

Child Protection in Selected Overseas Places

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Executive Summary

1. This report studies the child protection policies and measures in three selected overseas places, namely England in the United Kingdom (UK), the Province of Ontario (Ontario) in Canada and the State of New South Wales (NSW) in Australia.
2. In England, where the government has been carrying out a systemic reform of children's services in recent years, the guiding principles for child protection policies and measures are set out in the *Children Act 2004*, which has been the legislative spine for the reform. Under the reform, all children's services are provided by Children's Trusts, which are decentralized partnership arrangements led by the Children's Services Authority of each of the 150 local areas in England to deliver integrated services to children in need. Each Children's Services Authority is statutorily required to co-operate with non-governmental organizations (NGOs) to form and operate its Children's Trust. The government has established the statutory Children's Commissioner for England to promote awareness of the views and interests of children. The Commissioner can initiate an inquiry into a case of an individual child that raises issues of public policy relevant to children, and has power to summon people to give evidence or produce documents. Children are allowed to have legal representation in family proceedings, subject to the court's authorization.
3. In Ontario, where the government has been carrying out a Child Welfare Transformation Agenda since 2005, the guiding principles for child protection policies and measures are set out in the *Child and Family Services Act*. Ontario is the only selected place where child protection services are provided exclusively by local, government-funded and non-profit-making Children's Aid Societies in their territorial jurisdictions. Ontario has no authority independent of the government to safeguard children's rights. The Ontario Parliament has been considering a legislative proposal to establish the Provincial Advocate for Children and Youth, who would be an Officer of the Legislative Assembly accountable to the Ontario Parliament instead of the Ontario government. The Advocate would have a wide range of functions, such as receiving and responding to complaints made regarding children's rights, but cannot summon people to give evidence or produce documents. Children are allowed to have legal representation in child protection proceedings.

4. In NSW where the child protection system has been undergoing reform for more than 10 years, the guiding principles for child protection services are set out in the *Children and Young Persons (Care and Protection) Act*. The Department of Community Services of the NSW government, the largest child protection agency in Australia, has the lead responsibility in providing care and protection services for children and youth. It is also statutorily required to promote partnership with NGOs in child protection. NSW has a statutory Commissioner for Children and Young People to promote the overall safety, welfare and well-being of children, and conduct inquiries into issues affecting children. However, the Commissioner has no power to summon people to give evidence or produce documents. NSW is the only selected place where the legislature has a statutory committee to monitor and review certain matters relating to child protection, including the functions exercised by the Commissioner for Children and Young People. Children are allowed to have legal representation in the Children's Court.
5. The Analysis chapter compares the main features of child protection policies and measures in the three selected places and Hong Kong.

Child Protection in Selected Overseas Places

Chapter 1 – Introduction

1.1 Background

1.1.1 At the meeting of the Panel on Welfare Services on 29 June 2006, the Panel requested the Research and Library Services Division to conduct a research on the child protection policies and measures in overseas places to facilitate Members' discussion on the situation in Hong Kong.

1.2 Scope of research

1.2.1 This study covers the child protection policies and measures in:

- (a) England in the United Kingdom (UK);
- (b) the Province of Ontario in Canada; and
- (c) the State of New South Wales (NSW) in Australia.

1.2.2 England is chosen because, following the death of a child abused and murdered by her carers in 2000, the UK government has launched a comprehensive system overhaul with the intention of creating clearer accountability for children's services and safeguarding children. Unlike Hong Kong, England has a Children's Commissioner responsible for promoting public awareness of the views and interests of children. The Commissioner is independent of the government and has power to initiate inquiries into child abuse and neglect cases.

1.2.3 Ontario is chosen because it has children's services provided exclusively by local non-profit-making children's aid organizations instead of a government agency. Meanwhile, the Province has established the Ministry of Children and Youth Services to fulfil its commitment to child protection. New legislation has also been enacted in recent years to improve the child protection system, especially for vulnerable children.

1.2.4 NSW is chosen because the State, with a population comparable to that of Hong Kong, has the largest child protection agency in Australia. Since 2002, the State government has allocated an extra AUS\$1.2 billion (HK\$6.9 billion) to improve its services to children, young people and families, focusing on the prevention of and early intervention in child abuse, and out-of-home care for children.

1.2.5 The child protection policies and measures in the selected overseas places are examined in the following aspects:

- (a) legal framework, guiding principles and policy framework for child protection;
- (b) mode of provision of child protection services, including the respective roles of the government and non-governmental organizations (NGOs) as well as their relationship in the planning and delivery of such services;
- (c) government intervention strategies;
- (d) measures for supporting children in various age groups and their families;
- (e) funding for child protection measures;
- (f) legal representation of children in court; and
- (g) mechanisms for monitoring and reviewing the implementation of child protection measures, including whether authorities independent of the government are in place to safeguard children's rights.

1.3 Research method

1.3.1 This study adopts a desk research method, which involves Internet research, literature review, documentation analysis and correspondence with the relevant authorities.

Chapter 2 – England in the United Kingdom

2.1 Background

2.1.1 The UK government has been initiating major changes in child protection policies for England in recent years. The policy changes were mainly driven by the death of an eight-year-old girl in England, Victoria Climbié, who was recorded to have no fewer than 128 separate injuries to her body, after being abused and tortured by her carers in February 2000.

2.1.2 In January 2001, after the carers of Victoria Climbié were convicted of murder and sentenced to life imprisonment, the UK government appointed Lord Laming to conduct three statutory inquiries into the girl's death (collectively known as the Victoria Climbié Inquiry). Lord Laming's Report of the Inquiry, published in January 2003, attributed the girl's death to a "lack of good practice" within and among social services, the health agencies and the police; a "gross failure" of the child protection system; "widespread organizational malaise"; and "ineffective and inept management" in England.¹ The Report pointed out that "it is neither practical nor desirable to try to separate the support services for children and families from that of the service designed to investigate and protect children from deliberate harm". In addition, it indicated that "it is for the central government to make key decisions on overall policy, legislation and the funding of services", but "it is unrealistic for service delivery to be managed centrally". It therefore recommended a fundamental change in the way that services to support children and families were organized and managed in England, with the "local authorities with responsibilities for social services" being empowered to facilitate inter-agency co-operation and integration of key services to children, young people and their families.² In response, the UK government accepted almost all the recommendations in the Report.³

¹ Lord Laming (2003), pp. 3-13.

² Lord Laming (2003), pp. 7-8. The Report called for a new management and accountability structure which should be: (a) child and family centred; (b) responsive to local needs and opportunities; (c) adequately resourced; (d) capable of delivering an agreed set of measurable, national outcomes for children; (e) clear in its accountability arrangements; (f) transparent in its work and open to scrutiny; (g) clear and straightforward to understand; and (h) placed on a statutory footing, with the powers to deliver the desired outcomes.

³ Department for Education and Skills et al. (2003), pp. 28-66.

2.1.3 In September 2003, the UK government published the *Every Child Matters (ECM)* Green Paper for public consultation in England. The framework set out in ECM is regarded as "the biggest reform of child welfare services in England for 30 years"⁴, with children and young people from birth to 19 living in England being the primary targets of the reform. In line with Lord Laming's calling for an integration of child protection services and other support services for children and families, ECM does not focus on child protection services solely; it also covers services relating to child welfare. Accordingly, ECM aims to reduce the numbers of not only children and young people who are the victims of abuse and neglect but also those who experience educational failure, suffer ill health, become pregnant as teenagers, or engage in offending or anti-social behaviour.⁵ ECM focuses its actions not merely on early intervention and effective protection but also on three other areas, namely supporting parents and carers, reform of accountability structure and integration of services at the local, regional and national levels, and workforce reform⁶, with the key services involved requiring new legislation.

2.1.4 The legislative commitments in ECM were taken forward through the *Children Act 2004* introduced in March 2004 and enacted in November 2004. Published alongside the Act, the government paper based on the public consultation results on ECM, *Every Child Matters: Next Steps*, emphasizes that the implementation of ECM requires a "whole system change". The change would involve "a new relationship between Government and its partners and between those partners and children, young people, families and their communities".⁷ The key aspects of change are laid down in *Every Child Matters: Change for Children* published in December 2004. The UK government has been undertaking further thinking and consultation about the reforms of structure and provision of children's services in England, and most of the new measures are expected to be in place by 2008.

2.1.5 The UK government has strengthened its focus on services for children, young people and their families at the national level by appointing the first Minister for Children, Young People and Families in June 2003. The Minister heads the newly created Children, Young People and Families Directorate (CYPFD), the staff of which are transferred from the Department of Health, Home Office and Lord Chancellor's Department. The Minister and CYPFD are under the Department for Education and Skills (DfES) led by a Cabinet member, the Secretary of State for Education and Skills.

2.1.6 In England, the number of children and young people placed on child protection registers increased from 26 840 in 2000-2001 to 30 700 in 2004-2005.⁸

⁴ Department for Education and Skills (2006h).

⁵ *Every Child Matters* (2003), p. 13.

⁶ The UK Government is developing a workforce strategy to improve the skills and effectiveness of the children's workforce and make working with children a more attractive career option.

⁷ Department for Education and Skills (2004a), p. 28.

⁸ National Statistics Office (2006).

2.2 Legal framework

2.2.1 The *Children Act 2004* is "the legislative spine" on which the UK government builds the reforms of services for children, young people and their families in England, including child protection services, envisaged in ECM.⁹ Besides making arrangements for children or young people who need protection, the Act aims to create:¹⁰

- (a) clear and shared outcomes across services for children, young people and their families embedded in legislation;
- (b) partnership arrangements to ensure public, private, voluntary and community organizations work together to improve such outcomes;
- (c) a tighter focus on local arrangements for services for children, young people and their families;
- (d) clear accountability for services for children, young people and their families;
- (e) a legislative basis for practitioners to share information relating to children and young people;
- (f) a new integrated inspection framework to ensure services are judged on how they work together effectively to achieve better outcomes; and
- (g) a Children Commissioner to promote the interests of children and young people.

⁹ Department for Education and Skills (2004b), p. 5.

¹⁰ Department for Education and Skills (2004a), pp. 13-14.

2.3 Guiding principles

2.3.1 In England, the reform of child protection services, which are considered as inseparable from other support services for children, young people and their families, are guided by five inter-dependent outcomes, of which child protection is an element. Such outcomes are identified by ECM as being essential to the "well-being" of children and young people. They are:¹¹

- (a) "Be healthy", i.e. enjoying good physical and mental health, and living a healthy lifestyle;
- (b) "*Stay safe*", i.e. being protected from harm and neglect and able to look after themselves growing up;
- (c) "Enjoy and achieve", i.e. getting the most out of life and developing broad skills for adulthood;
- (d) "Make a positive contribution", i.e. contributing to the community and society, and not engaging in anti-social or offending behaviour; and
- (e) "Achieve economic well-being", i.e. overcoming socio-economic disadvantages to achieve their full potential in life.

2.3.2 These five outcomes, confirmed by the public consultation results,¹² are given legal force by the *Children Act 2004*, which states that the "well-being" of children comprises:¹³

- (a) physical and mental health, and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) contribution made by them to society; and
- (e) social and economic well-being.

¹¹ Every Child Matters (2003), p. 14.

¹² Department for Education and Skills (2004a).

¹³ Section 3, *Children Act 2004*.

2.4 Policy framework

2.4.1 Based on the five ECM outcomes, the UK government has worked with public, voluntary and community organizations in England to establish the Outcomes Framework, which contains 25 specific aims for children and young people, as shown in **Table 1**:¹⁴

Table 1 – Outcomes framework for children and young people

Outcomes	Specific aims
Be healthy	(a) Physically healthy; (b) Mentally and emotionally healthy; (c) Sexually healthy; (d) Maintaining a healthy lifestyle; and (e) Choosing not to take illegal drugs.
Stay safe	(a) Safe from maltreatment, neglect, violence and sexual exploitation; (b) Safe from accidental injury and death; (c) Safe from bullying and discrimination; (d) Safe from crime and anti-social behaviour in and out of school; and (e) Having security and stability, and being cared for.
Enjoy and achieve	(a) Ready for school; (b) Attending and enjoying school; (c) Achieving stretching national educational standards at primary school; (d) Achieving personal and social development, and enjoying recreation; and (e) Achieving stretching national educational standards at secondary school.
Make a positive contribution	(a) Engaging in decision-making, and supporting the community and environment; (b) Engaging in law-abiding and positive behaviour in and out of school; (c) Developing positive relationships, and not bullying and discriminating; (d) Developing self-confidence, and successfully dealing with significant life changes and challenges; and (e) Developing enterprising behaviour.
Achieve economic well-being	(a) Engaging in further education, employment or training on leaving school; (b) Ready for employment; (c) Living in decent homes and sustainable communities; (d) Access to transport and material goods; and (e) Living in households free from low income.

¹⁴ Department for Education and Skills (2004b), p. 9.

2.4.2 This Outcomes Framework is used by the UK government to support policy development, to work with public, voluntary and community organizations to prioritize the delivery of the Public Service Agreement¹⁵ targets that are relevant to children and young people, and to monitor progress.

2.5 Mode of service provision

2.5.1 In England, as proposed in Lord Laming's Report and ECM, child protection services and other support services for children, young people and families are not provided by a central government agency but by a Children's Trust, a decentralized arrangement created in each of the 150 local areas.

