

# **THE MORAL STATUS OF CHILDREN IN CHILD PROTECTION: THE CASE FOR EMERGING FROM OUR MORAL IGNORANCE**

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## SUMMARY

The heart and soul of statutory child protection is ensuring that children are safe and protected; that their rights, development and wellbeing are central and flourishing. A growing and consistent theme in child protection discourse is the increasing silence, invisibility and marginalisation of children who experience trauma, oppression and dehumanisation. “Childism” facilitates an understanding of the prejudice and oppression of children (Young-Bruehl, 2012), and anti-childist practice provides the foundation for a transformative agenda (Wall, 2010). The study reported in this thesis is particularly concerned with exposing childist practices within family and statutory child protection contexts with the aim of understanding the lived experiences of children who had been maltreated.

The study begins with a philosophical deliberation asserting that children have moral status and are valuable members of the human community. The concept of moral status and other compelling factors enhance children’s humanity and moral standing, thus degrading childism. Children who experience maltreatment are morally worthy and deserving of care, compassion and recognition. The philosophical deliberation illuminates the criticality of relationships, rights and obligations. It informs morally just practice in statutory child protection.

Morally just practice is a central concept in this study. The *Emergent Model of Morally Just Practice* (EMMJP) a synthesis of the *Just Practice Framework* (Finn & Jacobson 2003a, 2003b) and *Ecological-Transactional Perspective* (Cicchetti & Lynch, 1995), and the *Capabilities Approach* (Nussbaum, 2011) is the interpretive conceptual framework. EMMJP was developed by the author specifically for this study. The EMMJP model serves two functions in the study context: first, it provides an interpretive conceptual framework; second, it is evaluated for its applicability as a social work practice framework in statutory child protection. Morally just practice, which makes the claim that child protection workers are morally and professionally obliged to attend to the realities of children’s lives without abandoning the quest for social justice and human rights, is a critical element of the emergent model and an essential component of social work practice.

Critical social research methodology is operationalised in the study by a critical-dialectical process that grounds the research in the concrete realities of children’s lived experiences and statutory child protection. The *Emergent Model of Morally Just Practice* conceptual framework, as an interpretive lens, demands an intimate knowledge of children’s lived experiences within their family context. It is an interpretive instrument inclusive of children’s development, rights and wellbeing. As such, it facilitates the analysis of the narratives, as case studies, of Dean, Jack, Baby Kate and Ebony, four children central to the study. All four had been in need of care and protection, and met their demise while in contact with statutory child protection. Interrogation of the children’s narratives exposed childism within the contexts of the family and statutory child protection. The trauma that characterised the children’s lives culminated from complex transactions of parental developmental histories,

parental characteristics, meaning of the child and structural factors. The interrogation also identified dynamics that resulted in a profound elimination of the children's humanity.

The statutory child protection agencies that were mandated to attend to the safety and protection of Dean, Jack, Ebony and Baby Kate failed them, thereby exposing the chasm between the rhetoric and reality of practice. Complex, interacting forces contributed to childist practices within the statutory child protection authorities, exacerbating oppression and dehumanisation of the children. The evidence shows a fundamental lack of attentiveness to, and recognition of, their adversity and suffering. Child protection processes and responses illustrate speedy casework resolution, or conveyor belt social work, minimising moral attentiveness and effectively excluding the children and families from the moral community. These strategies, indicative of neoliberalist and managerialist agenda that promote efficiency but obscure the human aspect of statutory child protection work, preclude the formation of working alliances and erode workers' confidence and competence.

As the lives and deaths of Dean, Jack, Ebony and Baby Kate in this study unfold, the readers will observe the fatal impact of childism in family and statutory child protection. It will become clear that a transformative agenda must fundamentally reclaim the rehumanisation of children – *CHILDREN MUST COME FIRST*.

The concluding chapter provides a critique of the *Emergent Model of Morally Just Practice* framework and determines its applicability as a framework for morally just social work practice in statutory child protection. The model starts with a genuine concern for a child's wellbeing coupled with a commitment to social justice and human rights. Engaging with, and having an in-depth understanding of, the oppressive and dehumanising realities of children's lives promotes humane practice and moral status, and erodes childism. This transformation is contingent on humane and ethical statutory child protection agencies that nurture and attend to workers' needs, interests and wellbeing.

## ACRONYMS

CA	Capabilities Approach
CSC	Community Service Centre
CSR	Critical Social Research
DADHC	Department of Ageing, Disability and Home Care
DET	Department of Education and Training
DOF	Department of Families (Queensland)
DoCS	Department of Community Services
DOH	Department of Housing
EMMJP	Emergent Model of Morally Just Practice
ETP	Ecological Transactional Perspective
JIRT	Joint Investigation Response Team
JPF	Just Practice Framework
MJSWP	Morally Just Social Work Practice
UNCRC	United Nations Convention on the Rights of the Child



# DECLARATION

I certify that this study does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Signed

Date 30/06/2016

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## PREFACE: THE BEGINNING OF THE JOURNEY

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*Bullied, berated, criticised, ignored, silent*  
*Cried out, sought help, affirmed, protected*  
*Safe, supported, loved*  
*Hope, opportunities, dreams of a happy future,*  
*Learning, working, planning, growing, understanding*  
*Peace short lived – betrayal!*  
*Again unsafe, bullied, berated, criticised, ignored, silent*  
*Small, insignificant*  
*Shattered dreams, helplessness, despair*  
*Death.*  
*(Bastian, 2013)*

---

*Baptism by fire is a fitting idiom to describe the beginning of my journey and career as a social worker in the field of child protection. Delving into the past has enabled me to make sense of the present (Parton, 2014). As a new graduate, I was allocated the case of a young man and informed that the case was easy and that my role was to support this young man's transition into independent living. Eric (a pseudonym) was 16 years of age and had made the courageous decision to leave home after experiencing persistent and debilitating emotional and psychological abuse perpetrated by his father. He had run away to live with his sister who was also estranged from her parents. On meeting Eric, I was confronted with a defeated, sad young man who could not sustain eye contact. His head was hung low and he was stooped over. He informed me that he could no longer endure living with his father due to the constant belittling and verbal abuse. He felt safe living with his sister.*

*He thrived and remarkable changes occurred. He was able to sustain eye contact with me, became confident and made some important decisions about his life. Engaged in counselling and receiving the much needed support the healing process had begun, and inching towards recovery although a long road lay ahead. The change in his appearance and demeanour was remarkable, detected by his teachers and peers. He was hopeful, optimistic and often smiled.*

*After some months, his sister decided it was time for her to re-unite with her parents without considering the consequences for Eric. He felt he had no choice but to return home due to family*

*pressure. Eric and I discussed his options but he felt that he did not have any other choice. His demeanour changed – defeated and betrayed.*

*I had concerns for Eric's wellbeing and safety, however I was directed to close the case on the basis that Eric was 16 years of age and had chosen to return home and therefore no longer needed our support! My assessment was entirely different – in my professional opinion he needed more support and that we should not abandon him. I tried to negotiate but my request was denied. I was informed that there were many more urgent cases that needed our attention! Contrary to my orders, I spent some time with Eric to ensure that he had a professional network to provide ongoing support for him.*

*Two weeks later Eric suicided.*

# CHAPTER 1

## AN AGENDA FOR CHANGE: ENHANCING THE MORAL STATUS OF CHILDREN IN CHILD PROTECTION

Because children are full human beings, neglecting children diminishes the humanity of us all. It impoverishes the complex webs of social relations in which human beings live and find meaning. (Wall, 2010, p. 2)

### Putting children as moral agents firmly at the centre

With the memory of Eric fuelling my desire for change, I embark on a journey towards understanding, knowledge development and contribution to the imperative for change in child protection.

