 of the CYF Act requires DHS to provide a 'disposition report' to the Court under certain circumstances set out in that section. A disposition report is an outline of what one party thinks the Court should order, and what would happen under such an order. For example, a DHS disposition report might include recommendations concerning the order that DHS believes the Court should make, a draft case plan, and an outline of the sorts of services that DHS would provide to the child and their family.

Under section 560(b) of the CYF Act, in any proceeding where a DHS disposition report is required, the Court can order the preparation and submission of an 'additional report', including a report from the Clinic through the Secretary of DOJ. While the Act (and its predecessor) does not specify what matters this additional report should address, consultation with the Court and the Clinic would suggest that as a matter of practice, section 560(b) is also used by the Clinic to make disposition recommendations and the Clinic almost always makes disposition recommendations in reports to the Family Division.

Currently, the Clinic makes disposition recommendations to the Court. According to the Children's Court, the recommendations in the report will be discussed with the child's legal representative and DHS, if the recommendation made is one that would involve DHS. In making the recommendations, the Clinic maintains the right to offer opinions to the Court that differ from those of the other parties/agencies (Children's Court of Victoria 2007, chapter 12.3.3).

However, the Inquiry queries the ability of the Clinic to make well-informed disposition recommendations due to the current resource constraints preventing clinicians from conducting in-home assessments and spending as much time with the family and the child as DHS workers when preparing their assessments. Further, as is noted in the DOJ Report, the Clinic may be dealing with families and children who may have travelled some distance to be assessed and their behaviour on the day may be atypical (Acton 2011, p. 10).

The Inquiry considers that the provision of disposition reports to the Court by the Clinic is an inappropriate practice. This is because reports from the Clinic are, formally, reports from the Secretary of DOJ to the Court. This means that the Court is hearing what DHS considers is in the best interests of the child, what the parent(s) believe is in the best interests of the child and what, in effect, DOJ considers is in the best interests of the child. In this situation there are two agencies of the State working under the CYF Act to meet the needs of a child or young person, yet potentially providing conflicting views on those needs to the Court. This is an untenable arrangement and perpetuates nothing more than an artificial concept of independence that has led to some of the more questionable practices by the Clinic in an effort to reinforce its independence of the parties. The system should be simpler.

It is properly up to the parties or to the Court or the Victorian Civil and Administrative Tribunal (VCAT), based on the parties' involvement with the child, or on the court or tribunal's independent decision-making, to decide what outcomes would be in the child's best interest. These decisions are taken using various sources of information, which may include Clinic assessments.

In the statutory child protection system, clinical services should be focused on the Clinic's observations of the child, the interactions between the child and his or her family or caregivers, and should include any historical information provided by the parties that may assist the Clinic in making its observations.

The Inquiry considers that involving clinical services in disposition recommendations creates the perception that the clinical service is involved in the substance of the litigation. An independent clinical service should not make disposition reports.

### Victorian Medical Panels

The Inquiry considers the Medical Panels assessments process under the *Wrongs Act 1958* as instructive. Under the *Wrongs Act*, a specialist medical panel is convened to determine whether a claimant's degree of impairment (either physical or psychiatric) meets a statutory threshold for impairment set under that Act. A Medical Panel does not make a recommendation on damages or recommendations on future treatment of the claimant or what the claimant should be doing to improve their current condition. The statutory threshold determines eligibility for damages and a court decides what damages are appropriate. The *Wrongs Act* specifies the use of the *American Medical Association Guide to Permanent Impairment (Fourth Edition)* by the Medical Panel to assist parties understand how Medical Panels assessments are undertaken.

### Recommendation 73

*The Children, Youth and Families Act 2005* should be amended to:

- Empower the clinical service provider to provide a report at the request of the Children's Court, or at the request of the Victorian Civil and Administrative Tribunal, or at the request of the parties to the proceedings;
- Prohibit the clinical service provider from making any disposition recommendations in its report;
- Enable the Department of Human Services to release clinic reports to carers or case managers who have a direct involvement with the child or young person subject to appropriate safeguards around the use and dissemination of those reports; and
- Require a clinical assessment to take into account information provided to the clinical assessor by the parties, particularly where the clinical assessor is unable to assess the child, young person or the family within their home environment.