Children's Trust

2.5.2 A Children's Trust is not a legal entity but "a set of arrangements for partnership working in a local area, led by the local authority [or Children's Services Authority (CSA)], to deliver children's services across the five outcomes".¹⁶ According to DfES, CSAs are local authorities in England. They include county councils, metropolitan district councils, non-metropolitan district councils for areas where there is no county council, and the city of London.¹⁷ They operate within the powers laid down under various Acts of Parliament. The functions they are given include the provision of services relating to education, social services, housing, recreation and culture.

2.5.3 Children's Trusts aim at addressing the fragmentation of responsibilities for children's services highlighted in Lord Laming's Report. The introduction of Children's Trusts formalizes and extensively strengthens the integration of children's services (such as Sure Start and Connexions).¹⁸ Such services include:¹⁹

- (a) all local education functions, such as education welfare services, youth services, special educational needs and educational psychology, childcare and early-year education;

¹⁵ The Public Service Agreement is part of the UK government's public expenditure framework, setting out the key government priorities to deliver public services.

¹⁶ Department of Education and Skills (2005a).

¹⁷ Ibid.

¹⁸ Sure Start brings together universal, free and early education and childcare to children from conception to age 14, and up to age 16 for those with special educational needs and disabilities. Connexions provide information, advice, guidance and access to personal development opportunities to all young people aged 13 to 19 through multi-agency working.

¹⁹ Every Child Matters (2003), p. 71.

- (b) children's social services, such as family support, foster and residential care, adoption services, child care, advocacy services and child protection; and
- (c) community and acute health services, such as community paediatrics, services relating to drug, teenage pregnancy, and mental health services.

Key features

2.5.4 To facilitate the integration of services to children, young people and their families, a Children's Trust must have the following four essential elements:²⁰

- (a) the formulation of child-centred, outcome-led vision covering the five ECM outcomes, based on a statutory Children and Young People's Plan (CYPP) created by CSA, to be discussed in **paragraph 2.5.7**;
- (b) a Director of Children's Services appointed by CSA to be in overall charge of delivering such vision and responsible for services within the Children's Trust and co-ordination of services outside the Trust, and a Lead Member for Children's Services designated by CSA to be "politically accountable" for children's services;²¹
- (c) a single planning and commissioning function supported by pooled budgets provided by CSA and its partners, to be discussed in **paragraph 2.5.8**; and
- (d) an integrated, accessible and personalized frontline service delivery, including co-located services such as children's centres and extended schools; multi-disciplinary teams; a common assessment framework across services; information sharing systems across services; joint training with some identical modules so that frontline staff have a single message about key policies and procedures and can learn about each other's roles and responsibilities; and arrangements for addressing interface issues with other services, such as services for parents with mental health problems.

²⁰ Every Child Matters (2003), p. 72 and Department for Education and Skills (2004b), p. 12.

²¹ Department of Education and Skills (2005a), and Department of Education and Skills (2005b), p. 10. Both the Director of Children's Services and the Lead Member are expected by DfES to play a key leadership role in developing Children's Trusts by bringing together local partners, both statutory and non-statutory, across services for children, young people and their families. DfES also expects all CSAs to have a Director of Children's Services and a Lead Member by 2008.

Children's Trust pathfinders

2.5.5 The UK government expects to see Children's Trusts in place in most local areas of England by 2006 and all by 2008. In view of the diverse circumstances and backgrounds of the local areas, the UK government has chosen not to prescribe a single model for Children's Trusts. Instead, CSAs and their partners are encouraged to be flexible and innovative in creating solutions to integrate services for children, young people and their families, as long as they work towards the ECM vision for Children's Trusts. In 2004, the UK government commissioned the University of East Anglia, in partnership with the National Children's Bureau,²² to carry out a three-year, independent evaluation of 35 Children's Trusts (known as pathfinders) across England to test the idea of Children's Trusts. The UK government will use the pathfinder experiences to build models of good practice to promote the development of Children's Trusts in other local areas of England.

Children and Young People's Plans

2.5.6 To enhance coherence and integration, all services provided by a Children's Trust in a local area must be planned in accordance with a statutory CYPP created by the relevant CSA under the Children and Young People's Plan (England) Regulations 2005. CYPP is a single, strategic and overarching plan for all services affecting children and young people. There is no statutory requirement that it has to be approved by the central government. Nonetheless, its planning must involve health services, youth justice, private, voluntary and community organizations, and other local partners, such as cultural bodies, and sports and play organizations (organizations working with volunteers and partners to use sport and play to enhance child development in disadvantaged areas). CYPP will identify where children and young people outcomes need to be improved, and how and when these improvements will be achieved. Based on CYPP, the CSA concerned must take the lead to set clear targets and priorities for all services affecting children and young people, identify the actions and activities needed to achieve them, and ensure delivery. Since April 2006, all CSAs have had their own CYPP in place.

²² National Children's Bureau is a charitable organization established in 1963. Its members include various organizations and networks providing children's services.

Role of public organizations not involved in Children's Trusts

2.5.7 Although some public organizations are not directly involved in Children's Trusts, such as the police, agencies providing services relating to learning and skills, health agencies and housing departments, they are statutorily designated as the "relevant partners" of CSAs.²³ Under the *Children Act 2004*, CSAs must make arrangements to promote its co-operation with the relevant partners in achieving the five outcomes for children and young people. Each CSA and its relevant partners must provide staff, goods, services, accommodation or other resources, and establish and maintain a pooled budget, in support of the arrangements. DfES will set out the outcomes expected of the co-operation for the Children's Trust arrangements. The outcomes include: effective working together to understand the needs of local children, agreeing to the contribution each agency should make to meet those needs, effective sharing of information about individual children to support multi-agency working, and oversight of arrangements for agencies to work together in integrated planning, commissioning and delivery of services as appropriate.

Role of voluntary and community organizations

2.5.8 Each CSA is required by the *Children Act 2004* to make arrangements for co-operation with not only its relevant partners but also other persons or bodies, including the voluntary and community sectors,²⁴ which exercise functions or are engaged in activities relating to children.²⁵ In particular, at the national level, DfES has engaged the voluntary and community sectors in a range of stakeholder groups to facilitate policy development. Such stakeholder groups include a Ministerial-level Board of Stakeholders (a multi-agency group including representatives from the voluntary and community sectors that meets regularly with officials and Ministers) and the Voluntary and Community Sector Strategic Issues Group. The UK government has pledged to remove any inappropriate or unintended barriers that may prevent the voluntary and community sectors from entering the market for the provision of children's services. At the local level, DfES expects each CSA to encourage the voluntary and community sectors to contribute to and participate in the various aspects of the Children's Trust arrangements.

²³ Section 10(4), *Children Act 2004*.

²⁴ Department of Education and Skills (2005a). The UK government states that it has chosen not to define the voluntary and community sectors in a narrow sense.

²⁵ Section 10(1), *Children Act 2004*, and Explanatory Note, *Children Act 2004*, p. 9.

2.6 Government intervention strategy

2.6.1 The UK government has put in place measures below in England to facilitate early intervention highlighted in ECM:

Multi-agency working

2.6.2 Each CSA is encouraged to develop multi-agency working in its local area. Education, health, youth justice, social care, youth work, the voluntary and community sectors and other children services are being reconfigured extensively to work more collaboratively to facilitate prevention and early intervention services. In particular, each CSA is required to put in place a systematic multi-agency arrangement to identify and track children missing education (i.e. those of compulsory school age who are not on a school roll or not receiving a suitable education) or at risk of doing so. A named individual is appointed to receive details of children found missing education and arrange supports for them through the most appropriate agencies.

Co-ordination by lead professionals

2.6.3 Each CSA is encouraged to appoint lead professionals who take the lead to co-ordinate frontline delivery of integrated services for children and young people. A lead professional acts as a single point of contact for not only a child (and his or her carers) with additional or cross-cutting needs that require integrated support, but also all practitioners who are delivering services to the child. In addition, from 2006 to 2008, pilot tests in up to 15 local areas will be set up to examine the idea of a budget-holding lead professional. The aim is to test whether better service packages for core groups of children and families can be delivered by giving lead professionals a budget with which services can be commissioned directly from providers.

Common Assessment Framework

2.6.4 Each CSA is required to implement the Common Assessment Framework (CAF). It is a national standard assessment form provided to all practitioners to assess children who need additional or specific help to achieve the five ECM outcomes, and to have a common language and structure to record information to facilitate information sharing.

Information sharing

2.6.5 Each CSA is required to establish information databases under guidance or direction from the UK government. A list of people and bodies, including Primary Care Trusts, Local Education Authorities and Connexions, are required to disclose information for inclusion in the database. The basic data held for a child include:²⁶ name, address, gender, date of birth and an identifying number; name and contact details of any person with parental responsibility for the child or taking care of the child; details of any education being received by the child; and name and contact details of any person providing primary medical services to the child.

Comprehensive directories of children's services

2.6.6 Each CSA is encouraged to introduce up-to-date, comprehensive online directories of all types of children's services available in the local area to enable practitioners to make informed referrals and help children and families access the services conveniently.

Local Safeguarding Children Board

2.6.7 To ensure that the local areas have a coherent approach to safeguarding children effectively based on contributions from all key agencies, each CSA is required by the *Children Act 2004* to establish a Local Safeguarding Children Board (LSCB). Each LSCB must include representatives of the relevant persons and bodies such as public, voluntary and community organizations to be board members, who may provide resources in support of the activities of LSCB. LSCB will co-ordinate and monitor its members' effort to safeguard and promote children's welfare, set policy and procedures, and establish local screening teams to analyze the data with the aim of reducing local children death or injury. Since April 2006, all local authorities have had their own LSCB.

²⁶ Section 12(4), *Children Act 2004*.

2.7 Measures for supporting children in various age groups and their families

2.7.1 The UK government has carried out some measures for supporting children in various age groups and their families in England (and other countries of the UK). They include:

Child Trust Fund

2.7.2 The Child Trust Fund (CTF) is a long-term savings and investment account for children. It aims at ensuring that young people have some savings at the age of 18, helping children get into the habit of saving, teaching them about the benefits of saving, and helping them understand personal finance.²⁷

2.7.3 All children, who were born on or after 1 September 2002, living in the UK and not subject to immigration restrictions, and with Child Benefit²⁸ awarded to their families, are automatically entitled to a CTF account.²⁹ The UK government will send a one-time CTF voucher of £250 (HK\$3,680) to the person receiving Child Benefit for a child to open an account. Children from lower-income households (£14,155 (HK\$208,000) or less in 2006-2007) will receive an extra £250 (HK\$3,680), paid directly into their accounts. At the age of seven, all children eligible for CTF will receive a further one-time government payment of £250 (HK\$3,680), with those from lower-income households receiving an extra £250 (HK\$3,680). Family and friends of a child may put money into the account as well. Excluding government payments, a maximum of £1,200 (HK\$17,700) each year can be saved in the account by parents, family or friends.

2.7.4 To set up a CTF account, there are three types of accounts for one to choose from, depending on the risks of investment one is willing to take:

- (a) a stakeholder account, which invests a child's money in companies' shares, with some measures in place to reduce the risks of investment;
- (b) a shares account, which invests a child's money in companies' shares but is not subject to measures that reduce the risks of investment; and
- (c) a savings account, which does not invest in shares and only pays interests.

²⁷ HM Revenue and Customs (2006c).

²⁸ Child Benefit is a tax-free monthly payment to anyone bringing up a child aged under 16; a young person under 19 who is either studying in full-time non-advanced education (A-Level or equivalent) or on an approved training programme; or a 16- or 17-year-old who has recently left school or training and has registered for work or training with his or her carer, or similar services.

²⁹ Child Trust Fund and Looked After Children: Guidance for Local Authorities (England and Wales) issued by HM Revenue and Customs.

2.7.5 The person who opens the account will be responsible for managing it until the child reaches the age of 16 when the child will take control. The money cannot be taken out of CTF once it has been put in. In essence, the account belongs to the child. At the age of 18, the child can choose to continue contributing to the account or use the money as he or she thinks best.

Local Network Fund for Children and Young People

2.7.6 Commencing in 2001, the Local Network Fund for Children and Young People is a seven-year programme delivered through a network of 57 voluntary organizations with community development and grant making experience. The programme supports small voluntary and community groups to develop projects and activities for children and young people aged 0-19. The Fund offers grants between £250 (HK\$3,680) and £7,000 (HK\$103,000). Projects or activities eligible for the Fund must fit the following themes that are consistent with the ECM outcomes:

- (a) Being healthy: activities that promote a healthy lifestyle, e.g. sports sessions, healthy eating classes and peer support programmes on drug misuse;
- (b) Staying safe: activities that contribute to child protection, e.g. anti-bullying projects, safe cycling groups and after-school clubs;
- (c) Enjoying and achieving: activities that help children and young people maximize their potential and develop skills, e.g. theatre arts groups, self advocacy skills programmes, cultural dance and music projects;
- (d) Making a positive contribution: activities that enable children and young people to use their skills and abilities to enhance their own lives and the lives of their community, e.g. conservation schemes, recycling programmes and mentoring projects; and
- (e) Achieving economic well-being: activities that help children and young people overcome income barriers, e.g. preparation for work and training and financial literacy classes.