Journeys have personal, community and historical dimensions; journeys are about individuals and communities and how their stories unfold over time. Journeys are also stories or narrative accounts that describe important milestones and turning points, highlight contributions of key players and settings, note main themes and trends and different points in the journey, and provide coherence and meaning about the journey. (Nelson & Prilleltensky, 2005, p. 4)

It is time for child protection practitioners and policy-makers to emerge from moral ignorance and engage in a philosophical dialogue where children's humanity is firmly positioned centrally. We - practitioners, academics and policymakers - demonstrate moral ignorance when we fail to engage with, react to, and understand others' suffering and, through this insensitivity, avert our gaze (Bauman & Donskis, 2013). The consensual starting point (Wolff & de-Shalit, 2013) is unwavering in that *children have moral status*; they count morally and are morally considerable. This implies that moral agents, inclusive of social workers, are obliged to attend to children's needs, best interests and wellbeing. Children's rights and wellbeing are realised within the context of nurturing and loving relationships; relationships inclusive of adults who are attuned and empathic to children's lived experience, and who, responsive and responsible in alleviating their suffering and adversity, have children in mind and will accomplish the core mission of child protection. This study discloses that there are many complex interacting forces within both family and professional relationships that contribute to the trauma, oppression and dehumanisation of children irrespective of ideological and philosophical intent.

As a researcher and practitioner, I am committed to raising the profile of children who are recipients of child protection services because these children have become increasingly silent and invisible (Brandon et al. 2009; Murray, 2006); a consistent theme within the burgeoning number of reviews and child death inquiries. In the last fifteen years, every jurisdiction in Australia has undertaken a comprehensive review of their child protection system (Bamblett et al. 2010; Carmody, 2013; Crime and Misconduct Commission, 2004; Cummins, Scott & Scales, 2012; Jacob, 2006; Layton, 2003; NSW Parliament Legislative Council, 2002; Wood, 2008). The reports provide a wealth of intelligence delineating the complex and wicked nature of child protection systems (Buckley, 2012; Devaney & Spratt, 2009). Wide ranging recommendations are made that focus on workload issues, interagency

and collaborative practices, workforce competencies and supervision, assessment, and responses to children and young people. While most reforms and legislative changes refer to rights, best interests and welfare, the review processes have neglected to explore in depth the representation and moral philosophical importance of children and young people who are primary recipients of statutory child protection interventions and services (Taylor & Ashford, 2011). The marginalisation of children who experience abuse and neglect, and the related exclusion of their voices and experiences is a phenomenon that has been present since the discovery of child abuse (Young-Bruehl, 2012). This phenomenon is known as childism (Pierce & Allen, 1975; Wall, 2010, 2013; Young-Bruehl, 2009, 2012).

The aim of this study is to identify some of the dynamics that contribute to childism in the context of statutory child protection. Childism “is the automatic presumption of superiority of any adult over a child” (Pierce & Allen, 1975, p. 15) and “the basic form of oppression in our society [that] underlies all alienation and violence” (p. 168). Young-Bruehl (2012) defines childism as prejudice against children leading to their oppression; “At its basis, childism is a legitimation of an adult’s or society’s failure to prioritize or make paramount the needs of children over those of adults” (p. 280). Children, as a target group, become objectified, silenced and invisible, and socially excluded (Wall, 2010; Young-Bruehl, 2012). As a target group, children also may experience oppression and disadvantage as a result of gender, race, class and sexuality exemplifying the complex nature of their experiences. These intersecting complexities have implications for practice in responding to their adversity (Young-Bruehl, 2012; Mattsson, 2014). Mullaly (2010) in citing the work by Wineman (1984) asserts that although there are distinct forms of oppression, they are not unrelated. Different types of oppression intersect at many points in a person’s daily lived experiences creating a total system of oppression. Childism is an emerging theoretical construct and does not effectively account for multiple oppressions and intersectionality and much more theoretical development is necessary (Mullaly, 2010). Nevertheless, childism facilitates the commencement of a critical dialogue about the oppression and adversity experienced by children and the social structures that contribute to their oppression (Mattsson, 2014).

Wall (2010) presents childism as a paradigm “to respond to the experiences of children by transforming understanding and practices for all” (p. 3). According to Wall (2013) childism, like the third wave of feminism, must not only ascertain forces that persecute children but also deliberate on, and activate, forces that empower them. The needs and interests of children are not reducible to those of other human beings with whom they share their life, and recognition of difference will enhance their moral status and moral worth (Wall, 2013). It is on this basis that an agenda for transformation will be built. Childism, like feminism:

... could similarly guide us to understanding of various behaviours and acts against children... We could recognize many social and political arrangements that are detrimental to children or that fail to meet their needs... *Childism* could help identify as related issues child imprisonment, child exploitation and abuse...and all other behaviours and policies that are not in the best interests of children. (Young-Bruehl, 2012, p. 7)

Childism, as described in the literature, has a dual function which is conceptually confusing. Young-Bruehl (2012) defines it as a concept that facilitates analysis and understanding of discrimination and oppression experienced by children whereas Wall (2010; 2013) articulates that it is a paradigm for empowerment and transformation. Conceptual clarity is required. Childism, as articulated by Young-Bruehl (2011) is adopted in this study. As moral agents, who work with children who experience abuse and neglect, we must also inform and propel an agenda for change. *Anti-childist practice* will be the transformative concept deployed in this study.

In their theorising, Pierce and Allen (1975) contend that the modification of childist practices will lead to an alteration in oppressive systems “that retard the development of humankind to its full potential” (p. 18). An optimistic reading of the development of child protection systems is that they were designed in the mid to late nineteenth century to protect children’s interests and rights in the wake of industrialisation and rising capitalism. The 1990s witnessed an acknowledgement of children’s rights and moral status with the ratification of the *United Nations Convention on the Rights of the Child* (UNCRC) (United Nations, 1989). The UNCRC has had a profound impact on domestic child protection legislation and policies. Young-Bruehl (2012) and Wall (2010) argue that the UNCRC formalised and cemented the beginning of an ongoing conversation about obligations owed to children by their families and governments. Yet, seemingly irrespective of the children’s rights movement and commitment to child-focused practice (Gilbert, Parton, & Skivenes, 2011), children continue to experience trauma, oppression and marginalisation (Archard, 2003; Parton, 2014). Deployed in this study childism will facilitate understanding as to why children are denied their rights and wellbeing (Young-Bruehl, 2012). The optimistic reading of child protection will be challenged through the use of critical social research methodology (CSR).

Critical social research (CSR) methodology is used in this study to expose childism in statutory child protection. An empirically grounded process, CSR affords a framework for engaging with and interpreting the data (Harvey, 1990). The *Emergent Model of Morally Just Practice* (EMMJP), as the interpretive conceptual framework developed by the author specifically for this study, operationalises CSR and the generation of knowledge. The knowledge generation process involves a constant shuttling backwards and forwards between the theoretical constructs and concrete data in the form of children’s narratives or case study material in a dynamic process of deconstruction and reconstruction (Harvey, 1990). The critical methodology is ethically responsible because it facilitates exposing unfair and unjust processes within a particular milieu. Being ethically responsible means that there is “a compelling sense of duty and commitment based on moral principles of human freedom and wellbeings, and hence a compassion for the suffering of living beings” (Madison, 2005, p. 5). Foucault described this approach as work that unsettles and commented that “transformative knowledge is disturbing by nature” (Chambon, 1999, p. 53).