## 18.7 A new child-friendly model of court clinical services

The Inquiry is unable to comment on the quality and practice of current clinical assessments due to an inability to examine this matter within the Inquiry's reporting timeframe. However, the DOJ Report reiterates some of the concerns expressed by DHS to the Inquiry, which includes a lack of formal assessment protocols and guidelines, and a lack of formal training and induction programs for new staff and sessional assessors. The DOJ Report observed that these practices are not in keeping with peer bodies such as the NSW Children's Court Clinic, the Victorian Mental Health Review Board or Forensicare (Acton 2011, pp. 35-36).

The Inquiry has confined its consideration to whether the current Clinic model is the most contemporary and most suitable model for the provision of independent expert advice to the Court and to the parties to protection applications. Based on the views and material put to the Inquiry, and in light of the Inquiry's proposals for a new system for early dispute resolution of protection applications as outlined in Chapter 15, the Inquiry considers that the current Clinic model, both in its legislative and administrative setting, is not the optimal model for providing children, families, protective interveners and the Children's Court with independent expert advice.

The Inquiry, with the benefit of reviewing the DOJ Report, agrees with that report's findings at least with respect to the deficiencies to be addressed in the short term. Some of these matters have also been identified to the Inquiry by the Clinic and by the Children's Court. As a result, the following areas for reform should be prioritised:

- Reforming the current structure and governance model for the Clinic including the removal of the Clinic from the Courts Administration Division of DOJ;
- Facilitating greater provision of clinical assessment services for children and families in outer metropolitan Melbourne and in regional Victoria;
- Increasing remuneration rates for the current pool of sessional clinicians and permanent clinical staff and considering other ways in which to expand the pool of experts available to assist children and families, particularly in regional Victoria;
- Physically re-locating the Clinic away from the Melbourne Children's Court building, having regard to other organisations or buildings with existing child-friendly spaces and facilities; and
- Implementing formal assessment protocols, guidelines in the form of a practice handbook and formal training programs for clinical staff and sessional assessors.

It is critical that a framework that would uphold the quality of service provided to the parties and the courts in the statutory child protection system is established. This requires a strong level of clinical service oversight and direction based on the most contemporary professional standards. This necessitates the provision of professional peer review and some form of clinic assessors' accreditation process that requires staff and assessors to undertake continuing professional development.

From its meeting with the CEO of the Magistrates' Court and the Clinic, the Inquiry understands that planning is underway to address some of the concerns, particularly regarding governance and oversight and the appointment of sessional assessors with the development of a business plan. The Inquiry has also been advised by DOJ that it is proposed to remove the current Clinic from the Courts Administration Division of the department and to amalgamate the Clinic with two other business units under a new Forensic Health Services Unit. This new unit will be headed by a Director and will comprise the current Clinic, the current Justice Health Unit and the National Coronial Information System.

In view of the broader role the Inquiry conceives for a new statutory clinical service, the Inquiry does not support the continued placement of the current Clinic within DOJ and considers that the government should first address the options put forward in this Report.

The Inquiry has identified the following options for improving the current Clinic model:

- Abolish the Clinic and, in the short term, establish a statutory Clinic board which oversees a clinical unit within DOH. In the medium to long term, retain the board but abolish the Clinic as an administrative unit within government. The role of the board will be to:
  - engage suitable external service providers to provide clinical services to the Children's Court consistent with contemporary standards of clinical practice;
  - ensure appropriate clinical services are available throughout Victoria; and
  - support the development of a range of suitable service providers across Victoria.
- Abolish the Clinic as an administrative unit within government but re-establish a similar model of clinical services provision within an independent institution such as a teaching hospital or university and subject to clear governance arrangements (as contemplated by the DOJ Report); and
- Abolish the Clinic model altogether and establish a recognised panel from existing service providers that can be called upon by the Children's Court, or by the parties, depending on the type of expertise and assessments required.

These options are discussed below.