Children's Fund

2.7.7 The Children's Fund was launched in November 2000. It aims at identifying at an early stage children and young people at risk of social exclusion, and making sure that they receive the necessary support. Its particular objectives include:

- (a) promoting attendance in school by 5- to 13-year-olds and helping them improve their educational performance;
- (b) ensuring that fewer young people aged 10-13 commit crime and fewer children aged 5 -13 are victims of crime;
- (c) reducing child health inequalities;
- (d) ensuring that children, young people and their families can access the necessary services; and
- (e) involving families in building the community's capacity to sustain the Children's Fund and thereby create pathways out of poverty.

2.7.8 The Children's Fund operates in all local areas. There are Children's Fund partnerships at the local level involved in delivering the Fund. The services are delivered in various locations ranging from schools to community centres, sports centres and other local venues. Each of the Children's Fund partnerships is overseen by one of the nine regional DfES teams located within government offices. For 2005-2008, DfES has allocated £411.5 million (HK\$6 billion) to the Children's Fund.

2.8 Funding for child protection measures

2.8.1 In 2004-2005 and 2005-2006, all CSAs in England received a Safeguarding Children grant of £90 million (HK\$1.3 billion) to help them respond to the recommendations in Lord Laming's Report. In addition, a local Change Fund grant of £15 million (HK\$221 million), for a 18-month period from September 2004 to March 2006, was allocated across all CSAs to help them set in place the Children's Trust arrangements.³⁰

³⁰ Department for Education and Skills (2004b), pp. 27-28.

2.9 Legal representation of children in court

2.9.1 Children involved in public law proceedings are entitled to representation by a solicitor (usually from a private practice) appointed by a Children's Guardian³¹ from the Children and Family Court Advisory and Support Service (CAFCASS).³² In such cases, the children involved are made a party to the proceedings. However, children involved in private law proceedings under section 8 of *Children Act 1989* on "orders with respect to children in family proceedings" do not automatically have party status and the accompanying representation, unless the court makes an order to this effect under Rule 9.5 of the Family Proceedings Rules 1991, which allows a child to be legally represented by a solicitor.³³

2.10 Mechanisms for monitoring and reviewing the implementation of child protection measures

2.10.1 There are mechanisms at both the local and national levels to monitor the implementation of child protection measures and safeguard children's rights.

Local supervision

2.10.2 Under the *Children Act 2004*, the Secretary of State for Education and Skills may request two or more of the inspectorates to conduct a review of particular children's services in an area the Secretary specifies. The Act also empowers two or more of the inspectorates to conduct a review of children's services in a particular area under CSA on their own initiative. The main purpose of such reviews is to consider the quality of children's services and how the bodies providing those services work together.³⁴

³¹ CAFCASS, pp. 1-5. Children's Guardians are appointed by the court to represent the rights and interests of children in cases that involve social services. They are independent of courts, social services, education and health authorities, and everyone else involved in such cases. They are qualified in social work, and trained and experienced in working with children and families. They may work for CAFCASS or may be self-employed and contracted by CAFCASS.

³² CAFCASS is a non-departmental public body sponsored by DfES. Its functions, set out in the *Criminal Justice and Court Services Act 2000*, relate to the welfare of children in family proceedings.

³³ Department for Constitutional Affairs (2006), p. 4.

³⁴ Sections 20-24, *Children Act 2004*.

Supervision by the UK government

2.10.3 At the Ministerial level, a new Cabinet sub-committee formed in 2004 not only oversees the general progress of reforms in children's services but also looks in detail at key children's issues, such as youth crime, teenage pregnancy, workforce reform and information sharing. The sub-committee is chaired by the Secretary of State for Education and Skills, and its membership includes all the key departments relating to children's services.

Children's Commissioner for England

2.10.4 England is the last of the four countries comprising the UK to have a Children's Commissioner.³⁵ Established by the *Children Act 2004*, the Children's Commissioner for England is a "non-departmental public body",³⁶ which has the function of "promoting awareness of the views and interests of children in England".³⁷ The first Commissioner, working on a full-time basis, was appointed by the Secretary of State for Education and Skills in April 2005.

Functions

- 2.10.5 The Commissioner is empowered to:³⁸
- (a) encourage persons exercising functions or engaging in activities affecting children to take account of the children's views and interests;
 - (b) advise the Secretary of State for Education and Skills on the views and interests of children; and
 - (c) consider or examine the operation of the complaint procedures or any other matters relating to the interests of children, and publish a report on these matters.

³⁵ In the UK, Wales established the Children's Commissioner for Wales in 2001, while Scotland and Northern Ireland set up the Commissioner for Children and Young People for Scotland and the Commissioner for Children and Young People for Northern Ireland in 2003 respectively. Like that for England, the posts in these three countries are statutorily prescribed.

³⁶ Office of the Children's Commissioner (2006), p. 3.

³⁷ Section 2(1), *Children Act 2004*.

³⁸ Section 2(2), *Children Act 2004*.

2.10.6 In general, the Commissioner is concerned with all people under the age of 18 and those over 18 but under 21 who have been looked after by CSAs at any time after attaining the age of 16 or have a learning disability. In particular, the Commissioner has to pay regard to the United Nations Convention on the Rights of the Child when he or she determines what constitutes the interests of children under the age of 18.³⁹

2.10.7 According to DfES, the Commissioner is expected to actively gather and understand the views of children from all backgrounds. The Commissioner is also expected to use his or her own judgement in determining the interests of children, which may not always be the same as their own wishes, especially with younger children.⁴⁰ In carrying out his or her functions, the Commissioner should have particular regard to the five aspects of children's well-being stated in the *Children Act 2004*, as mentioned in **paragraph 2.3.2**. It is intended that the five aspects form the framework for the Commissioner to monitor the delivery and effectiveness of the UK government's child protection measures.

Power to initiate inquiries

2.10.8 The Commissioner is empowered to initiate inquiries into a case of an individual child in England, but the case concerned must "raise issues of public policy of relevance to other children", and the Commissioner is satisfied that the inquiry "would not duplicate work that is the function of another person" (having consulted such persons as the Commissioner considers appropriate).⁴¹ Before holding an inquiry, the Commissioner must consult the Secretary of State for Education and Skills, who may offer guidance but has no power to veto the inquiry.⁴² When carrying out an inquiry, the Commissioner may summon people to attend to give evidence or produce documents. It will be an offence to disobey a summons by, for example, refusing to give evidence or tampering with documentary evidence.⁴³

2.10.9 After completing an inquiry, the Commissioner must publish a report containing his or her recommendations, and send a copy of it to the Secretary of State for Education and Skills. The Commissioner may require persons with statutory functions that are subject to his or her recommendations to inform the Commissioner of what action they have taken or propose to take in response to the recommendations.⁴⁴

³⁹ Sections 2(11) and (12) and 9 (1) and (2), *Children Act 2004*.

⁴⁰ Explanatory Note, *Children Act 2004*, p. 2.

⁴¹ Section 3(1) and (2), *Children Act 2004*.

⁴² Explanatory Note, *Children Act 2004*, p. 6.

⁴³ Section 3(8), *Children Act 2004*.

⁴⁴ Section 3(7), *Children Act 2004*.

2.10.10 On the other hand, the Secretary of State for Education and Skills may direct the Commissioner to hold an inquiry into the case of an individual child in England, if he or she considers that the case "raises issues of relevance to other children".⁴⁵

Accountability

2.10.11 The Commissioner must report annually on what he or she has done and found, and the matters he or she intends to consider or research in the next financial year. The Commissioner must send his or her annual report to the Secretary of State for Education and Skills, who must as soon as possible lay the report unchanged before the UK Parliament.⁴⁶ The Commissioner must, as he or she thinks appropriate, produce a child-friendly version of his or her annual report.

Budget and remuneration

2.10.12 The budget of the Office of the Commissioner was set by DfES at £3 million (HK\$44 million) per annum for the three-year period of 2005-2006 to 2007-2008.⁴⁷ The Commissioner's remuneration is reviewed by the Permanent Secretary in DfES, in line with the average senior civil service pay increases. In 2005-2006, the Commissioner's annual pay ranges from £130,000 (HK\$1,900,000) to £135,000 (HK\$1,990,000).

⁴⁵ Section 4(1), *Children Act 2004*.

⁴⁶ Section 8(3), *Children Act 2004*, and Explanatory Notes, *Children Act 2004*, p. 9.

⁴⁷ Office of the Children's Commissioner (2006), p. 35.

Chapter 3 – The Province of Ontario in Canada

3.1 Background

3.1.1 In Ontario, child protection services as part of the child welfare system have been undergoing what the Ontario government calls a "transformation" in recent years. The transformation was mainly prompted by a substantial increase in the number of child abuse and neglect cases in the past decade. The number of children suspected of being abused or neglected and hence investigated by child protection agencies almost tripled from 45 000 in 1993 to 130 000 in 2003. The number of children admitted to the care of such agencies also increased from 10 000 in the early 1990s to more than 18 000 in 2003.

3.1.2 In October 2003, the Ontario government indicated its commitment to children and young people by creating the Ministry of Children and Youth Services (MCYS), the first new ministry in Ontario in 20 years. Most government-funded children and youth programmes, such as those managed by the Ministry of Community and Social Services, the Ministry of Health and Long-Term Care and the Ministry of Community Safety and Correctional Services were transferred to MCYS. Some children and youth programmes provided by the Ministry of Education, the Ministry of Citizenship and Immigration, the Ministry of Culture and the Ministry of Tourism and Recreation have continued to be delivered by those ministries, but MCYS has worked closely with them to plan and co-ordinate such programmes.

3.1.3 In November 2003, MCYS issued the Child Welfare Program Evaluation Report,⁴⁸ which concluded that the rate of increase in expenditures in child welfare services, including child protection services, was not sustainable, unless government policies, the funding framework and the mode of service delivery were modified. The Report called for a major transformation of the child welfare system. Following the publication of the Child Welfare Program Evaluation Report, MCYS created in April 2004 the Child Welfare Secretariat, a body responsible for implementing the recommendations of the Report.

3.1.4 In June 2005, the Ontario government launched the Child Welfare Transformation Agenda to strengthen its child welfare system in Ontario.⁴⁹ The Transformation Agenda aims to make children and young people not only "safe from harm" but also "healthy and active", "ready to learn at all ages", "valued, involved and responsible", and "economically secure". Accordingly, besides a number of early intervention and prevention measures for children and young people at risk, the Transformation Agenda includes measures to foster healthy development for children and young people in their families and communities.⁵⁰ Details of the Transformation Agenda are discussed in **section 3.5**.

⁴⁸ Ministry of Children and Youth Services (2003b).

⁴⁹ Ministry of Children and Youth Services (2005d).

⁵⁰ Ministry of Children and Youth Services (2005d), p. 2.

3.2 Legal framework

3.2.1 In Ontario, the *Child and Family Services Act (CFSA)* provides the primary statutory framework for child protection services. Its paramount purpose is to "promote the best interests, protection and well-being of children". It sets out what a child "in need of protection" means,⁵¹ and authorizes Children Aid Societies (CASs), which are local, non-government and non-profit child welfare agencies, to provide child protection services. The core aspects of CFSA include:⁵²

- (a) members of the public, especially those performing professional or official duties with respect to children,⁵³ must report suspected child abuse or neglect cases directly to CAS, and such a duty cannot be delegated to anyone;⁵⁴
- (b) family autonomy should be preserved if possible in that while parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent;
- (c) the least disruptive course of action available and appropriate in a particular case to help a child should be considered; and
- (d) services for children should: respect a child's need for continuity of care and stable relationships within a family and the cultural environment; take into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children; provide early assessment, planning and decision-making to achieve permanent plans for the child in accordance with his or her best interests; and include the participation of the child, his or her parents and relatives and members of the child's extended family and community, where appropriate.

⁵¹ Section 72(1), *Child and Family Services Act*.

⁵² Section 1(2), *Child and Family Services Act*.

⁵³ Section 72(4), *Child and Family Services Act*. CFSA recognizes that people performing professional or official duties with respect to children should have a special awareness of the signs of child abuse and neglect and a particular responsibility to report their suspicions. Therefore, any of them failing to report a suspicion that a child is or may be in need of protection is liable on conviction to a fine of up to CAN\$1,000 (HK\$6,700), if he or she has obtained the information on which that suspicion is based in the course of his or her duties.

⁵⁴ Section 72(3), *Child and Family Services Act*.

3.3 Guiding principles

3.3.1 MCYS has identified the following five principles to guide its policy development and implementation for the transformation of child protection services in particular and child welfare in general.⁵⁵

- (a) "outcome focused" in that "programme, policy, funding and legislative directions will achieve better child welfare outcomes in the areas of child safety, permanency and child well-being";
- (b) under a "balanced service approach" in that "change to policy and practice will maintain a strong emphasis on child safety, build on family and community strengths, encourage prevention and early intervention and achieve continuity of care and relationships for child and youth";
- (c) "research-based" in that "best practice and research will help guide Ontario's child welfare transformation", and "a research and evaluation agenda will track key policies implemented by the Ministry";
- (d) "sustainable and flexible" in that "policy, practice and funding solutions will acknowledge Ontario's diversity" and "solutions must be sustainable, flexible and equitable", while "planning must be multi-year focused"; and
- (e) "accountable and integrated" in that "government and governance structures and process will focus on ends, not means", and "better child welfare outcomes will be encouraged through integrated efforts within and between sectors".

⁵⁵ Ministry of Children and Youth Services (2005d), pp. 7-8.