The unsettling narratives of Dean, Jack, Ebony and Baby Kate, presented in the form of child death reviews and other relevant documents, are analysed and central to this study. Child death reviews are important, legally sanctioned mechanisms that enable the unpacking and understanding of those complex circumstances that contribute to the abuse, neglect and demise of children (Newton, Frederick, Wilson, Dibben & Goddard, 2010). Most importantly, they are charged with giving insight into the child's world and their experiences. Reviewing child deaths and in some cases serious injuries is considered critical to deepening our understanding of child maltreatment and the operation of child protection systems, including how they respond to the protective needs of children (Brandon, 2009; Connolly & Doolan, 2007; Reder & Duncan, 2004). Therefore, the reviews facilitate an in-depth generation of knowledge that contributes to a growing awareness of the operation of childism within the discourse of child abuse and statutory child protection with the aim of informing policy and practice development. Child death reviews also provide a more focused, valuable insight into the chronological events and service responses leading to the children's demise. The following analyses of the narratives of the four children highlight professional practices that enhance and obscure the centrality and reality of children.

## **Agenda for transformation: moving from legitimation to practice**

As I write this study, an unfolding crisis within the South Australian child protection system has been precipitated with revelations that children in out of home care have been sexually abused by trusted staff (Debelle, 2013; Hunt, 2014; Martin, 2014a); allegations of sexual abuse of Aboriginal children (Martin, 2014b); and the release of coronial inquiry reports into the deaths of four year old Chloe Lee Valentine (Johns, 2015) and four month old Ebony Simone Napier (Schapel, 2016; Hancock, 2014). A Royal Commission was established in 2014 (Edwards, 2014), increasing to five the number of inquiries into the state child protection system in the last ten years (Debelle, 2013; Layton, 2003; Mullighan, 2008; Parliament of South Australia, 2009). Revelations such as these, with ensuing crises and public inquiries into child protection systems, are not isolated to a single jurisdiction, as evidenced by the publication of the *Independent Inquiry into Child Sexual Exploitation in Rotherham* (Jay, 2014).

A philosophical deliberation about the centrality and humanity of children is long overdue. This study engages in a philosophical discourse and invites my colleagues to join with me and, through a morally just discourse, recognise that a system designed to protect children is, for many children, exacerbating their trauma, oppression and dehumanisation. The oppression and domination of children and young people has been absent from critical discourse (Agger, 2013). Authors Wall (2010) and Young-Bruehl (2009, 2012) have progressed a dialogue of childism that was originally proposed in the 1970s (Pierce & Allen, 1975; Young-Bruehl, 2012). Childism is a unifying concept required to propel an agenda and movement advocating for "a more fully developed analysis of the prejudice against children" (Young-Bruehl, 2012, p. 269) by recognising and understanding the



oppression they experience. On this basis, this study contributes to an anti-childist reform agenda to progress and build systems that will enhance the development, wellbeing and protection of children. There is a need for the transformation of relevant social practices that challenge individuals, institutions and societies to alternative responses.

The moment is overdue for academics, practitioners and policy makers (to whom henceforth I will refer as “we” or ‘our’) to re-position the humanity of children in child protection; to engage in a political and philosophical discourse so that these children’s needs, interests and wellbeing are *truly* up front and centre. The best interests and voice of the child must find their way from legislation to frontline practice as exemplified in best practice principles of child protection (Ferguson, 2007b, 2011; Munro, 2008, 2011). A system inclusive of children and responsive to their suffering and adversity will “expand rather than contract the sphere of social inclusiveness in light of those most easily left out” (Wall, 2010, p. 104).

Here I take up the mantle of the new wave of social work in child protection that challenges the increasing concern about restructuring social work and child protection since the 1980s, with the emphasis on new rules, procedures, audit, information sharing, interprofessional collaboration and greater accountability as a way of managing the risks of system failures and child deaths. Consequently, practitioners are increasingly characterised as deskilled (Ferguson, 2011), and instruments of control and surveillance. A number of key writers in the field advocate for a critical review of current managerial-focused practices and a shift to an increased focus on the development of relationships (Featherstone, White, & Morris, 2014; Goodman & Trowler, 2011; Lonne, Harries, Featherstone & Gray, 2016; Munro, 2011); a move towards intimate social work practice (Ferguson, 2011) and a welfare system based on compassion, recognition and care (Froggett, 2002).

In proposing a transformative agenda, I am guided by Wolff and de-Shalit (2013), who assert that policy makers cannot rectify social issues without engaging in a proper philosophical and conceptual discussion of the issue at hand; why it generates moral difficulties, and what is the point of public policy and practices. In following Wolff’s (2011) leadership, I assert that it is imperative to engage in a discussion as to why child abuse is so troubling in order to understand the point of child protection. This discussion will be followed by philosophical considerations centring on the moral importance of children who experience maltreatment. The philosophical discussion grounds an examination of the concrete realities of children who were recipients of child protection responses, and links theory to practice – from abstraction to reality (Wolff, 2011; Wolff & de-Shalit, 2013).

In the next section I establish the Australian child protection policy and practice context within which the four children central to this study received services. This scene setting does not offer an in-depth historical perspective of child protection, which will be provided in Chapter 3.

## **Child protection: setting the scene**

This section meets two specific aims: first, to broadly define and delineate child protection and situate the study; second, to provide an overview of the jurisdictional child protection contexts within which the children – Dean, Jack, Ebony and Baby Kate – were provided services. The chapter concludes with an overview of all chapters, which portray my journey through this field, finishing with my conclusion about the necessity for a morally just approach to child protection social work.

### **What is the role and function of child protection?**

The child protection system is understood as:

A collective term to describe the organisational and procedural arrangements that facilitate individual professionals and their employing agencies to work together to protect children who are believed to be at risk of, and who are experiencing, significant harm. (Devaney & Spratt, 2009, p. 636)

At its most basic, the term child protection signifies the laws, professional practices and policies that have evolved in response to the abuse and neglect of children (Parton, 2014). Australia has the necessary system features to protect children, including an established integrated platform of child protection policies, legislation, systems, services, programs, resources, research, education/training and information. Furthermore, Australia possesses a data surveillance system, population research, a reporting system, and education and training for professionals (Svevo-Cianci, Hart, & Rubinson, 2010). Numerous child protection inquiries (Crime and Misconduct Commission, 2004; Cummins, Scott & Scales, 2012; Munro, 2011; Wood, 2008) demonstrate that children continue to experience abuse and neglect in highly industrialised countries such as the United Kingdom, Belgium, Canada and Australia. A country's financial wealth does not guarantee the safety and protection of vulnerable and disadvantaged children if adequate resources are not assigned to service provision (Svevo-Cianci, Hart, & Rubinson, 2010).

Contemporary child protection is a complex system charged with many and often opposing purposes, particularly in relation to the protection of children and simultaneously supporting families who have been responsible for harming them (Braithwaite, Harris, & Ivec, 2009; Healy, 2009). The essential operation of child protection is the assessment of the functioning and dynamics of family life, and provision of intervention into family life that has been assessed as an imminent or potential threat to children's wellbeing (Parton, Thorpe, & Wattam, 1997). Overall, the aim is to reduce further incidence of harm and associated detrimental outcomes for the child in the short and long-term (Devaney & Spratt, 2009).