### **18.7.1 Option 1: Abolish the current Clinic and re-establish as an administrative unit within the Department of Health**

Under this option, which would broadly resemble the model of clinical service delivery in NSW, the Clinic and its staff would be relocated as a business unit within DOH. Ministerial responsibility for the provision of clinical services in the statutory child protection system would be transferred from the Attorney-General to the Minister for Health. The Clinic would be headed by a director who reports to the Secretary of DOH. However, specialist oversight of, and directions for the Clinic, its appointment processes, the performance of its statutory functions and the quality of its assessments would lie with an independent statutory Clinic board as contemplated by the DOJ Report (Acton 2011, pp. 17-18). The Inquiry considers that a multidisciplinary board must consist of eminently qualified professionals with expertise in: infant, child and adolescent physical and mental health; child abuse and neglect and trauma; children's law; youth justice; and public administration and management. The clinic would retain permanent clinicians and use external sessional clinicians in accordance with protocols established by the board. The sessional clinicians will be based throughout the state and be available, where possible, to assess children and young people closer to that child or young person's location.

The Inquiry sees a broader role for a Clinic within the realigned court processes outlined in Chapter 15. The Clinic would provide services not only to the court but also to the parties. Pre-court or pre-tribunal clinical assessments should be provided to the child (or their representative as appropriate), DHS, the parents and any other non-party who has a relevant interest in the child's safety and wellbeing. To ensure a degree of structure around the commissioning of reports, consideration should be given to allowing a clinic assessment to be requested by DHS or by one or both parents or primary caregivers who are a party to the proceedings. This could happen prior to, or during a Child Safety Conference, where parties believe a clinic assessment would help resolve conditions around intervention and care planning. The Clinic would retain its statutory functions with respect to supporting the Criminal Division of the Court.

As the Clinic would retain its statutory ability and authority to provide reports to the Court or VCAT at the request of those bodies and retain its independence, as discussed in section 18.2, there is no reason why the integrity of Clinic reports provided at an earlier stage of the application process should be called into question. Indeed, it would be expected that the earlier use of Clinic reports will further reduce the number of matters that ultimately proceed to contest.

The Inquiry acknowledges, however, that with an expanded role, there will be demand pressure on the clinical service providers to meet the requirements of the Children's Court, VCAT and the parties to the proceedings. The concern is the potential for delays in protection proceedings due to a lack of clinical services. The Inquiry considers that in circumstances of high demand, where clinical resources are to be prioritised, the Children's Court and VCAT should be accorded a higher priority for clinical assessments and services.

Further, the Inquiry considers that appropriate protection is required against potential misuse of clinical resources by parties in order to delay or otherwise frustrate child protection proceedings. The Inquiry considers that a key aspect of the oversight and governance function of the board would be to monitor and intervene where necessary to protect against the misuse of clinical services. These are matters that should also be addressed in the formal guidelines or handbook that should be published as stated earlier in this section.

The Inquiry considers that the transfer of the Clinic from DOJ to DOH would be an improvement on the current system for the following reasons:

- The relocation of the Clinic from DOJ to DOH would bring a degree of independence to its involvement and would satisfy the concerns of stakeholders' – it would not be relocated to DHS, it would not be perceived as being too closely aligned to the Children's Court, and it would reflect a service being provided by health professionals not just in support of the Court but to the parties within the statutory child protection system;
- The direction and role of the Clinic would be more easily adaptable to any future policy changes in the statutory child protection system; and
- Historical and current data collected by the Clinic would remain easily accessible by the government and, where appropriate, the new Commission for Children and Young People and should be used to inform future reforms.

However, the Inquiry considers that this option means that the State, which is responsible for intervening in a child and their family's life, will continue to be responsible for providing day-to-day clinical assessments that may determine the outcome of a protection application. Although the future clinic will not make disposition recommendations, its assessments would amount to a service provided by DOH to the Court and now, under the processes proposed in Chapter 15, also directly to all parties to the application.