3.4 Mode of service provision

3.4.1 In Ontario, child protection services stipulated in CFSA are not provided by MCYS or other central government agencies but by the 53 CASs approved and funded by MCYS.⁵⁶

Children's Aid Societies

3.4.2 Under CFSA, each CAS is responsible for providing child protection services in its specified territorial jurisdiction.⁵⁷ Its statutory functions include:⁵⁸

- (a) investigating allegations or evidence that children who are under the age of 16, in the care of CAS or under the supervision of CAS may be in need of protection, and protecting those children where necessary;
- (b) providing guidance, counselling and other services to families for the protection of children or prevention of circumstances requiring the protection of children;
- (c) providing care or supervision for children assigned to CAS; and
- (d) placing children for adoption.

3.4.3 Each CAS is governed by a volunteer Board of Directors, which is accountable to MCYS. The Board is responsible for setting policies and strategic directions, approving service plans and budgets, and appointing a Local Director responsible for the daily management of CAS. The Local Director's statutory responsibilities include:⁵⁹

- (a) advising and supervising the daily operation of CAS;
- (b) inspecting the operation and records of CAS, or directing and supervising such inspection;

⁵⁶ Section 19, *Child and Family Services Act*. The first CAS, the Toronto Children's Aid Society, was established as a charitable organization by a group of citizens in 1891. In 1893, the Toronto CAS became a semi-public agency in that while having a private board of directors, it was empowered by the *Children's Protection Act* to apprehend children, act as the legal guardian of a child, and collect a "reasonable sum" from the municipality for the maintenance of wards in CAS. By 1907, more than 60 CASs were operating in Ontario. In 1912, the Associated Children's Aid Societies of Ontario, the predecessor of the current Ontario Association of Children's Aid Societies, was founded to promote child welfare and co-ordinate the work of all CASs.

⁵⁷ Section 15(2), *Child and Family Services Act*.

⁵⁸ Section 15(3), *Child and Family Services Act*.

⁵⁹ Sections 16 and 17, *Child and Family Services Act*.

- (c) inspecting places where children in the care of CAS are placed, or directing and supervising such inspection; and
- (d) ensuring that CAS provides the prescribed standard of services and follows the prescribed procedures and practices.

3.4.4 The services, governance and administrative responsibilities of CASs are evaluated by the Accreditation Programme run by the Ontario Association of Children's Aid Societies, which is a membership organization representing the 53 CASs. The Accreditation Programme aims at promoting the quality and accountability of child protection and welfare services across Ontario. Standards have been developed in areas such as agency governance and administration, agency in the community, children in care, family service, foster care, human resources and volunteer services. These standards are developed and reviewed regularly along the changes in practice, legislation and government policies and the demand for greater accountability. The Accreditation Programme operates on a four-year accreditation cycle. A review is conducted every four years to determine those CASs meeting all the requirements for accreditation.

Role of government

3.4.5 The role of MCYS in child protection is to "fund, legislate and monitor the child welfare system".⁶⁰ MCYS provides all the required funding for CASs. CFSA gives the Minister of MCYS the authority to develop policies and programmes for a range of child protection and welfare services, including the monitoring of CASs. MCYS has nine regional offices that co-ordinate child protection and welfare service planning and monitor the activities of CASs in their territorial jurisdictions. In addition, MCYS has the mandate to influence other ministries to assess their policies and programmes affecting children and young people.

3.5 Government intervention strategy

3.5.1 Under the Child Welfare Transformation Agenda, early intervention is considered as the core of the Ontario government's child protection services because it "will reduce the need for more intrusive and costly public services later and will lead to better outcomes for children and youth".⁶¹ The major early intervention measures adopted by the Ontario government are discussed in the following paragraphs.

⁶⁰ Ministry of Children and Youth Services (2006a).

⁶¹ Ministry of Children and Youth Services (2005d), p. 2.

Youth intervention centres

3.5.2 In response to the 2002-enacted federal *Youth Criminal Justice Act*, which aims at reducing the overuse of custody and detention in Canada, the Ontario government has pledged in 2006 to provide CAN\$9.5 million (HK\$64 million), up from CAN\$7.5 million (HK\$50 million) in 2005, to establish 12 new and support 15 existing youth intervention centres. These centres provide community alternatives to custody programmes for lower-risk young people aged 12 to 17 who have broken the law. At these centres, which are non-residential, such young people are required to participate in programmes appropriate to their assessed needs, such as anger management, anti-violence programmes, skills, counselling, peer relationships and employment readiness. Those who do not participate as required may be returned to youth court for further action.

Youth Opportunities Strategy

3.5.3 In February 2006, MCYS launched the Youth Opportunities Strategy, which involves an initial investment of at least CAN\$28 million (HK\$190 million) during 2006-2008 to strengthen the provision of prevention and early intervention services for young people who need help to overcome their difficulties. The Strategy includes:⁶²

- (a) the Youth Outreach Worker Programme, which provides funding to community agencies to hire in 2006-2007 an additional 62 youth outreach workers responsible for connecting young people in high-risk communities with services that address their needs;
- (b) the Summer Jobs for Youth Programme, which aims at providing job opportunities to young people aged 15 to 18. In 2006, the Ontario government invested about CAN\$2.6 million (HK\$18 million) to deliver the programme for 800 young people from high-risk communities. In 2007, the Ontario government will provide an additional CAN\$5.3 million (HK\$36 million) to expand the programme for up to 1 650 young people from those communities;
- (c) the Youth-in-Policing Initiative launched by MCYS in partnership with the Toronto Police Service. In 2006-2007, at least 150 young people aged 14 to 17 have been or will be placed in summer jobs with various departments of the Toronto Police Service, such as information technology, forensic identification, community events, traffic safety and the marine unit;

⁶² Ministry of Finance (2006).

- (d) piloting in six high schools a school-based prevention programme, which uses peer mediation and role modelling activities to help prevent disruptive behaviour among students; and
- (e) committing CAN\$52 million (HK\$35 million) in 2006 to help 56 000 young people find jobs or start their own businesses.

Best Start

3.5.4 To reduce the need for more intrusive and costly child protection intervention services, in November 2004, the Ontario government introduced the Best Start project to foster the healthy development for children and young people in their families and communities. Best Start is an early learning and care project aimed at establishing an integrated local network of services that helps children aged up to six to be ready and eager to learn by the time they enter school. MCYS considers Best Start as "the largest investment in child care and early child development in Ontario's history".⁶³ The implementation of Best Start is led by MCYS in partnership with other ministries relating to education, health and long-term care, community and social services, culture, and tourism and recreation.

3.5.5 When fully implemented by 2015, Best Start is expected to involve:⁶⁴

- (a) 25 000 new licensed child care spaces (about 20% of the current total licensed child spaces) by the end of 2008 for children in junior and senior kindergartens and for children aged up to four;
- (b) additional child care subsidies, which allow more families to access quality and affordable child care spaces;
- (c) establishment of a local network of early learning and care hubs in every local community where children and parents can access one-stop welfare services, including early learning, care and parenting services, specialized services such as mental health and speech and language resources; and
- (d) an early and on-going screening for all newborns by public health nurses to identify potential issues, needs and risks, and a check-up for all 18-month-old children.

⁶³ "McGuinty Government expands Best Start Plan for Children", Ministry of Children and Youth Services, 28 July 2005, available from: <http://www.children.gov.on.ca/CS?en/newsRoom/newsReleases/050728.htm> [Accessed November 2006].

⁶⁴ Ministry of Children and Youth Services. (2005) and "McGuinty Government expands Best Start Plan for Children", Ministry of Children and Youth Services, 28 July 2005, available from: <http://www.children.gov.on.ca/CS?en/newsRoom/newsReleases/050728.htm> [Accessed November 2006].

3.5.6 The Ontario government has established three expert panels to guide Best Start implementation:

- (a) the 18-month Well Baby Expert Panel responsible for developing strategies for a province-wide developmental assessment for every child at 18 months of age in Ontario;
- (b) the Expert Panel on an Early Learning Programme responsible for developing a learning programme for pre-school children that can link to junior and senior kindergarten learning programme and ultimately become a single integrated learning programme for children in pre-schools and junior and senior kindergartens; and
- (c) the Expert Panel on Quality and Human Resources responsible for looking at recruitment and retention of qualified early childhood education professionals and ways to improve quality licensed and informal child care.

3.5.7 To implement Best Start, the Ontario government signed the Early Learning and Child Care (ELCC) agreement with the federal government in 2004. Under the agreement, the federal government was supposed to provide Ontario with CAN\$1.9 billion (HK\$12.8 billion) over five years for such purpose. However, the new federal government has given notice to terminate the ELCC agreement, taking away CAN\$1.4 billion (HK\$9.4 billion) intended for child care spaces and fee subsidies for working families. Without sustained federal financial support, the Ontario government has indicated that it cannot enhance the child care system as originally planned. The Ontario government is still urging the federal government to reconsider and honour the ELCC agreement.⁶⁵

Encouraging young people to engage in community sport and recreation

3.5.8 Under ACTIVE2010, a strategy launched by the Ministry of Health Promotion to develop a sports and physical activity system for improving the health and quality of life of Ontarians, sport is identified as having "the potential to become a constructive outlet for youth at risk, keeping them engaged in positive and productive activities". The Ontario government has pledged to invest CAN\$12 million (HK\$81 million) in provincial and community sports and CAN\$5 million (HK\$34 million) in the Communities in Action Fund to support physical activities and local sports and recreation initiatives.

⁶⁵ Ministry of Finance (2006).

3.6 Other measures supporting children in various age groups and their families

3.6.1 Besides addressing the immediate and critical needs of children and young people at risk, the Ontario government has introduced a number of measures supporting children and young people in various age groups and their families.

Youth Challenge Fund

3.6.2 In February 2006, the Ontario government established a special-purpose charitable trust fund called the Youth Challenge Fund. The Fund's mission is to mobilize the community's resources in support of young people, invest in effective programmes for young people and promote a sustained and co-ordinated response to youth development. It targets youngsters aged 11-24 who face significant barriers and inequality and are residing in the 13 priority neighbourhoods in Toronto.

3.6.3 The Ontario government has provided a start-up funding of CAN\$15 million (HK\$101 million) for the Fund. The Fund is called a "challenge" fund because the Ontario government has "challenged" the private sector to match the government's start-up funding. The Ontario government has committed an additional CAN\$15 million (HK\$101 million) over the next three years to match private sector contributions, for a potential total funding of up to CAN\$45 million (HK\$303 million). Members of the public can also make donations directly to the Fund.

3.6.4 The Fund receives applications for funding. Only youth groups with an idea, grass-roots youth-led initiatives, non-profit organizations, community networks and coalitions, foundations and public institutions are eligible to apply.⁶⁶ Each application must be supported by three references, one of whom must be a young person.

3.6.5 In its first year, the Fund is intended to support the following three types of projects:⁶⁷

- (a) Building Great Ideas, under which a successful applicant can get a one-time grant of up to CAN\$50,000 (HK\$337,000) to develop and realize a good idea;

⁶⁶ Public institutions can only apply for new programmes in which youth and community organizations are involved. Individuals, for-profit organizations, organizations whose main purpose is political activity and religious groups which do not clearly separate religious and social service activities cannot apply for the Fund.

⁶⁷ Youth Challenge Fund (2006a) and (2006b).

- (b) Creating Youth Spaces, under which a successful applicant can get a one-time grant of up to CAN\$50,000 (HK\$337,000) to purchase equipment and supplies or develop a plan to create new spaces for young people, or a one-time grant of up to CAN\$250,000 (HK\$1,690,000) to renovate or expand existing spaces for young people; and
- (c) Investing in Youth, under which a successful applicant can get a grant of up to CAN\$450,000 (HK\$3 million) to expand or create new programmes that can build youth leadership, improve learning and education for young people, generate income for young people through innovative or entrepreneurial ideas, or inspire young people through participation in arts and culture or recreation.

3.6.6 The Fund is governed by a Board of Directors with a variety of backgrounds, such as government representatives, sports leaders, senior business executives, trade leaders, educators, and provincial and municipal representatives. The Board Chair is appointed by the Premier of Ontario, while other Board members excluding government representatives are selected by the Board Chair. The Board is responsible for approving all funding decisions, and establishing funding priorities and grants criteria.

Encouraging young people to keep learning

3.6.7 Some measures are implemented by the Ontario government to encourage young people to keep learning until the age of 18 or graduation. They include:

- (a) developing options for a high-skill diploma for high school students;
- (b) improving young people's test scores in reading, writing and mathematics through the establishment of the Literacy and Numeracy Secretariat under the Ministry of Education in 2005;
- (c) launching the Student Access Guarantee Project to ensure that 200 000 students from lower- and middle-income families have access to the resources they need for their college or university tuition, books and other mandatory fees; and
- (d) increasing the number of registered new apprentices to 26 000 annually in 2007-2008, and providing an Apprenticeship Training Tax Credit to encourage employers to hire and train new apprentices;

3.7 Funding

3.7.1 Historically, the funding for child protection was shared by the Ontario government and the local municipalities. Since 1998, the Ontario government has assumed the responsibility for 100% of the expenditures of CASs. In the past five years, the total net expenditures for CASs have increased 65%, from CAN\$751 million (HK\$5 billion) for 2000-2001 to the projected CAN\$1.24 billion (HK\$8.3 billion) for 2005-2006.