The emergence of child protection practices caused a fundamental shift in the relationship between the State and the family. The original purpose of child protection was being *in loco parentis* – assuming responsibility for children who were considered destitute and neglected because their

parents were unable or unwilling to care for them. By the end of the twentieth century, statutory child protection performed the function of:

Screening huge numbers of referrals for an ever-widening group of parental behaviours seen to constitute child abuse and neglect, some of which were normative childrearing practices a generation earlier. (Scott, 2009, p. 64)

Waldfoegel (2008) concurs with this view, identifying that child protection in the United States has been criticised in five key areas. First, there is an overinclusion of children and families being subjected unnecessarily to adversarial and forensic investigations. This may lead to feelings of humiliation and alienation, and inadvertently increase parental stress and social isolation. Second, there is an under inclusion whereby children and families who require intervention are excluded from receiving services. Superficial assessments and/or premature case closure are consistent themes in child death inquiries (Scott, 2006). Third, due to the increased number of children referred to child protection, the system's capacity has diminished. Fourth, children and families who cross the threshold and receive protective intervention do not necessarily receive the most appropriate services. Fifth, the predominance of a narrow investigative approach reduces the system's ability to engage with children and families. Similar issues have been noted in other English speaking jurisdictions (Parton, 2009), including Australia (Scott, 2006). Scott (2006), in her analysis of the child protection system, adds that overloaded child protection services can have detrimental consequences for workers, including high levels of stress and high staff turnover, which further compound workplace issues.

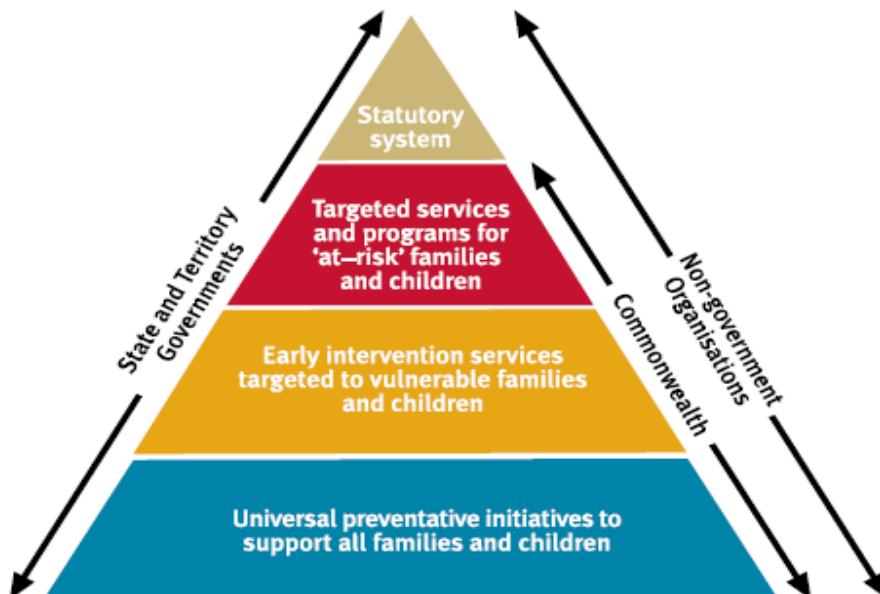
Child protection is at the crossroads. It is in a state of perpetual crisis, evidenced by increasing numbers of children who experience adversity and harm (Parton, 2014; Tomison, 2004), burgeoning numbers of inquiries, child death reviews and complex reform agendas. Ainsworth and Hansen (2006) argue that since 2002 there has been a flurry of activity, evidenced by reviews in every Australian jurisdiction (Bamblett, Bath, & Roseby, 2010; Crime and Misconduct Commission, 2004; Cummins et al. 2012; Ford, 2007; Layton, 2003; Munro, 2011; NSW Parliament Legislative Council, 2002; Parliament of South Australia, 2009; Vardon, 2004; Wood, 2008). The reviews and inquiries have resulted in significant organisational changes, increases in available resources, amended statutes and continued growth in notifications (Ainsworth & Hansen, 2006). The consistent growth in the number of children who have been harmed, are at risk of harm and are the subjects of child protection reports poses significant challenges. Overloaded systems do not have the ability to attune and respond to the needs of children who experience maltreatment. Workload management strategies introduced to cope with overload include closure of reports due to competing priorities (Wood, 2008), hasty assessments and premature case closure (O'Donnell, Scott, & Stanley, 2008), all consistent with Ferguson's (2004) notion of "conveyor belt practice" (p. 221). An under-resourced system struggling to attend to the increasing number of children in need of protection is an unswerving and unrelenting theme, although Lonne, Parton, Thomson, & Harries (2009) dispute that an increase in resources alone will enhance child safety and protection.

Scott (2009) argues that any reform agenda in child protection must embrace two vital and seemingly unacceptable facts:

One, no child protection system can prevent all child abuse deaths, just as there is no mental health system which can prevent all suicides. Two, removing increasing numbers of children from their families on the basis that they are at risk of *possible harm* can inflict serious harm on a large scale on children and their families. (p. 65)

A reform agenda was developed in the mid to late 2000s in Australia with a proposed *Public Health Model of Child Protection* (Australian Research Alliance for Children and Youth, 2009; Scott, 2006). The framework of the public health model informed the development of *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020* (Council of Australian Governments, 2009). The public model's premise is a shift from a residual model focused on protecting children as a response to maltreatment to a preventative one that promotes children's safety and wellbeing (Council of Australian Governments, 2009). Under a public health model:

Priority is placed on having universal supports available for all families (for example, health and education). More intensive (secondary) prevention interventions are provided to those families that need additional assistance with a focus on early intervention. Tertiary child protection services are a last resort, and the least desirable option for families and governments. (Council of Australian Governments, 2009, p. 7)

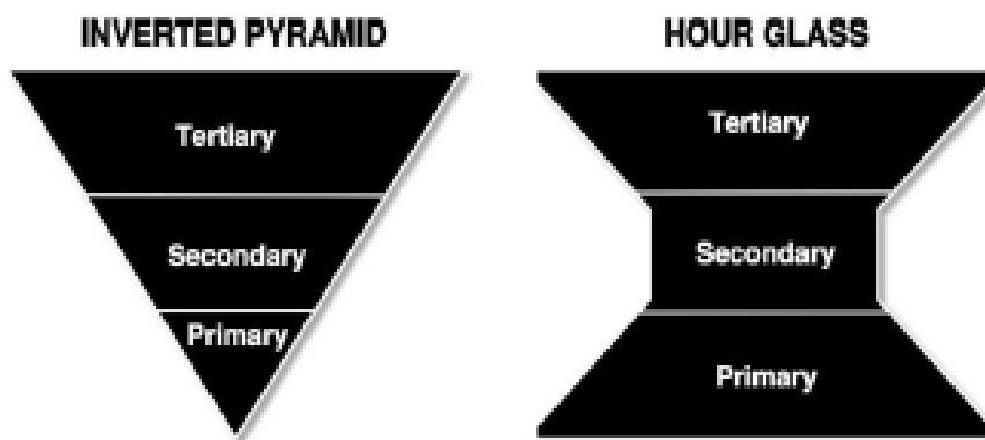


**Figure 1: A system for protecting children (Council of Australian Governments, 2009, p. 8)**

The public health model is best demonstrated through a pyramid (Figure 1). The larger, lower part of the pyramid represents universal and primary prevention strategies provided to all children and their families. The middle section represents services that are more intensive in nature and for families where children are vulnerable or deemed to be at risk of abuse and neglect. The tip provides tertiary services for children who have experienced harm, or are at significant risk and require an intensive statutory response and long-term services to prevent re-occurrence of maltreatment. “Under a public health model, statutory child protection services are just *one component of the*

*system for protecting children*” (Council of Australian Governments, 2009, p. 4). This study is positioned within a statutory child protection context.

Contemporary child protection systems resemble an inverted pyramid or hourglass shape, where the tertiary end of the system dominates the model (Figure 2). There is consensus about the urgent need to reduce the burden on this end of the system (Council of Australian Governments, 2009). In his report, Wood (2008) affirmed this notion, stating that “the child protection system should comprise integrated universal, secondary and tertiary services, with universal services comprising the largest proportion” (p. v). The ultimate aim of implementing a public health approach is to reduce the prevalence of children who experience abuse and neglect, and divert them from the statutory system (Council of Australian Governments, 2009).