The maintenance of a unit within DOH also means two reporting lines for the Clinic, on operational matters to the Secretary of DOH and on policies and practices to the statutory board. Further, there is likely to be some overlap between the DOH governance structure and the statutory board on issues such as handling complaints or disciplinary matters. In the long term, this option is not the Inquiry's preferred option for an independent clinical service provider. The Inquiry's long-term option is canvassed in Option 3.

### **18.7.2 Option 2: Abolish the Clinic as an administrative unit within government and re-establish as a separate statutory entity**

Under this option the Clinic would be constituted by a statutory board supported by a secretariat of clinical and administrative staff but attached to a paediatric teaching hospital or university with established expertise in child health and clinical practice. The Clinic secretariat could draw in staff on a permanent or rotational basis, including graduate students. Even though the entity would be located within that organisation, staffing arrangements should include local area-based or accessible sessional assessors for outer metropolitan and regional locations. The Clinic would also retain its statutory functions with respect to supporting the Criminal Division of the Children's Court.

#### **Organisational relocation of the New South Wales Clinic**

In 2008 the *Report by the Special Commission of Inquiry Into Child Protection In New South Wales* (the Wood Inquiry) made the following key recommendation concerning the New South Wales (NSW) Children's Court Clinic:

- That there should be a feasibility study into the transfer of the Clinic [from the Department of Attorney-General and Justice (DAGJ)] to NSW Justice Health that should also investigate ... an extension of the matters dealt with in current assessments so as to provide greater assistance in case management decisions (Special Commission of Inquiry into Child Protection Services in NSW 2008, p. 462).

The Wood Inquiry also made the following findings:

- The work of the Clinic should be expanded to assist caseworkers' decision making and be used as a basis for discussion between the parties which may result in matters being finalised without a court order (Special Commission of Inquiry into Child Protection Services in NSW 2008, pp. 455-456); and
- That the NSW Children's Court should advise parties when a Clinic report is received and the Court should be empowered to release a copy to a person who is not a party to the proceeding but nevertheless had an interest in the safety and wellbeing of the child or young person (Special Commission of Inquiry into Child Protection Services in NSW 2008, p. 457).

In early 2011, due to the changes of the structure of NSW Health with the formation of Local Health Districts, the NSW Government reviewed the operational location of the NSW Clinic. Following discussions between NSW Health and Sydney Children's Hospital Network (SCHN) it was agreed that the Clinic would be administratively located within the SCHN when transferred from the DAGJ to NSW Health.

While it is understood that the NSW Government's consideration of the Wood recommendation initially raised considerable anxiety for staff at the Clinic, particularly as NSW Justice Health dealt with the assessment and treatment of prisoners and those recently released from prison, the proposed move to the health portfolio through the SCHN addressed some of that anxiety. The Inquiry understands that access by clinical staff to like-minded professionals within the SCHN was viewed by the NSW Government as a positive outcome.

The new arrangements took effect on 1 July 2011 when responsibility for the Clinic was transferred from the Attorney-General's portfolio to the Minister for Health.

A critical advantage of this option is that it would allow an ongoing dialogue between clinicians and related professionals to ensure contemporary professional knowledge and standards are maintained. Further, it would allow Clinic staff to engage with broader research work undertaken at the facility. It would also enable a system of peer reviews to be undertaken between the clinical body and other members of the teaching hospital or university and facilitate the accreditation of assessors. In turn, assessors would be able to undertake continuing professional development courses to maintain accreditation. This option was recommended in the DOJ Report (Acton 2011, p. 19).

The Inquiry considered this to be a strong model for the provision of future clinical services in the long term. However, the disadvantage of this model is that the Clinic would be tied to one organisation and may not have the benefit of accessing a range of knowledge, viewpoints or practice cultures that might be offered through a range of providers or expert bodies.

### ***18.7.3 Option 3: Abolish a single clinic service model and establish a statutory clinical board that would oversee service provision by a panel of providers***

Under this option the Clinic would be constituted by a statutory board supported administratively by DOH. The legislation will provide the structure and process for the board to enter into services tender arrangements with established and respected service providers depending on the treatment or assessment required to meet the particular needs of the child or the family. The board would be responsible for determining the direction of, and monitoring the quality of, services. It would have regard to the expertise offered by the service providers and their ability to meet the needs of children and families in outer metropolitan and regional Victoria.