3.8 Legal representation of children in court

3.8.1 In Ontario, a child "may have legal representation at any stage in a [child protection] proceeding" under CFSA.⁶⁸ If a child does not have legal representation in the proceeding, the court "may determine whether legal representation is desirable to protect the child's interests".⁶⁹ If the court determines that legal representation is desirable to protect the child's interests, it can "direct that legal representation be provided for the child".⁷⁰

3.8.2 In addition, under CFSA, if a child receiving child welfare services proposes that a prescribed method of alternative dispute resolution be undertaken to assist in resolving an issue relating to the child or a plan for the child's care, the Office of the Children's Lawyer under the Ministry of the Attorney General may provide legal representation to the child, if the Office considers such legal representation as appropriate.⁷¹ The Office's lawyers may represent children in various areas of law, including child protection proceedings, child custody and access disputes, and civil litigation.

⁶⁸ Section 38(1), *Child and Family Services Act*.

⁶⁹ Section 38(2), *Child and Family Services Act*.

⁷⁰ Section 38(3), *Child and Family Services Act*.

⁷¹ Section 20.2(3), *Child and Family Services Act*.

3.9 Mechanism for monitoring and reviewing the implementation of child protection measures

3.9.1 The Ontario government has the following major mechanisms for monitoring the implementation of child protection measures and safeguarding children's rights:

Monitoring by the Ministry of Children and Youth Services

3.9.2 MCYS is responsible for monitoring CASs. Under CFSA, if the Minister of MCYS believes on reasonable grounds that CAS fails to perform any of its functions, the Minister may revoke or suspend the approval of CAS, remove any or all of the members of its Board of Directors and appoint others in their place, or operate and manage CAS in the place of its Board of Directors.⁷²

3.9.3 While CASs are subject to certain accountability review mechanisms provided for under CFSA, they are outside the scrutiny of an independent third party such as Ontario's Ombudsman. The current Ontario's Ombudsman has repeatedly and publicly expressed his wish to bring all CASs under his scrutiny.⁷³

3.9.4 In response to the Auditor General's first value-for-money audit report of CASs in Ontario's history,⁷⁴ MCYS announced on 5 December 2006 its plan to create a new Accountability Office. The responsibilities of the Accountability Office include: monitoring whether CASs are meeting their statutory requirements for the care and protection of children; ensuring that corrective actions are taken as needed; assessing and reporting on the performance of CASs; providing training and tools to the staff of MCYS for better oversight; and creating a culture of continuous improvement for CASs.

Strengthening the Office of Child and Family Service Advocacy

3.9.5 MCYS is launching a legislative measure to enhance the functions of the Office of Child and Family Service Advocacy to safeguard children's rights and improve the welfare services for children. The Office, which has been in operation since 1978, is currently authorized by CFSA to "co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive or seek [government-]approved services or services purchased by [government-]approved agencies".⁷⁵ The Office also advises the Minister of MCYS on matters or issues concerning the interests of such children and families.⁷⁶ The Office reports to MCYS.

⁷² Section 22, *Child and Family Services Act*.

⁷³ Ombudsman and the Children's Aids Societies, CBC Network, 18 October 2006.

⁷⁴ Office of the Auditor General (2006a) and (2006b).

⁷⁵ Section 102, *Child and Family Services Act*.

⁷⁶ Ibid.

3.9.6 The Legislative Assembly of Ontario (the Lower House of the Ontario Parliament) is deliberating on a bill introduced by MCYS on 30 November 2006, Bill 165. The Bill seeks to strengthen the functions of the Office of Child and Family Service Advocacy. It proposes to establish the Office of the Provincial Advocate for Children and Youth headed by the Provincial Advocate for Children and Youth (the Advocate),⁷⁷ and makes the Advocate an Officer of the Legislative Assembly, who reports to the Legislative Assembly instead of MCYS. According to MCYS, such an arrangement will make the Advocate as independent as the Ombudsman and the Auditor General. MCYS expects the Advocate to have "greater ability to amplify the voice of children about their fears, concerns and wishes".⁷⁸

Powers

3.9.7 Under the Bill, the Advocate's powers include:⁷⁹

- (a) receiving and responding to complaints made regarding children's rights;
- (b) conducting reviews, whether in response to a complaint or on the Advocate's own initiative;
- (c) representing the views and preferences of children and young people to the relevant agencies and service providers;
- (d) using informal methods to resolve disputes between children or young people and the relevant agencies or service providers;
- (e) providing advice and making recommendations to entities including local governments, ministries, the relevant agencies and service providers;
- (f) educating children in care, young persons in custody, their families and staff of the relevant agencies and service providers about children's rights; and
- (g) providing advocacy to children in care and young persons in custody who are appearing before a court or tribunal, or who are appearing before a body or person who is reviewing their care, custody or detention disposition.

⁷⁷ Bill 165 2006.

⁷⁸ Ministry of Children and Youth Services (2006e).

⁷⁹ Section 14, Bill 165 2006.

3.9.8 Nevertheless, under the Bill,⁸⁰ the Advocate does not provide legal advice or legal representation to a child or young person before a court or tribunal. Nor is the Advocate, when handling a complaint, empowered to summon and enforce the attendance of witnesses, compel testimony under oath, or compel witnesses to produce records or other evidences. In addition, if an investigative authority is conducting an investigation that involves a child in care or a young person in custody, the advocacy provided by the Advocate to the child or young person cannot interfere with the investigation.

Appointment

3.9.9 The Bill proposes that the Advocate should be appointed or removed by the Lieutenant Governor in Council on the address of the Legislative Assembly. According to MCYS, the Advocate will be selected by an "all-party legislative committee" of the Assembly.⁸¹ The Advocate will be required to serve full-time and will not be allowed to hold any other public office or engage in any other employment.

Accountability

3.9.10 The Advocate is required to submit an annual report to the Legislative Assembly, and may also make any other public reports as he or she considers appropriate.

Budget and remuneration

3.9.11 The Bill proposes that the budget required for the Advocate should be paid out of funds appropriated by the legislature for the purpose. The Board of Internal Economy, i.e. the governing body of the Legislative Assembly, may issue directives to the Advocate concerning the expenditure of funds, and the Advocate must comply with those directives. The Advocate's budget estimates are subject to the approval and review of the Board of Internal Economy. The Advocate's remuneration will be determined by the Lieutenant Governor in Council.

⁸⁰ Section 14, Bill 165 2006.

⁸¹ Ministry of Children and Youth Services (2006e).

Chapter 4 – The State of New South Wales in Australia

4.1 Background

4.1.1 In NSW,⁸² the child protection system has been undergoing reform for more than 10 years. For instance, in September 1995, the NSW government established the statutory Child Death Review Team to identify patterns and trends relating to child deaths and make recommendations for preventing child deaths and reducing their number. In December 2000, the *Children and Young Persons (Care and Protection) Act 1998* came into effect. Through the Act, the NSW government for the first time laid out a comprehensive framework for the NSW child protection system. In October 2001, the statutory Child Protection Register, the first of its kind in Australia, was established under the NSW Police to record information about people convicted of offences against children.⁸³

4.1.2 The most significant child protection reform was launched in December 2002 when the NSW government committed AUS\$1.2 billion (HK\$ 7.3 billion) to strengthen the child protection system. The reform included an early intervention programme, an expansion of the Out-of-Home Care (OOHC) system,⁸⁴ and a new framework for inter-agency co-operation in child protection. The reform was driven by a massive increase in the number of child abuse reports to the NSW government and an increasing demand for services to children. The number of reports made about children or young people at risk of harm increased from 72 986 in 1999-2000 to 216 000 in 2004-2005.⁸⁵ There was a 119% increase in child abuse reports between 1999-2000 and 2001-2002. The number of children and young people in OOHC also grew by 40% between 1997-1998 and 2001-2002. According to the NSW government, the increase in demand for children's services was partly caused by the expanded definitions of what constitutes a child being abused or neglected and what people must be mandatory reporters of the suspected cases of child abuse or neglect under the *Children and Young Persons (Care and Protection) Act 1998*. In addition, there were a growing number of child abuse incidences among families affected by drug and alcohol abuse, domestic violence, mental health problems, gambling addictions, financial stress and unemployment.⁸⁶

⁸² NSW has a population of about 6 800 000 and is the most populous state in Australia.

⁸³ The *Child Protection (Offenders Registration) Act 2000*.

⁸⁴ Out-of-Home Care means any residential care and control of a child or young person in any place other than the usual home by any person other than a parent or relative for any period over 28 days.

⁸⁵ Department of Community Services (2006c).

⁸⁶ Department of Community Services (2003a) and (2003b).

4.1.3 In its 2006 State Plan, the NSW government indicates that while the reform launched in 2002 was primarily aimed at children who were already victims of abuse and neglect or at significant risk of becoming so, the NSW government will focus on improving the ante-natal services for young single mothers (Aboriginal mothers in particular) and the child protection service delivery in general.⁸⁷

4.1.4 The Department of Community Services (DoCS) of the NSW government states that it has the "lead responsibility" in providing care and protection for children and young people.⁸⁸ DoCS is the largest child protection agency in Australia, with over 3 000 employees. It is headed by the Minister for Community Services, who is also the Minister for Youth.

4.2 Legal framework

4.2.1 The *Children and Young Persons (Care and Protection) Act 1998*, focusing on the protection of children and young people aged below 18, provides the basic statutory framework for the child protection system in NSW. In particular, the Act:

- (a) lays out, for the first time, the objects and principles for the child protection system as a whole, to be discussed in **paragraph 4.3.1**;
- (b) introduces the term "at risk of harm" covering not just the more extreme forms of abuse but a wide spectrum of behaviour that may trigger statutory child protection actions;⁸⁹
- (c) expands the range of "mandatory reporters" (who must, as soon as practicable, report to DoCS if they have reasonable grounds to suspect that a child is at risk of harm) from specified professionals to all professionals working "partly or wholly" with children in health care, welfare, education, children's services, residential services or law enforcement;⁹⁰

⁸⁷ New South Wales Government (2006).

⁸⁸ Department of Community Services (2006i).

⁸⁹ Section 23 of the *Children and Young Persons (Care and Protection) Act 1998* states that a child or young person is at risk of harm if: "(a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met; (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care; (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated; (d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm; and (e) a parent or another caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm".

⁹⁰ Section 27, *Children and Young Persons (Care and Protection) Act 1998*.

- (d) emphasizes the roles of the Minister for Community Services and DoCS in child protection, to be discussed in **paragraphs 4.4.1 and 4.4.2**;
- (e) establishes a framework for co-operative and co-ordinated work among DoCS, other government agencies and NGOs in child protection, to be discussed in **paragraphs 4.4.3 and 4.4.4**; and
- (f) encourages the use of various forms of "alternative dispute resolution services" that are designed to ensure early intervention or avoid the need for court or care proceedings.⁹¹

4.3 Guiding principles

4.3.1 The NSW child protection system is mainly guided by the following principles set out in the *Children and Young Persons (Care and Protection) Act 1998*.⁹²

- (a) The safety, welfare and well-being of a child or young person must be "the paramount consideration". In particular, the safety, welfare and well-being of a child who has been removed from his or her parents are paramount over the rights of the parents;
- (b) If a child or young person is able to form his or her own views on a matter concerning his or her safety, welfare and well-being, the child or young person "must be given an opportunity to express those views freely, and those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances";
- (c) In all actions and decisions that have a significant impact on a child or young person, "account must be taken of the culture, disability, language, religion and sexuality of the child or young person";⁹³

⁹¹ Sections 36 and 37, *Children and Young Persons (Care and Protection) Act 1998*.

⁹² Sections 9 and 10, *Children and Young Persons (Care and Protection) Act 1998*.

⁹³ Section 10, *Children and Young Persons (Care and Protection) Act 1998*. Decisions that are likely to have a significant impact on the life of a child or young person include: (a) plans for emergency or ongoing care, including placement; (b) the development and reviews of care plans concerning the child or young person; (c) Children's Court applications concerning the child or young person; (d) provision of counselling or treatment services; and (e) contact with the family or others connected with the child or young person.

- (d) To ensure that a child or young person is able to participate in decisions that have a significant impact on his or her life, DoCS must provide, among others, adequate information, in a manner and language that the child or young person can understand, about the decisions to be made, the reasons for DoCS's intervention, the ways in which the child or young person can participate in decision-making, and any relevant complaint mechanisms; and
- (e) In deciding what action is necessary for the protection of a child or young person, the intervention "must be the least intrusive" in the life of the child or young person and his or her family.

4.4 Mode of service provision

4.4.1 In NSW, DoCS takes the lead role in child protection. The *Children and Young Persons (Care and Protection) Act 1998* requires DoCS to provide child protection services and promote the development, adoption and evaluation of policies and procedures that accord with the objectives and principles of the Act.⁹⁴

4.4.2 DoCS's lead role in child protection does not detract from the joint responsibility of all relevant agencies, including NGOs, to protect children and young people. In particular, the Minister for Community Services must "promote a partnership approach between the government, non-government agencies, families, corporations, business agencies and the community in taking responsibility for and dealing with children and young persons who are in need of care and protection".⁹⁵

⁹⁴ Section 16, *Children and Young Persons (Care and Protection) Act 1998*. The statutory role of DoCS includes (a) providing assistance to children and young persons; (b) involving children and young persons and their families in processes that affect them and providing services and information to them; (c) promoting the raising of children and young persons in families; (d) supporting the community involved in the care and protection of children and young persons; and (e) undertaking or encouraging research, education or training.

⁹⁵ Section 15, *Children and Young Persons (Care and Protection) Act 1998*.