**Figure 2: Deviation from public health model (Council of Australian Governments, 2009, p. 5)**

The implementation of a public health model is complex, requiring cultural and systemic changes (Australian Research Alliance for Children and Youth, 2009):

For over a decade, numerous inquiries and reviews have proposed reforms which in the main have failed. Real reform will require a commitment to philosophical, structural and cultural change. We must develop a system which is dynamic in its response to the needs of children and young people. (NSW Parliament Legislative Council, 2002, p. 7)

Turnell, Munro, and Murphy (2013) assert that:

... deliverables such as legislative change, a policy rewrite, a new computer system, an organisational restructure, a child death review, compliance measures, or adopting a particular practice model, while challenging to implement, are the more brick-like components for an effective child protection organisation. (p. 201)

These are necessary but not adequate. The harder work lies in the soft stuff; the cement that binds the solid elements together. The soft stuff is situated within the “skilfulness of the professionals, which is determined by the human attitudes and responses to the uncertainty and anxiety of the child protection work” (p. 201). The soft stuff promotes practice depth and enhances development of

relationships between workers, children and their families; it is essential for statutory child protection that is authoritative (Sidebotham, 2013), intimate (Ferguson, 2011) and morally just. Morally just practice in child protection is practice ethically grounded in the centrality of the child, recognising and understanding their lived experiences and ensuring that professional intervention is relational and responsive to their unique circumstances (Chu, Tsui, & Yan, 2009).

This study is situated within a political context where the child protection system is aptly reflected as in inverted pyramid or an hour glass, triggering a need to shift from a child protection system to a system that protects children (Australian Research Alliance for Children and Youth, 2009). The children who are central to this study were in receipt of services in the overburdened tertiary or statutory child protection system. The present analysis contributes to the evolving knowledge necessary for a transformative agenda in statutory child protection.

The focus of this study are children who received services at the 'front end' of the statutory child protection systems. The front end of child protection focuses on processes of identification, investigation and assessment and immediate case management responses to child abuse and neglect. This study *does not* examine the treatment of children who are in out-of-home care although many of the issues are similar and relevant. The exclusion of children who are in out-of-home care in this study does not diminish nor negate the prejudicial treatment or childism that they experience within a system that is responsible for their care and protection. The rationale for the focus of my study is based on two factors. Firstly, a system that is ethically responsive to the needs of children at the front end should, ideally reduce the number of children who enter out-of-home care. Secondly, my professional experience and passion lies within the front end of child protection. The experiences of children in out-of-home care have been recently examined in the *South Australian Child Protection Systems Royal Commission* arguing for expansive reform across the whole system (Nyland, 2016) and many of the issues that emerged are consistent across the all areas of child protection work. There may be capacity in my post-doctoral work to apply The *Emergent Model of Morally Just Practice* (EMMJP) to the experiences of children in out-of-home care with the intent to expose childism and further contribute to an agenda of transformation across the entire child protection system.

The next section will briefly introduce you to the four children who are central to this analysis, and give an overview and examination of the child protection context for the relevant jurisdictions that provided them with services. The intent is to provide you with an intimate appreciation of the ideological and professional issues that were in existence for frontline statutory child protection when the four children were receiving services. More in-depth information about the children is provided in Chapters 6 and 7, and Appendices 3 to 6.

## **The children central to this study: an introduction**

The children central to this study were in receipt of services situated within overburdened statutory or tertiary child protection services in the jurisdictions of Queensland and New South Wales.

**Baby Kate** was in receipt of child protection services from the Department of Families (DOF) in Queensland immediately following her birth in July 2001. DOF received information prior to her birth that Baby Kate was at risk of harm for the following reasons: her mother, Lisa, was intellectually disabled and experienced difficulties attending to her own basic needs; Lisa had experienced childhood abuse and neglect, and was raised in state care; Lisa's partner, who denied paternity, was physically and verbally abusive, and they both abused substances. DOF intervened and assessed that Lisa was able to care for Baby Kate with ongoing support. Baby Kate died when she was ten weeks of age (Queensland Ombudsman, 2003).

**Jack** was born in 2000. He was three years of age when he was found dead while in the care of two males who were not well known to either him or his mother. Jack had been sexually abused. Jack's narrative chronicles a life of emotional and physical neglect, and a documented episode of physical abuse. Jack and his sibling were denied a safe, protective and nurturing environment. He, his sister and his mother had been in receipt of services from the Department of Community Services, New South Wales episodically from June 2000 until prior to his death in September 2003 (New South Wales Ombudsman, 2004).

**Ebony** was born in 2000. She was seven years of age when she died from chronic starvation and extreme neglect. Ebony and her family were in receipt of services from the Department of Community Services (DoCS) in New South Wales, although no professionals had sighted Ebony for the last sixteen to eighteen months of her life. Intensive intervention had been provided by DoCS between 2000 and 2003. The family situation deteriorated between 2005 and 2007, and Ebony and her siblings were the subjects of a multitude of notifications. Ebony, particularly in the last two years of her life, was physically and emotionally abandoned, imprisoned and ceased to exist (New South Wales Ombudsman, 2009b).

**Dean** was born in 2005. He was two years and seven months of age when he was found deceased in October 2007. During his lifetime, Dean was the subject of ten child protection notifications that had been recorded by the Department of Community Services (DoCS) in New South Wales. Dean and his siblings together were the subjects of thirty-four notifications, twenty-four of which required further assessment. Prior to his death and despite the number of notifications received by DoCS, a comprehensive assessment of Dean's circumstances had never been completed (New South Wales Ombudsman, 2009a).

Secondary data, in the form of official documents concerning the children, have been analysed to give an understanding of the children's circumstances and child protection practices. The child death

reviews that provide an examination of the children's chronological history and statutory child protection responses are central to this study. The narratives were selected according to the following criteria: 1) the documents examining the child's narrative and ensuing child protection practices were published within an Australian jurisdiction; 2) the documents provide adequate information to facilitate an examination and understanding of the child's lived experiences and adversity, and detailed child protection practices; and 3) the documents are publicly accessible. More discussion about the inclusion criteria and document scope is provided in Chapters 5 and 6.

The children's narratives and statutory child protection practice responses occurred between the years 2000 and 2008. Three of the four narratives prompted reforms in the Queensland and New South Wales jurisdictions. Findings from Baby Kate's child death review were included in the *Protecting Children: An Inquiry into abuse of children in foster care* report following an investigation by the Crime and Misconduct Commission (2004) in the Queensland jurisdiction. The child death reviews of Ebony (New South Wales Ombudsman, 2009b) and Dean (New South Wales Ombudsman, 2009a) triggered Wood's (2008) *Report of the Special Commission of Inquiry into Child Protection in New South Wales*. The reviews conducted by Wood (2008) and the Crime and Misconduct Commission (2004) provide valuable contextual information about the New South Wales and Queensland jurisdictions respectively. Despite a lapse of more than a decade since the inquiries into the deaths of these children, the analysis in this study demonstrates that many of the issues requiring reform remain pertinent and compelling.

### **Provision of protection in a time of reform**

The early 2000s saw significant reform in the Queensland and New South Wales jurisdictions with the implementation of new legislation and reform agendas reflective of a shift in ideologies and practice imperatives (Crime and Misconduct Commission, 2004; NSW Parliament Legislative Council, 2002). The *Child Protection Act 1999* (Qld) became fully operational in March 2000. Following a seven-year consultation process, a plan for reform, including new legislation, was implemented. It emphasised the following principles: "the paramount consideration was the child's right to protection...accountability, and recognition that both parents and children have a right to information and to participate in planning and decision making...a preference for working co-operatively with families to protect children...statutory recognition to the Indigenous child placement principle..if intervention was necessary, it must be taken at the least intrusive level that was compatible with ensuring the child's protection" (Crime and Misconduct Commission, 2004, p. 8).