As it is contemplated that there may be more than one clinical service provider under this option, consideration would need to be given to ensuring that the authorised service provider or providers are capable of providing the necessary expert clinical assessments to the Criminal Division of the Court. The board would need to consider specific arrangements in consultation with the Court to ensure that the service model is appropriate for that jurisdiction.

In the long term, the Inquiry prefers this option as its model for the provision of clinical services within the statutory child protection system. The Inquiry considers this model to offer the following benefits:

- Clinical assessments are provided by organisations and individual practitioners whose professional focus is children's health services;
- The responsibility for sourcing clinical assessors will lie with organisations external to the State, and subject to the qualification and appointment criteria overseen by an independent statutory board;
- There should be greater opportunity for developing the flexibility and capacity for the provision of in-home clinical services and consistent services to all parts of Victoria; and
- The availability of a broader range of practice experience, expanded knowledge and research base, and exposure to peer review, than would be available under a single Clinic model.

To ensure there is consistency in conducting assessments and meeting the needs of the parties and the Court in the statutory child protection system, the Board would be responsible for developing and publishing guidelines, directions, and assessment criteria in consultation with the Children's Court and DHS. Further, the board would be responsible for monitoring authorised service providers' performance against the guidelines and criteria and would be responsible for determining complaints against individual practitioners or organisations.

#### **Recommendation 74**

The scope, governance and oversight of the provision of clinical services in the statutory child protection system should be reformed:

- As an immediate priority, the current Children's Court Clinic should be abolished and re-established as an administrative unit within the Department of Health; and
- In the medium to long term, the administrative unit should be replaced by a statutory clinical services board that will oversee service provision by a panel of providers. The parties to protection applications or the Children's Court or the Victorian Civil and Administrative Tribunal, should be able to use a panel clinical service provider to provide a clinic report.

### **Recommendation 75**

The Government should implement the following legislative and administrative changes to support the recommended reform of clinical services.

#### ***Scope and governance***

The *Children, Youth and Families Act 2005* should be amended to:

- Set out the new statutory board's and clinical service provider's objectives and tying these objectives, where appropriate, to the best interest principles in the Act;
- Define the type of clinical services to be provided within the statutory child protection system and the services to be provided within the criminal justice system; and
- Require the statutory board to publish an annual report.

#### ***Clinic access and environment in the immediate term***

- The administrative unit should be relocated from the Children's Court but the Government should ensure the Court still has access to on-site counselling and support services to deal with children, youth, and families who may be experiencing acute stress in the court environment; and
- Clinical services should be decentralised as a priority to ensure the needs of children, young people and their families are met across Victoria, as outlined in the 2011 report on the Children's Court Clinic prepared for the Department of Justice.

#### ***Resourcing of the Clinic in the immediate term***

- The administrative unit should be resourced to: expand the current pool of assessors available to the Clinic; provide the proper level of remuneration to both permanent and sessional Clinicians commensurate with their professional expertise; implement the process and quality assurance reforms as recommended in the 2011 report on the Children's Court Clinic prepared for the Department of Justice; and provide therapeutic treatment services, where appropriate, for children, young people and their families by agreement of the parties, or at the request of the Court, or the Victorian Civil and Administrative Tribunal; and
- The Government should, in consultation with the new statutory board, ensure the new administrative unit is properly funded and resourced to provide the necessary services to meet its statutory objectives with a view to establishing a panel of clinical service providers in the medium to long term.

## **18.8 Conclusion**

There is an urgent need to reform the current model for the provision of clinical services to the Children's Court. The Inquiry considers the changes are required to create robust governance and clinical structures to support high-quality assessments to assist vulnerable children and their families, carers and decision-makers to understand the child's health and wellbeing needs during protective proceedings.

The reforms proposed will take place in a system realigned to meet the needs of children in statutory intervention and protection proceedings before the Children's Court and VCAT as contemplated in Chapter 15. Reforming the structure, services, accessibility, governance and oversight of future clinical services is another step in strengthening Victoria efforts to protect vulnerable children.