4.4.3 Meanwhile, DoCS must "promote the development of procedures and protocols with government departments and agencies and the community sector that promote the care and protection of children and young persons", and "ensure that these procedures and protocols are implemented and regularly reviewed".⁹⁶ Such inter-agency procedures and protocols aim at promoting co-ordinated strategies for the provision of support services to children and young people.⁹⁷ In deciding what action should be taken to promote the safety, welfare and well-being of a child or young person, DoCS "may request a government department or agency, or a non-government agency in receipt of government funding, to provide services to the child or young person or to his or her family".⁹⁸ At the same time, other government departments or agencies are required to use their "best endeavours" in responding to DoCS's requests for services, if such requests are consistent with their own responsibilities and policies.⁹⁹

4.4.4 The statutory requirements for inter-agency co-operation are reflected in the NSW Interagency Guidelines for Child Protection Intervention formulated by DoCS. The Guidelines serve the purpose of promoting inter-agency collaboration across all responsible service providers under the *Children and Young Persons (Care and Protection) Act 1998*.¹⁰⁰

4.4.5 Currently, about 50% of DoCS's annual budget of AUS\$500 million (HK\$3 billion) is provided via grants and subsidies to 1 900 NGOs to fund 3 500 projects, which involve individual and family support, community development, neighbourhood, community and youth services, as well as services for Aboriginal people and those from culturally and linguistically diverse backgrounds.¹⁰¹ Government funding is one of the various funding sources of NGOs. Their OOHHC services are usually purchased by DoCS either through programme funding with an annual agreement or on a fee-for-service basis relating to individual children and young people.

4.5 Government intervention measures

4.5.1 According to DoCS, the implementation of early intervention services can reinforce family relationships, increase resilience, promote healthy child development, prevent child abuse and neglect, and break inter-generational cycles of disadvantage. In addition, they are cost-effective in reducing the need for more intensive and expensive services later on child protection. Since 2002, DoCS has introduced some major early intervention measures.

⁹⁶ Section 16, *Children and Young Persons (Care and Protection) Act 1998*.

⁹⁷ Section 16(2) and (3), *Children and Young Persons (Care and Protection) Act 1998*.

⁹⁸ Section 17, *Children and Young Persons (Care and Protection) Act 1998*.

⁹⁹ Section 18, *Children and Young Persons (Care and Protection) Act 1998*.

¹⁰⁰ Department of Community Services (2006i), p.7.

¹⁰¹ Department of Community Services (2005b).

Early Intervention Programme for families expecting a child or having young children

4.5.2 From 2003-2004 to 2007-2008, DoCS has pledged AUS\$150 million (HK\$910 million) to fund the Early Intervention Programme (EIP), which helps those families in need to prevent their problems from escalating.

4.5.3 EIP is specifically for families who are expecting a child or have children aged up to eight facing specific problems, such as domestic violence, drug or alcohol abuse, mental illnesses, lack of family or social support, parental learning difficulties or intellectual disability, or child behaviour management problems. In the first few years of its introduction, EIP gave priority to families with children younger than three.

4.5.4 EIP is different from the other statutory child protection services of DoCS in that the participation in EIP is voluntary. Families have full discretion to take part in EIP or accept specific services offered by EIP, with their privacy being respected. Nonetheless, only those families referred to by nominated NGOs or DoCS Helpline¹⁰² can join EIP. An early intervention worker is assigned to each family joining EIP. The worker works with the family to identify its needs and develop a tailored support package, which includes one or more services funded by DoCS. Such services include co-ordination and case-management, quality child care, home visiting and parental programmes. The content of support packages varies according to each family's individual needs.

Families First for children aged up to eight

4.5.5 Families First is a "whole-of-government" prevention and early intervention strategy that supports families with children aged up to eight. It is jointly planned and delivered by five state government agencies, namely DoCS, NSW Health, the Department of Education and Training, the Department of Housing, and the Department of Ageing, Disability and Home Care, in partnership with parents, community organizations and local governments. It aims at developing a co-ordinated local network for supporting families to raise healthy children.

¹⁰² DoCS Helpline is the single entry point in NSW for people wanting to report child protection issues. It is the first point of contact for enquiries, reports and requests for assistance, and operates as a kind of triage system to prioritize the hundreds of calls received every day. Each report to DoCS Helpline is assessed by caseworkers who have been specially trained in handling cases constituting child abuse or neglect under NSW law.

- 4.5.6 Families First includes the following projects:
- (a) the Universal Health Home Visiting Service, which provides post-natal home visits by registered nurses to all mothers with new babies (about 45 000 every year) in NSW within two weeks of their children's birth;¹⁰³
 - (b) the Volunteer Home Visiting Service, which provides home visits by volunteers with parenting experience to parents of newborn babies and toddlers;
 - (c) Supported Playgroups, which, under the assistance of trained co-ordinators, help parents with children aged up to three play and communicate with their children and manage their children's behaviour; and
 - (d) the Schools as Community Centres Programme, which uses schools as community centres to provide various services (such as supported playgroups, nutrition projects and transition to school programmes) to families with children aged up to eight to help them prepare their children for entering school.

4.5.7 The NSW government has allocated AUS\$117.5 million (HK\$711 million) to Families First during the period 2002-2006.

Better Futures for children and young people aged nine to 18

4.5.8 Better Futures is a prevention and early support scheme, which encourages children and young people aged nine to 18 to participate in the planning and delivery of services and community activities, so as to improve their self-esteem, organizational abilities and sense of connection to family, friends, school and community. The Scheme has been implemented in six out of the 15 regions across NSW since 2002. Each region is required to develop a youth plan to strengthen the networks for supporting children, young people, families and communities. The Scheme received over AUS\$2.4 million (HK\$14.5 million) in 2004-2005 for two regions, increasing to over AUS\$4.5 million (HK\$27 million) in 2005-2006 to provide services in four other regions.

¹⁰³ The services provided by a nurse include a health and development check on a baby, such as measuring the baby's weight, height and head circumferences, and talking to the mother about any problems about the baby she may have, such as feeding, settling and sleeping. If necessary, the nurse will link the mother to any additional support she may require.

Recruiting early intervention caseworkers

4.5.9 DoCS has pledged to recruit 375 additional caseworkers by 2007-2008 to strengthen its response to urgent and serious child protection cases. High priority locations are identified for the deployment of these caseworkers. Besides, DoCS will recruit an additional 350 early intervention caseworkers by 2008 to focus exclusively on cases assessed as less urgent, so that the families in need can benefit from DoCS's intervention before reaching a crisis point. Additional funds are made available for NGOs that work with such caseworkers.

Strengthening the Joint Investigative Response Teams

4.5.10 DoCS is working with NSW Health and NSW Police on the project of Joint Investigative Response Teams, which comprise DoCS's caseworkers, health professionals and specially trained police officers. The Teams conduct joint investigations when reports of children at risk of harm involve criminal acts.

Enhancing the organizational capacity of the Department of Community Services

4.5.11 DoCS has established a new Economics, Research and Information Directorate to ensure that the child welfare reform introduced in 2002 is properly costed and its impacts fully assessed. Additionally, a Research Advisory Council, comprising experts in child protection and development, social policy, health and education, has been established to advise on child and family-related research undertaken by DoCS. The new "Research to Practice" programme launched by DoCS in July 2004 also helps ensure that latest research evidence and best practice are incorporated into its services, from policy and programme development to casework. The programme has established a research network, which links researchers, practitioners and policy staff; organizes seminars, discussion forums and workshops; and produces papers and fact sheets to facilitate the understanding of child protection issues.

4.6 Other measures for supporting children in various age groups and their families

4.6.1 In addition to the introduction of new measures under the early intervention strategy, there are other measures and institutions in place for supporting children in various age groups and their families.

The Office for Children

4.6.2 In April 2006, the NSW government set up the Office for Children to strengthen its support for children and young people aged under 18. The Office is responsible to the Minister for Community Services and the Minister for Youth. It provides administrative and financial support for the Commission for Children and Young People (CCYP) and the Office of the Children's Guardian (OCG).

Commission for Children and Young People

4.6.3 Established in 1999 and headed by the Commissioner for Children and Young People who is appointed by the NSW Governor, CCYP administers two pieces of legislation, the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*. Its statutory functions include:¹⁰⁴

- (a) promoting the participation of children and young people in the making of decisions that affect their lives, and encouraging government agencies and NGOs to follow suit;
- (b) promoting and monitoring the overall safety, welfare and well-being of children and young people, and making recommendations to government agencies and NGOs on legislation, policies, practices and services affecting children and young people;
- (c) conducting special inquiries into issues affecting children and young people;
- (d) encouraging public and private organizations to develop a safe and friendly environment for children and young people;
- (e) implementing and monitoring laws to assist employers in recruiting suitable people to work with children and young people; and
- (f) managing a voluntary accreditation system for counsellors and therapists working with people who have committed sexual offences against children.

¹⁰⁴ Section 11, *Commission for Children and Young People Act 1998*.

4.6.4 CCYP is also responsible for the Working with Children Check, a screening scheme established under the *Child Protection (Prohibited Employment) Act 1998* that prohibits people convicted of sex offences, kidnapping or murder of a child from working in child-related employment.¹⁰⁵ In 2005-2006, CCYP carried out 238 400 background checks for employers to decide whether a person is suitable for child-related employment in NSW, and conducted eight Child-safe, Child-friendly training courses to help organizations manage the risks inherent in their responsibilities for children and young people. It also accredited 62 counsellors under its NSW Child Sex Offender Counsellors Accreditation Scheme.¹⁰⁶

Office of the Children's Guardian

4.6.5 OCG has a mandate to promote the interests and rights of children and young people in OOHC. Established in December 2000 under the *Children and Young Persons (Care and Protection) Act 1998*, it is headed by the Children's Guardian appointed by the NSW Governor. The Children's Guardian has the following major statutory functions:¹⁰⁷

- (a) promoting the interests of all children and young people in OOHC, and ensuring that their rights are safeguarded and promoted;
- (b) accrediting designated agencies that provide OOHC for children and young people who do not live with their families according to orders of the Children's Court;
- (c) monitoring the operation of accredited adoption service providers; and
- (d) regulating the employment of children aged under 15 in entertainment, exhibition, still photography and door-to-door sales, so as to protect children employed in such industries from exploitation or abuse.¹⁰⁸

¹⁰⁵ Under the *Child Protection (Prohibited Employment) Act 1998*, child-related employment includes works (paid or unpaid): involving the provision of child protection services; in pre-schools, kindergartens and child care centres; in schools or other educational institutions (except universities); in refuges used by children; in wards of public or private hospitals where children are patients; in any religious organizations; and in entertainment venues where the clientele is primarily children.

¹⁰⁶ Commission for Children and Young People (2006).

¹⁰⁷ Section 181, *Children and Young Persons (Care and Protection) Act 1998*.

¹⁰⁸ Under the *Children and Young Persons (Care and Protection – Child Employment) Regulation 2005*, children aged under 15 cannot be employed in the entertainment industry, for door-to-door selling and for still photography purposes, unless the Office of the Children's Guardian authorizes the employer or the employer is exempt from the restriction. Authorized and exempt employers must comply with the Code of Practice under the Regulation.

4.6.6 The Children's Guardian reports directly to the Minister for Community Services. At the request of the Minister, the Children's Guardian may make a special report to the Minister on any particular issue or general matter, and the report may be tabled before the NSW Parliament.¹⁰⁹ While the Children's Guardian must seek and consider comments from the Minister on his or her draft reports before submitting the reports to the NSW Parliament, the Children's Guardian is not required to amend the reports in light of any comments made by the Minister.¹¹⁰ In 2004-2005, the Children's Guardian introduced the Case File Audit Program to monitor whether designated agencies providing OOHC meet their statutory responsibilities, and established the Adoption Accreditation Program for adoption service providers. It also approved 141 applications from employers to employ children.¹¹¹

Youth Advisory Council

4.6.7 The Youth Advisory Council is another body providing supporting services to young people, focusing on those aged 12 or above and under 25. Established in 1989 under the *Youth Advisory Council Act 1989*, it is administered by the Minister for Community Services. Its statutory functions include:

- (a) advising the Minister for Community Services on the planning, development, integration and implementation of government policies and programmes concerning young people;
- (b) consulting young people, community groups and government agencies on issues and policies concerning young people;
- (c) monitoring and evaluating legislation and government policies and programmes concerning young people, and recommending changes if required;
- (d) conducting forums on issues relating to young people; and
- (e) collecting, analyzing and providing the Minister with information on issues and policies concerning young people.

¹⁰⁹ Section 181, *Children and Young Persons (Care and Protection) Act 1998*.

¹¹⁰ Section 189, *Children and Young Persons (Care and Protection) Act 1998*.

¹¹¹ NSW Office of the Children's Guardian (2005).

4.6.8 The Council comprises a representative of DoCS as the ex-officio member and 12 other members. All Council members, serving part-time, are appointed by the Minister for Community Services. Under the *Youth Advisory Council Act 1989*, at least half of the Council members must be under the age of 25 at the time of their appointment. In determining Council membership, the Minister seeks a balance of people from metropolitan, regional and rural areas; young men and women; young Aboriginal people; young people from non-English speaking backgrounds; and people with experience in youth and community organizations.¹¹² The secretariat support to the Council is provided by DoCS.