New South Wales also engaged in substantial reform during the 1990s.

First, the Community Services Commission was established to, *inter alia* review, monitor and deal with complaints in relation to the Government's care and protection of children. Secondly, a review was conducted of the *Children (Care and Protection) Act 1987*. Thirdly, a child death review team was created... Fourthly, many of the recommendations made in the review of the 1987 legislation were reflected in the *Children and Young Persons (Care and Protection) Act 1998*, (*the Care Act*)



including an extension of mandatory reporting. Finally, the Helpline was operational from 2000. (Wood, 2008, p. 8)

In 2002, a number of reports were published that were critical of the Department of Community Services (DoCS), including:

- a review conducted by the NSW Ombudsman censuring DoCS' inability to respond to the growing number of children at risk and other operational areas,
- the *Kibble Report* recommending an increase in staffing levels, and
- the final report by the NSW Parliament Legislative Council (2002) recommending sweeping changes across the system.

The mounting and unfailing criticism of DoCS resulted in an expansive reform agenda in 2002. Nevertheless, a number of key factors hindered the realisation of change, including: a continuing increase in the numbers of children who had allegedly been harmed or were at risk of harm; an inadequate electronic client information system and caseworkers reluctant to utilise the new system; other agencies held the perception that DoCS was the sole agency responsible for the safety and protection of children; slow pace of change; and lack of public funding (Wood, 2008). The deaths of Dean Shillingsworth and Ebony triggered an additional review of the child protection system in New South Wales:

It was largely in response to the deaths of these two children that, on 14 November 2007, a commission was issued for an Inquiry to determine what changes within the child protection system were required to cope with future levels of demand once the current reform to that system which had been initiated in 2002 were completed. (Wood, 2008, p. 3)

The reform agendas in Queensland and New South Wales are reflective of the changes that have occurred in the last twenty years in child protection in English speaking countries. Major encounters include the changing relationship between child protection and family support, and increasing efforts to develop holistic and integrated responses where the future welfare and wellbeing of children are positioned centrally. In broadening the focus of child protection, intervention has placed significant demands on frontline staff in statutory child protection (Parton, 2009).

Child protection statutes provide legitimacy for state intrusion into family life, as well as professional assessment and intervention. Statutes are not self-enforcing (Dingwall, Eekelaar, & Murray, 2014). Their application, social significance and implementation are subject to interpretation by authorised delegates on a case-by-case basis. The interpretations must be consistent with the organisational charter "if an agency is to fulfil its notional contract with the remainder of its host society" (p. 5). There have been legislative changes following more recent inquiries into the child protection systems in both the New South Wales and Queensland jurisdictions (Carmody, 2013; Crime and Misconduct Commission, 2004; Wood, 2008), therefore, in this study, I refer to the statutes as they were in operation at the time the children were in receipt of services.

The statutes governing practice in the DOF (Qld) and DoCS (NSW) are reflective of provisions from the UNCRC (United Nations, 1989), in particular, the best interests of the child and the child's right to participation and inclusion in decision-making processes (United Nations, 1989). Philosophically speaking, both the *Child Protection Act 1999* (QLD) and *The Care Act 1998* (NSW) are similar: the safety and wellbeing of the child is of paramount consideration; children should be provided with a stable, safe and nurturing environment; support for parents and preservation of family relationships; and the child, where able, is to be given the opportunity to participate in decision-making processes and freely express their views and opinions about their circumstances. The principles are reflective of contemporary child protection ideology and the ethical imperative that the maintenance and preservation of families is considered to be the best place to raise a child (Keddell, 2011; Lonne et al. 2016). The deconstruction of the best interests principle will be examined in more detail in Chapter 3.

The *Care Act 1998* (NSW) articulates that:

This Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and wellbeing of the child or young person are **paramount** (emphasis added). (Section 9(1))

Similarly, Section 5(1) of the *Child Protection Act 1998* (QLD) stipulates that:

This Act is to be administered under the principle that the welfare and best interests of a child are **paramount** (emphasis added).

The UNCRC specifies in Article 3(1) that:

In all actions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a **primary** (emphasis added) consideration. (United Nations, 1989, p. 1)

According to the UNCRC, a child's best interests should be a *primary* consideration as distinct from the primary consideration or *the paramount consideration* (Archard, 2003; Freeman, 2007a), which provides weight to the principle and has implications for practice. Archard (2003) asserts that a primary consideration is a leading consideration and ranks first in a list of all other considerations, "although no considerations outrank a primary consideration as there may be other considerations of equal, first rank. Furthermore, a leading consideration does not trump even if it outranks all other considerations" (Archard, 2003, p. 39). Alternatively, "a consideration that is paramount outranks *and* trumps all other considerations" (p. 39) and is effectively decisive. This differs significantly from the concept of a primary consideration and has significant ramifications for implementing the legislative frameworks. Legislative frameworks relevant to this study stipulate the **paramountcy** principle and, in practice, the child's best interests – their safety and wellbeing – must *trump and outrank* all other considerations, including parental rights. Philosophically speaking, intervention should enhance the child's status and moral worth as a result of state intervention.

The legislative frameworks also articulate the circumstances in which a child is found to be in need of protection to ensure they are free from abuse and violence (Hart, Lee, & Wernham, 2011). Under the Queensland legislation:

If the director-general becomes aware (whether by notification or otherwise) of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, he or she must immediately:

- (a) Have an authorised officer investigate the allegation and assess the child's need of protection, or
- (b) Take other action the director-general considers appropriate. (Crime and Misconduct Commission, 2004, p. 10)

Following investigation and assessment processes, a child in need of protection is a child who “has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm, and does not have a parent able and willing to protect the child from the harm” (Crime and Misconduct Commission, 2004, p. 11). This implies that harm or risk of harm must be “confirmed” or “substantiated” before protective intervention can be initiated. The concept of “harm” and “responsibility for the harm” are critical in the deliberation of what constitutes child abuse, although the construct of harm lacks clarity and specificity. In determining whether a child has been harmed and needs protection, the harm must be understood in terms of the consequences to the child's wellbeing (Corby, 2006). Archard (2004) asserts that a child has been harmed if their rights have been violated within a context of relationships characterised by adversity. The *Child Protection Act 1999* (QLD) stipulates that harm “to a child, is any detrimental effect of a significant nature of the child's physical, psychological or emotional wellbeing” (Section 9(1)), emphasising the importance of consequences. Section 9(2) specifies that the cause of harm is immaterial but that harm can be caused by “physical, psychological or emotional abuse or neglect, or sexual abuse or exploitation” (Section 9(3(a) and (b))).

Similar provisions exist in the New South Wales jurisdiction. A suspicion that a child is at risk of harm is adequate to trigger DoCS' powers to investigate and assess the child's circumstances. A child is deemed to be at risk if: the child's physical and psychological needs are not being met; the child is not provided with necessary medical care; the child is at risk of being physically or sexually maltreated; the child lives in a context of domestic violence; parental behaviour towards the child has caused suffering or the child is at risk of suffering serious psychological harm; and the child was a subject of pre-natal reports and the mother did not successfully engage with support services (*the Care Act, 1998* (NSW), Section 23) (Wood, 2008, p. 177). Thus, a child is deemed to be “in need of care and protection” if investigation and assessment processes determine that “the child or young person has been harmed physically, sexually, psychologically or through neglect”, or there is sufficient information to make a judgement that the child may be at risk of harm. In these circumstances, DoCS is obliged to “take whatever action is necessary to promote the safety, welfare and wellbeing of the child or young person” (p. 397), including provision of support services, and

development of care plans or other formal processes through the legal system (eg parent responsibility contracts, undertakings, protection orders).