Child Death Review Team

4.6.9 The purpose of the Child Death Review Team established under the *Children (Care and Protection) Amendment Act 1995* in 1995 is to prevent the deaths of children aged under 17 and reduce their number. The Team comprises the Commissioner for Children and Young People as the Convener of the Team and up to 19 other members appointed by the Minister for Community Services. The membership includes experts in health care, research methodology, and child development/protection, and representatives from government agencies concerned with the well-being of children.¹¹³

4.6.10 The Team does not investigate child deaths. The investigation responsibility belongs to government agencies, such as NSW Police and the Coroner, which carry statutory responsibility for death investigations. The Team is responsible for identifying patterns and trends relating to child deaths, and making recommendations to government agencies and NGOs for preventing child deaths and reducing their number. The Team is required to maintain a Child Death Register of all deaths of children and young people aged under 17 registered in NSW. The data of child deaths are mainly classified according to causes, demographic criteria and other relevant factors with a view to facilitating the understanding of child deaths so as to prevent future recurrence. The Team also undertakes research projects relating to child deaths as required by the Minister for Community Services.¹¹⁴

4.6.11 The Team reports its findings and recommendations to the NSW Parliament annually. While its draft reports must be submitted to the Minister for Community Services for comments, the only duty upon the Team is to consider such comments. Its reporting obligations are not subject to Ministerial control. Every year the Team contacts all relevant agencies for a report on progress and proposed actions on the implementation of its recommendations to prevent or reduce the likelihood of child deaths. Where a recommendation has not been acted on, those agencies are asked to provide reasons and information about any alternative action taken.¹¹⁵

¹¹² NSW Youth Advisory Council (2005).

¹¹³ Section 45(C), *Commission for Children and Young People Act 1998*. Members of the Legislative Council and the Legislative Assembly are not eligible to be a Team member.

¹¹⁴ Sections 11 and 17, *Commission for Children and Young People Act 1998*.

¹¹⁵ NSW Child Death Review Team (2005), p. 87.

Ombudsman's statutory duties in child protection

4.6.12 In NSW, the Office of the Ombudsman has been long established to deal with all sorts of public complaints. One of the statutory duties of the Ombudsman is to protect children aged under 18 in the workplace. Under the *Ombudsman Act 1974*, the Ombudsman must keep under scrutiny the systems for preventing "reportable conduct" by employees of designated government agencies or NGOs, and the systems for handling and responding to allegations or convictions involving such conduct. "Reportable conduct" means any sexual offence or sexual conduct committed against, with or in the presence of a child, any assault, ill-treatment or neglect of a child, or any behaviour that causes psychological harm to a child, even if the child consented to the behaviour.¹¹⁶

4.6.13 The heads of designated government agencies or NGOs must make arrangements to require employees to notify them of any allegation or conviction involving such "reportable conduct". Once the head of an agency has been advised of a reportable allegation or conviction against an employee, the head must notify the Ombudsman as soon as possible. The notification must include:¹¹⁷

- (a) details of the allegation or conviction;
- (b) whether or not the agency proposes to take any disciplinary or other action in relation to the employee, and the reason for taking or not taking any action; and
- (c) any written submissions made to the head of the agency by the employee about what action should be taken against him or her.

4.6.14 The Ombudsman may monitor the progress of an investigation conducted by or on behalf of a designated agency concerning an allegation or conviction against an employee. The Ombudsman may observe interviews for the investigation, and confer with the people conducting the investigation about the investigation's conduct and progress. If necessary, the Ombudsman may conduct a direct investigation into any such allegation or conviction, regardless of whether it has been notified by the head of the agency. The head of the agency must provide the investigation report to the Ombudsman, who will decide whether the allegation or conviction is properly investigated and whether appropriate action is taken as a result of the investigation.

¹¹⁶ Section 25A, *Ombudsman Act 1974*.

¹¹⁷ Section 25C, *Ombudsman Act 1974* and *Ombudsman (2006)*.

4.7 Funding for child protection measures

4.7.1 An extra AUS\$1.2 billion (HK\$7.3 billion) increase in funding for DoCS to reform the child protection system is being provided in escalating amounts from 2003-2004 to 2007-2008, with 75% of it becoming available in the final three years, so as to provide enough time to plan services and build organizational capacity. According to DoCS, about half of the new funding goes to NGOs to deliver community-based services.

4.8 Legal representation of children in court

4.8.1 Under the *Children and Young Persons (Care and Protection) Act 1998*, the Children's Court¹¹⁸ may appoint a legal representative for a child or young person if it appears to the Court that the child or young person needs to be represented in any proceedings before it.¹¹⁹ The legal representative of a child or young person in proceedings before the Court must "act on the instructions of the child or young person", and ensure that the views of the child or young person are placed before the Court and all relevant evidence is adduced and, where necessary, tested.¹²⁰ The *Children and Young Persons (Care and Protection) Act 1998* provides that there is a "rebuttable presumption" that a child aged not less than 10 is capable of giving proper instructions to his or her legal representative. However, this presumption is not rebutted only because a child or young person has a disability.¹²¹

4.8.2 If the Children's Court considers that a child or young person is "incapable of giving instructions", it may appoint the legal representative as a "separate representative" for the child or young person. A separate representative may present evidence of the wishes of the child or young person but is "not bound by the child's or young person's instructions".¹²²

¹¹⁸ The Children's Court deals with matters relating to the care and protection of children and young people and criminal cases concerning them.

¹¹⁹ Section 99, *Children and Young Persons (Care and Protection) Act 1998*.

¹²⁰ Section 99(2), *Children and Young Persons (Care and Protection) Act 1998*.

¹²¹ Section 99(3), *Children and Young Persons (Care and Protection) Act 1998*.

¹²² Section 99(6), *Children and Young Persons (Care and Protection) Act 1998*.

4.8.3 The Children's Court may also appoint a "guardian ad litem" for a child or young person if it considers that there are special circumstances (such as the child or young person having special needs because of age, disability or illness) that warrant the appointment, and the child or young person will benefit from the appointment. The functions of a guardian ad litem are to safeguard and represent the interests of the child or young person.¹²³

4.9 Mechanism for monitoring and reviewing the implementation of child protection measures

Monitoring by Parliament

4.9.1 The NSW Parliament is statutorily empowered to monitor the work of child protection and safeguard children's rights in the following ways:

Committee on Children and Young People

4.9.2 A parliamentary committee, the Committee on Children and Young People, is responsible for monitoring the work of CCYP. The Committee is a joint committee of both Houses (the Legislative Assembly and the Legislative Council) of the NSW Parliament. It was formed in 2000 under the *Commission for Children and Young People Act 1998*. Its primary statutory functions are to monitor and review the exercise by CCYP of its functions, report to the NSW Parliament on any matter relating to CCYP, and examine annual and other reports of CCYP and report the findings to the NSW Parliament.¹²⁴ It may also examine trends and changes in services and issues affecting children and young people, and make recommendations to the NSW Parliament as to the need for changes to the functions and procedures of CCYP.¹²⁵ However, the Committee cannot investigate "a matter relating to particular conduct".¹²⁶

4.9.3 The Committee comprises five Members appointed by the Legislative Council and six Members appointed by the Legislative Assembly. Neither a Minister nor a Parliamentary Secretary is eligible to be a member of the Committee.

¹²³ Section 100, *Children and Young Persons (Care and Protection) Act 1998*. According to The Law Society of New South Wales, a guardian ad litem appointed by the court is given authority to conduct proceedings on behalf of the child. Any legal representation is therefore provided to the guardian ad litem. There is no relationship between the legal representative and the child, although the legal representative may be required to communicate with the child in performing his or her duties as instructed by the guardian as litem. The Law Society of New South Wales. (2002), p.3.

¹²⁴ Section 28(1), *Commission for Children and Young People Act 1998*.

¹²⁵ Ibid.

¹²⁶ Section 28(2), *Commission for Children and Young People Act 1998*.

Reporting of the Children's Guardian to Parliament

4.9.4 The Children's Guardian is statutorily required to table annual reports before the NSW Parliament. Such reports must include an evaluation of the responses of the relevant agencies to the recommendations made by the Children's Guardian, and any recommendations for changes in the laws of NSW, or for administrative actions, that the Children's Guardian considers should be made as a result of the exercise of the functions of the Children's Guardian.¹²⁷ In addition, the Children's Guardian may, at any time, make a special report on any matter relating to the functions of the Children's Guardian, and submit the report to the NSW Parliament.¹²⁸

Audit by the Ombudsman

4.9.5 The NSW Ombudsman is required to audit the child protection measures that government agencies or NGOs have in place. Such audits aim at assisting those agencies in improving their systems and practice for providing a safe environment to children and young people. They also identify and promote good practice across government agencies and NGOs. In most cases, these agencies are randomly selected for audit. They may also be selected for audit where there are concerns that they are not reporting allegations or convictions involving "reportable conduct", or do not comply with the *Ombudsman Act 1974* on child protection. The Ombudsman provides its audit reports back to the heads of those agencies audited. Such reports highlight good practice, any areas that can be improved, and recommendations for them to implement.

¹²⁷ Section 187, *Children and Young Persons (Care and Protection) Act 1998*.

¹²⁸ Section 188, *Children and Young Persons (Care and Protection) Act 1998*.

Chapter 5 – Analysis

5.1.1 Based on the findings in the previous chapters, this chapter highlights the following aspects to facilitate Members' deliberation on the child protection policies and measures in Hong Kong:

- (a) guiding principles for child protection;
- (b) mode of provision of child protection services;
- (c) role of NGOs in child protection;
- (d) government intervention strategy and measures;
- (e) legal representation of children in court; and
- (f) mechanisms for monitoring and reviewing the implementation of child protection measures.

5.1.2 These issues are discussed with reference to the *Protection of Children and Juvenile Ordinance* (PCJO), which provides for the protection of children or juveniles (aged between 14 and 18) who have been or are being assaulted, ill-treated, neglected or sexually abused; whose health, development or welfare has been or appears likely to be neglected or avoidably impaired; or who are beyond control to the extent that harm may be caused to them or to others.¹²⁹

5.1.3 To facilitate Members' discussion, the **Appendix** presents a comparison table of the main features of the child protection policies and measures adopted by the governments of the three selected places and Hong Kong.

5.2 Guiding principles for child protection

5.2.1 In all the selected places, the principles that guide their governments' planning and implementation of child protection policies and measures are specified in legislation.

¹²⁹ Section 34(2), *Protection of Children and Juvenile Ordinance*.

5.2.2 In England, the *Children Act 2004* states that the well-being of children comprises five outcomes: (a) physical and mental health, and emotional well-being; (b) protection from harm and neglect; (c) education, training and recreation; (d) contribution made by children to society; and (e) social and economic well-being. Based on these statutorily-specified outcomes, the UK government has worked with public organizations and NGOs to establish the Outcomes Framework, which contains 25 specific aims for children and young people. The UK government has used the Outcomes Framework to support its policy development, work with NGOs for setting national priorities relevant to children and young people, and monitor the reform progress of the child protection system.

5.2.3 Unlike England, the Ontario government does not specify in legislation the expected outcomes of its Child Welfare Transformation Agenda launched in 2005. Nevertheless, certain guiding principles for child protection are specified in the *Child and Family Services Act*. The Act states that the paramount purpose of the Act is to promote the best interests, protection and well-being of children. The Act emphasizes that any child protection plan must take into account the differences among children as well as the physical, cultural, emotional, spiritual, mental and development needs of individual children. The Act also emphasizes that when setting a protection plan for a child, the autonomy and integrity of the child's family should be preserved.

5.2.4 Like England and Ontario, NSW has the guiding principles for child protection services set out in the *Children and Young Persons (Care and Protection) Act*. The Act emphasizes that the safety, welfare and well-being of a child who has been removed from his or her parents are paramount over the rights of the parents. It also states that in all actions and decisions that have a significant impact on a child, the child's particular attributes, such as culture, disability, language, religion or sexuality, must be taken into account.

5.2.5 In Hong Kong, PCJO does not specify any guiding principles for child protection policies or measures. Additionally, the government does not establish an outcome framework to guide and monitor its policy development on child protection or welfare. Nevertheless, according to the Social Welfare Department (SWD), the Government has adopted a "child-centred, family-focused and community-based" approach to the planning and delivery of family services. The basic values currently adopted by the Government for child welfare cases focus more on the general well-being of children and child protection, with less emphasis on children's rights and the attributes and needs of individual children. Such values are:¹³⁰

- (a) "children are best protected and nurtured within a loving family in which physical care, mutual support and emotional security are available to foster the development of children into healthy and responsible members of society;

¹³⁰ Social Welfare Department (2006b).

- (b) support to help a dysfunctional family to resume normal functioning will be provided so that children can be cared for continuously in a family environment; and
- (c) children will be removed from a family environment only when there is no better alternative".

5.3 Mode of provision of child protection services

5.3.1 The three selected places have adopted somewhat different modes of provision of child protection services.

5.3.2 In England, child protection services are not provided by a central government agency but by a Children's Trust in each local area. A Children's Trust is a decentralized partnership arrangement created and led by the local authority of a local area. Each Children's Trust integrates the child protection services with other support services provided by key education, social services, health and community organizations that come into contact with children, young people and their families. All these services must be provided according to a single, strategic and overarching plan set by the local authority. The plan is not statutorily required to be approved by the UK government.