Both the Queensland and New South Wales statutes stipulate that a child's circumstances will be assessed if there is reasonable suspicion that a child may be in need of protection. Both legislations also include caveats specifying that not every child protection notification will be investigated. The *Care and Protection Act 1999* (QLD) stipulates that "the director-general can respond to a notification by either investigating the allegation or by taking 'other action the director-general considers appropriate' (s.14[1]) (Crime and Misconduct Commission, 2004, pp. 10-11). Similarly, Section 35 of the *Care Act 1998* (NSW) specifies that:

(1) The Director-General may decide to take no action if...proper arrangements exist...and the circumstances ...are being adequately dealt with... (2) If the Director-General decides to take no action, the Director-General must make a record of the reasons for the decisions. (Wood, 2008, p. 264)

Special provisions are stipulated in the Queensland and New South Wales legislations in relation to the needs of Aboriginal children, who are significantly over-represented in Australian child welfare and child protection (Tilbury, 2009; Wood, 2008). As will be elaborated in Chapter 3, the reasons for this situation lie in the cumulative effects of post-colonisation policies that have resulted in general disempowerment and forced separation of children from their families and communities. This enforced separation over consecutive generations has given rise to a "legacy of grief, sadness and loss of identity and culture for many" (Tilbury, 2009, p. 58). The legacy continues to reverberate in contemporary society and the consequences are still evident in child protection (Bennett, 2013; HREOC, 2007; Tilbury, 2009; Wood, 2008).

All provisions in the child protection legislations apply equally to Aboriginal and non-Aboriginal children. The *Care Act 1998* (NSW) and the *Child Protection Act 1999* (Qld) have special principles related to Aboriginal children. Aboriginal people are to participate in the care and protection of their children, and partake in decision-making processes about the placement of their children that are consistent with, and respectful of, cultural considerations (Wood, 2008). These special provisions are in recognition of the vulnerability and chronic disadvantage experienced by some Aboriginal children and their families. Tilbury (2009), in her study of child protection, out-of-home care and juvenile justice administrative data, discovered an over-representation of indigenous children in the Australian child welfare system, identified that there is no reluctance to intervene and that Aboriginal children are more likely to be "substantiated for abuse or neglect, more likely to be placed on an order, and more likely to be placed in out-of-home care, more likely to stay longer, and more likely to be on juvenile justice orders and in detention" (p. 62). The issue is not that governments don't intervene but the type of intervention provided. Responses provided for Aboriginal children are consistent with an approach that focuses on individualistic pathology or criminality, ignoring cultural considerations (Tilbury, 2009). This information, however, is contrary to Dean's experience.

## **Provision of services in a time of growing numbers of children requiring protection**

In New South Wales, a substantial increase in notifications accompanied the implementation of the *Care Act 1998*. In 2001–2002, 158,643 notifications were recorded. In 2007–2008, DoCS received 303,121 child protection notifications, which represents almost a ninety per cent increase. In 2001–2002, 84,965 children were the subjects of the 158,643 notifications while in 2007–2008, 130,869 children were the subjects of 303,121 notifications. These figures indicate not only an increase in the number of children experiencing harm or at risk of harm, but “the occurrence of multiple reports per child has increased over time” (Wood, 2008, p. 120):

In 2001/02, 54.6 per cent of all children and young persons involved in reports were reported for the first time ever...by 2007/08... 58.7 per cent of all children and young persons involved in reports already had a child protection history, or were ‘known to DoCS’. (Wood, 2008, p. 121)

A trend identified in New South Wales was a significant increase in the percentage of children who “were the subject of a substantiated report and a further substantiation within the following 12 months” (Wood, 2008, p. 339). It appears that the likely outcome for children whose notifications were assessed as requiring multiple interventions from DoCS were more likely to be reported multiple times in the twelve months following the last child protection assessment process. Conversely, children who did not receive a child protection response “were most likely not to be reported again within the following 12 months” (Wood, 2008, p. 339). Wood (2008) offers some possible explanations for these findings. First, the intervention provided may not have resulted in increased safety for the child or assessments were predominantly incident-based rather than holistic. Second, DoCS intervention may have resulted in increased visibility of the child’s circumstances to other professionals, resulting in further reports. Third, an unpredictable change occurred in the family’s circumstances. Fourth, “cases may be closed after a report has been referred for further assessment...the record indicates that a secondary assessment has taken place without any work having been done” (Wood, 2008, p. 339). This trend is particularly germane and reflected in the narratives of Ebony, Dean and Jack.

The Queensland jurisdiction experienced a similar trend to New South Wales. In 1997–1998, 17,233 notifications were recorded (Australian Institute of Health and Welfare, 1999), while in 2002–2003, following implementation of the new legislation, the number of notifications almost doubled to 31,068, 88 per cent (27,218) of which were assessed as requiring an investigation and assessment of the child’s circumstances. Additional information provides insight as to the difficulties of meeting these increasing demands. Of the 27,218 notifications that required investigation, “12,203 (44.83%) were substantiated, 5339 (19.61%) were unsubstantiated and 9679 (35.56%) had no recorded outcome” (Crime and Misconduct Commission, 2004, p. 21). Further information indicates that:

... of the 9679 cases with no recorded outcome, approximately 2300 (23.76%) did not have an outcome recorded because the department was unable to obtain sufficient information to allow a finding of either substantiated or unsubstantiated. Approximately 3700 (38.22%) were still under investigation and approximately 3500 (36.16%) were not investigated due to ‘workload reasons’... This last figure is disturbing. (Crime and Misconduct Commission, 2004, p. 21)

Child protection notifications<sup>1</sup> and substantiations<sup>2</sup> provide valuable insight about the number of children who have been harmed or are at risk of harm (O'Donnell et al. 2008). The Queensland and New South Wales jurisdictions' experience of growing numbers of children referred for protective interventions is a common theme in child protection discourse and across Australia. In a five-year period between 2000–2001 and 2005–2006, child protection notifications across Australia more than doubled from 115,471 to 266,745. This placed the system under considerable stress, dealing with notification and investigation of so many children and families, and increasing numbers of children going into out of home care:

The challenge faced by the current Child Protection systems is that in reality they are services primarily targeting children at high risk and who meet the threshold for statutory intervention. However, the majority of cases that are being notified are children in vulnerable families in which there is risk from chronic adverse family circumstances and not from a specific episode of harm...it is neglect and emotional abuse that comprise the vast majority of substantiated cases. (O'Donnell et al. 2008, p. 326)

The issue of physical and emotional neglect contributing to cumulative harm is a dominant theme in the life stories of Dean, Jack and Ebony.

### ***What about Aboriginal children?***

During the period 2001–2002 to 2007–2008, statutory child protection reports for Aboriginal children in New South Wales increased from 18,348 to 55,303. In 2001–2002, 11.5 per cent of all reports involved Aboriginal children compared with 18.3 per cent in 2007–2008 (Wood, 2008). New South Wales was the jurisdiction responsible for providing services to Dean, and during the years just mentioned the number of child at risk reports involving Aboriginal children more than tripled. The growing numbers of children reported to the statutory child protection services were meaningfully higher for Aboriginal children.