5.3.3 In Ontario, child protection services are not provided by a central government agency. They are specifically provided by local, non-government and non-profit-making child welfare agencies (i.e. the Children's Aid Societies) in their respective territorial jurisdictions. Unlike the Children's Trusts in England, these agencies specialize in the provision of child protection services rather than integrated services relating to education, health, recreation, etc. All these agencies are approved and funded by the Ontario government. Each of them is governed by a volunteer Board of Directors accountable to the government.

5.3.4 Unlike England and Ontario, NSW has a government department which takes a lead role in the provision of child protection services. The department usually purchases child protection services from NGOs either through programme funding or on a fee-for-service basis.

5.3.5 In Hong Kong, child protection services are provided by SWD in collaboration with NGOs.¹³¹ The NGOs providing such services are funded by SWD under the Lump Sum Grant subventions system. Their performance is evaluated under SWD's Service Performance Monitoring System.¹³²

¹³¹ Social Welfare Department (2004).

¹³² Ibid.

5.4 Role of non-governmental organizations in child protection

5.4.1 Apart from Ontario where non-government and non-profit-making child welfare agencies are statutorily and exclusively responsible for providing child protection and other support services, both England and NSW have legislation requiring their government agencies responsible for child protection to co-operate with the relevant NGOs, including voluntary and community organizations, in the planning and delivery of such services.

5.4.2 In England, the local authorities are statutorily required to make arrangements for co-operation with not only their relevant partners but also other persons or NGOs exercising functions or engaging in activities relating to children and young people. At the national level, the UK government has engaged NGOs in a range of stakeholder groups to facilitate policy development. It has also pledged to remove any inappropriate or unintended barriers that may prevent NGOs from entering the market for the provision of services for children and young people. At the local level, the local authorities are expected by the UK government to encourage NGOs to contribute to and participate in the various aspects of the Children's Trust arrangements.

5.4.3 In NSW, to facilitate the co-ordination of child protection and other support services, the responsible government department is statutorily required to promote a partnership approach among the relevant government agencies, NGOs, families, corporations, business agencies and the community in taking responsibility for and dealing with children and young persons who are in need of care and protection. Meanwhile, other government agencies are statutorily required to use their best endeavours in responding to the responsible government department's requests for services. The statutory requirements for inter-agency co-ordination are reflected in the NSW Inter-agency Guidelines for Child Protection Intervention formulated by the NSW government.

5.4.4 In Hong Kong, unlike the arrangements adopted by all the selected places, neither the Health, Welfare and Food Bureau (HWFB) nor SWD is statutorily required to establish a partnership arrangement for child protection with NGOs. In any event, SWD has stated that it regards NGOs as its "working partners".¹³³ It has a policy to promote the "tripartite social partnership" among the government, the business community and the third (non-profit-making) sector for the long-term sustainability of the welfare system, including services for children, young people and their families.¹³⁴

¹³³ Social Welfare Department (2004), p. 2.

¹³⁴ Social Welfare Department (2004), pp. 1-2 and p. 6.

5.5 Government intervention strategy

5.5.1 Among the three selected places, both Ontario and NSW have statutory requirements governing the intervention strategy adopted by their governments or child protection service providers. In Ontario, the Children's Aid Societies, which are responsible for providing statutory child protection services to children, must include the participation of the child, his or her parents and relatives, or members of the child's extended family in any protection plan for a child, and take the least disruptive course of action. In NSW, it is statutorily stated that when the responsible government departments or NGOs are deciding on actions necessary for the protection of a child, the intervention must be the least intrusive in the life of the child and his or her family. The responsible government departments or NGOs are also statutorily required to give an opportunity to a child to express his or her views freely on a matter concerning his or her safety, welfare and well-being, if the child is able to form such views. Moreover, such views must be given due weight in accordance with the developmental capacity of the child.

5.5.2 Like England where government intervention principles are not stated in law, there are no statutory intervention principles governing either SWD or NGOs in Hong Kong. In any event, SWD states that "children will be removed from a family environment only when there is no better alternative," and "[i]n formulating a welfare plan for a child, the parents/carers are consulted and involved". In addition, "[d]epending on the child's age and ability to understand issues at stake, the views and wishes of the child will also be considered"¹³⁵ by SWD.

5.6 Government early intervention and prevention measures

5.6.1 All the three selected places emphasize early intervention and prevention for child protection, which can reduce the need for more intrusive and costly services for children in need.

5.6.2 In England, the local authorities forming the Children's Trusts are encouraged to appoint lead professionals responsible for taking the lead to co-ordinate frontline delivery of integrated services for children in need. In addition, the local authorities are required to implement the Common Assessment Framework which enables all practitioners providing services to children to have a common language and structure to record information on children in need and therefore facilitate information sharing.

¹³⁵ Social Welfare Department (2006b).

5.6.3 Both Ontario and NSW have committed a substantial amount of money to early intervention and prevention programmes for child protection. In Ontario, the provincial government has committed at least CAN\$28 million (HK\$190 million) to launch the Youth Opportunities Strategy under which more youth outreach workers are hired to connect young people at risk with services that address their needs, and more job opportunities are provided to young people. It has also been establishing more youth intervention centres to provide community alternatives to custody programmes for lower-risk young people who have broken the law. In NSW, besides recruiting more early intervention caseworkers, the State government has committed AUS\$150 million (HK\$910 million) to fund from 2003 to 2008 the Early Intervention Programme for families who are expecting a child or have small children facing problems such as domestic violence, drug or alcohol abuse and child behaviour management problems. The State government has also launched the multi-departmental Families First project to provide co-ordinated support for families to raise healthy children.

5.6.4 In Hong Kong, the Government says that it also places emphasis on early identification and early intervention of children's problems. In particular, the pilot Comprehensive Child Development Service launched in 2005 is a community-based programme using the Maternal and Child Health Centres (which provide services to over 90% of newborn babies) as the platform to foster better alignment of the delivery of health, education and social services to ensure early identification of the needs of children and their families. Children or their families in need are referred to the existing Integrated Family Service Centres and Integrated Services Centres for early intervention.¹³⁶

5.7 Legal representation of children in court

5.7.1 All the three selected places allow children to be legally represented in court, but the arrangements involved vary.

5.7.2 In England, a child involved in family proceedings on orders with respect to children does not automatically have party status and the accompanying legal representation, unless the court makes an order to this effect under the relevant family proceedings rules which allow a child to be legally represented by a solicitor (usually from a private practice). The solicitor representing the child is appointed by a Children's Guardian from a non-departmental public body sponsored by the UK government. Children's Guardians, appointed by the court, are independent of not only the court but also social services, education and health authorities, and everyone else involved in such cases.

¹³⁶ Social Welfare Department (2006b).

5.7.3 In Ontario, a child is statutorily allowed to have legal representation at any stage in a child protection proceeding. If a child does not have legal representation in the proceeding, the court may determine whether legal representation is desirable to protect the child's interests. If the court determines that legal representation is desirable, it can direct that legal representation be provided for the child.

5.7.4 In NSW, under the child protection legislation, if it appears to the Children's Court that a child needs to be represented in any proceedings before it, and the Court considers that a child is capable of giving proper instructions to his or her legal representative, it is empowered to appoint a legal representative for the child. The legal representative of a child must act on the instructions of the child, and ensure that the views of the child are placed before the Court and all relevant evidence is adduced and, where necessary, tested.

5.7.5 In Hong Kong, under the Legal Representation Scheme for Children/Juveniles Involved in Care or Protection Proceedings run by HWFB, legal representation is offered to a child in care or protection proceedings who is deprived of or at risk of being deprived of his or her liberty under PCJO. According to HWFB, while the offer of such a representation required the consent of the child's parents or legal guardian prior to 1 March 2007, the requirement has been removed.

5.8 Mechanisms for monitoring the implementation of child protection measures and safeguarding children's rights

5.8.1 Among the three selected places, both England and NSW have statutory non-departmental public bodies to monitor the implementation of child protection measures and safeguard children's rights, but their functions and powers vary.

5.8.2 In England, the statutory Children's Commissioner, appointed by the minister responsible for children, has the functions to promote awareness of the views and interests of children, advise the UK government on the views and interests of children; and consider the operation of the complaint procedures or any other matters relating to the interests of children. In particular, the Commissioner has power to initiate an inquiry into a case of an individual child, and summon people to give evidence or produce documents. The inquiry initiated by the Commissioner cannot be vetoed by the UK government. Persons or bodies with statutory functions that are subject to the Commissioner's recommendations made after an inquiry are required to inform the Commissioner of what action they have taken or propose to take in response to the recommendations. The Commissioner must send his or her annual reports to the UK government, which must lay the reports unchanged before the UK Parliament.

5.8.3 Like England, NSW has a statutory Commissioner for Children and Young People, who heads a commission to promote and monitor the overall safety, welfare and well-being of children, make recommendations to government agencies and NGOs on legislation, policies, practices and services affecting children, and conduct special inquiries into issues affecting children. However, unlike the Children's Commissioner in England, the NSW Commissioner for Children and Young People is not empowered to summon people to give evidence or produce documents, when conducting inquiries.

5.8.4 Ontario is the only selected place where no mechanism independent of the government is in place to monitor the child protection services, which are exclusively implemented by non-government child welfare agencies. Nevertheless, the Ontario Parliament has been considering a legislative proposal to establish the Office of the Provincial Advocate for Children and Youth headed by the Provincial Advocate for Children and Youth. The Advocate would be appointed by the Ontario Parliament instead of the Ontario government. The Advocate would be an Officer of the Legislative Assembly accountable to the Legislative Assembly, with an independent status similar to those of the NSW Ombudsman and the NSW Auditor General. Under the legislative proposal, the Advocate could receive and respond to complaints made regarding children's rights. However, unlike the Children's Commissioner in England, the Advocate would not be empowered to summon people to give evidence or produce documents.

5.8.5 NSW is the only selected place where its legislature has a statutory committee to monitor and review certain matters relating to child protection or welfare, including the functions exercised by the Commissioner for Children and Young People. However, the committee cannot investigate any particular child protection case.

5.8.6 In Hong Kong, there is no statutory authority independent of the government to safeguard or promote children's rights. The Government has established advisory committees (such as the Committee on Child Abuse and the Committee on Services for Youth at Risk, both being chaired by the Director of Social Welfare) to advise on child welfare matters.

Appendix

Comparison of the main features of the child protection policies and measures in selected places and Hong Kong

	Hong Kong	England	Ontario	New South Wales
Whether guiding principles for child protection policies/measures are specified by law	No.	Yes.	Yes.	Yes.
Mode of service provision for child protection	Child protection services are provided by the Social Welfare Department (SWD) in collaboration with non-governmental organizations (NGOs) funded by SWD under the Lump Sum Grant subventions system.	Child protection services are provided by the Children's Trust of each local area led by the local authority. A Children's Trust is a decentralized partnership arrangement for the planning and delivery of integrated services to children.	Child protection services are exclusively provided by the 53 non-government, non-profit-making Children Aid's Societies in their respective territorial jurisdictions. All these societies are approved and funded by the Ontario government.	Child protection services are primarily provided by a government department, which also funds NGOs to provide such services.
Role of NGOs in child protection	The government is not statutorily required to establish a partnership for child protection with NGOs, although it has adopted a policy to promote such a partnership.	The Children's Services Authority of each local area is statutorily required to co-operate with NGOs in the planning and delivery of child protection services through Children's Trusts.	Funded by the Ontario government, Children Aid's Societies are statutorily empowered to provide child protection services exclusively.	The NSW government is statutorily required to promote partnership with NGOs for child protection, with such requirements being reflected in the NSW Inter-agency Guidelines for Child Protection Intervention formulated by the NSW government.

Appendix (cont'd)

Comparison of the main features of the child protection policies and measures in selected places and Hong Kong

	Hong Kong	England	Ontario	New South Wales
Whether child protection intervention principles are specified in law	No.	Yes.	Yes.	Yes.
Whether children can have legal representation in court	Yes, a child is given legal representation under the Legal Representation Scheme for Children/Juveniles Involved in Care or Proceedings run by the Health, Welfare and Food Bureau.	Yes, with the court's authorization, a child involved in family proceedings can have legal representation. Such a representation does not need the consent of the child's parents or legal guardian.	Yes, a child is statutorily allowed to have legal representation at any stage in child protection proceedings. Such a representation does not need the consent of the child's parents or legal guardian.	Yes, the Children's Court can appoint a legal representative for a child if it considers that the child needs to be legally represented and is capable of giving proper instructions to the legal representative. Such a representation does not need the consent of the child's parents or legal guardian.
Whether authorities independent of the government are in place to safeguard children's rights	No. Nevertheless, the Government has established advisory committees (such as the Committee on Child Abuse and the Committee on Services for Youth at Risk) to advise on child welfare matters.	Yes, the statutory Children's Commissioner has functions to promote awareness of the views and interests of children, and initiate an inquiry into a case of an individual child that raises issues of public policy relevant to other children. The Commissioner can summon people to give evidence or produce documents.	No. The Ontario Parliament is considering a legislative proposal to establish the Provincial Advocate for Children and Youth, who can receive and respond to complaints made regarding children's rights, but cannot summon people to give evidence or produce documents. The Advocate would be an Officer of the Legislative Assembly accountable to the Ontario Parliament.	Yes, the statutory Commissioner for Children and Young People is responsible for promoting the overall safety, welfare and well-being of children, and conducting inquiries into issues affecting children, but would not be empowered to summon people to give evidence or produce documents. The NSW Parliament has a statutory committee to monitor and review certain matters relating to child protection.

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