In his report, Wood (2008) articulated some important points of difference between Aboriginal and non-Aboriginal children: Aboriginal children are more likely to have had a child protection history; a higher reporting rate of Aboriginal children aged less than one year; and above average growth in reports highlighting issues of neglect, carer drug and alcohol issues, and child drug and alcohol issues. A particular issue was short term re-reporting involving Aboriginal children. Re-reporting is defined as “a report received, with the same issue type, within seven days of another report for the same child” (p. 130). There was a 62 per cent rise in re-reporting between 2004–2005 and 2007–2008, which signifies an increase in reports per child per year. This, according to Wood (2008), implies continued contact with DoCS and a higher likelihood of being reported again within a period

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<sup>1</sup> Notifications consist of reports made to an authorised department making allegations of child abuse or neglect, child maltreatment or harm to a child (AIHW, 2007, p. 81).

<sup>2</sup> Child notifications investigated and it was concluded that there was reasonable cause to believe that the child had been, was being or likely to be abused or neglected or otherwise harmed (AIHW, 2007, p. 81).

of twelve months. However, this information is not consistent with Dean's experience of service provision.

This section has revealed that the children central to this study were in receipt of statutory child protection services in a context grappling with significant reform, increasing demand and decreasing capacity. The introduction of ideological changes, growing numbers of notifications, associated procedural demands and increased accountability would have intensified the demands for frontline child protection practitioners to preclude morally just practice. It is not within the purview of this study to examine compliance with processes or procedures in providing tertiary child protection services. However, it is important to provide a brief (albeit technical) overview of the child protection processes in place at the time services were provided to Dean, Jack, Ebony and Baby Kate. These processes provide prescribed systematic approaches to assessment and intervention for children who experience abuse and neglect (Bromfield & Higgins, 2005). As will become evident in the study, there is a dissonance between rhetoric and practice reality. This will be the focus of the next section.

### **What processes make up statutory child protection?**

As a federation of states and territories, Australia does not have one integrated system but eight different child protection systems that share many similarities but have significant differences (Bromfield & Higgins, 2005). Attempts to unify the eight jurisdictions through stated ideological and accountability performance measures did not commence until 2009 (Council of Australian Governments, 2009). Each state and territory in Australia has a legislation that governs child protection and the departments responsible for operating the child protection system (Bromfield & Higgins, 2005), including tertiary child protection services. A simplified version of child protection processes is provided in Appendix 1.

### ***Reporting***

State and territory statutory child protection authorities receive reports about children's compromised safety. These reports can be made by a concerned community member, a professional mandated to report abuse and neglect of children, or an organisation that provides services to the child and/or family. All states and territories have legislative provisions that compel reporting of suspected abuse and neglect of children, although the range of professionals who are mandated notifiers differs across jurisdictions (Australian Institute of Health and Welfare, 2009). Mandatory reporting has attracted significant critique. Its introduction has been associated with the ever growing number of notifications and reports to state and territory authorities (Ainsworth & Hansen, 2006; Bromfield & Higgins, 2005; Melton, 2005; O'Donnell et al. 2008), and hence a substantial increase in the number of children assessed as requiring protective intervention:

The system's net has broadened by a better understanding of the impact of chronic neglect and child maltreatment... At the same time, changing community attitudes, increased community awareness and greater professional knowledge have all increased the number of children coming to the attention of the system. (Parliament of South Australia, 2009, p. 69)

In New South Wales, any person who delivers health, welfare, education, child care, residential or law enforcement services to children in “their professional work or paid employment, or manage those who do so” (Wood, 2008, p. 176) is obligated to report. In Queensland, however, medical practitioners, Family Court staff, licensed residential care service employees, Department of Families staff and school principals are mandated to report suspicions of child abuse and neglect (Crime and Misconduct Commission, 2004). The Crime and Misconduct Commission (2004) deliberated on extending the provision of mandatory reporting and determined that it was generally “favoured by non-professionals but ... viewed more sceptically by professionals” (p. 183), who were of the opinion that:

There is no advantage gained by reporting if there is no capacity within the system to respond effectively, and that a flood of notifications may have the effect of disguising those reports that require an immediate and strong response. In Victoria the view is expressed that the system is buckling under the effect of the current regime of mandatory reporting and that mandatory reporting can lead to a legalistic cycle of investigation and intervention which arguably may not benefit the child or the family...mandatory reporting is said to promote over-reporting for fear of being held accountable for not reporting. (Crime and Misconduct Commission, 2004, p. 183)

### ***Intake: receiving of notifications***

According to Bromfield and Higgins (2005), intake is a core component of child protection and basically the same across all jurisdictions. However, it is highly proceduralised and therefore the processes are subject to variability. In the DOF in Queensland, for example, workers in local area offices receive and record notifications. If the reported information suggests “that a child has been harmed or at risk of harm and does not have a parent willing and able to protect them from harm” (Crime and Misconduct Commission, 2004, p. 10), a child protection notification is recorded. The departmental officer then “determine[s] the level of harm or risk of harm, and prioritise[s] the case either as a protective advice response or for investigation and assessment with a rating of 1, 2 or 3 (1 being the most serious and urgent)” (Murray, 2003, p. 7). In the review of the Baby Kate case, the Queensland Ombudsman (2003) found that “there is some evidence that less experienced officers tend to be allocated to assessment work; yet poor decision-making at this point can have devastating consequences” (Crime and Misconduct Commission, 2004).

The intake system in the New South Wales DoCS is more systematic and complex. The “contact and initial assessment stages” (Wood, 2008, p. 268) are conducted by workers situated at the DoCS *Helpline* (Bromfield & Higgins, 2005), which was established in 2000 and coincided with the implementation of the *Care Act 1998* (NSW). The process is as follows:

- Child protection reports are recorded and assessed and an initial assessment conducted. Initial assessment should include information about the child’s age, vulnerability and development. If, at initial assessment stage one, the child, young person or unborn child is at risk, then assessment proceeds to initial assessment stage two. If the child is not deemed to be at risk, then the report is closed and no further action is undertaken.
- Initial assessment stage two requires the collation of more in-depth and relevant information, including: previous episodes of abuse and neglect and any identifiable patterns; previous or



current orders; previous assessments conducted by DoCS about the child and the family; and any parenting issues such as domestic violence, substance abuse or mental health issues.

- An analysis of the information is conducted and, if an assessment is made that the child is in need of protection, the reports are sent through to the relevant Community Service Centre.

In 2007, the New South Wales Ombudsman critiqued the proficiency of *Helpline* assessments, identifying the following issues: the recommendations made by *Helpline* staff did not accurately reflect the level of risk experienced by the child; information that amounted to new concerns was minimised and recorded as information only, particularly when a child had an open case; inadequate history checks were conducted, failing to capture important information about previous interventions or involvement with DoCS and chronicity of abuse or neglect; errors in reporting of facts; and “multiple reports at times appeared to be assessed on an incident basis, although records indicated escalating risk” (Wood, 2008, p. 335).

### ***Investigations and assessments***

Investigation is the area of least variability across Australian jurisdictions. Core processes for investigation/assessment include: contact with family; organisation of any relevant specialist assessments (for example, medical or developmental); and amassing information from others who know the child and family, including the school, police and health services. After completion of the information gathering phase, a full assessment is conducted and decisions are made about the child’s safety and whether “to substantiate the allegation and the child’s risk of being subjected to further harmful events” (Bromfield & Higgins, 2005, p. 20). In situations where it is deemed that the child has not been harmed or there is minimal risk of harm in the future, a referral may be made to family support services. In cases where children experience harm and a determination is made that they may experience further harm, “an assessment is made of the services and interventions required in order to keep the child safe” (p. 20). Ensuring the child’s immediate safety, which may involve legal actions, is the priority.

The Queensland DOF and New South Wales DoCS have been censured in relation to investigation and assessment. In her review of child safety and foster care in Queensland, Murray (2003) asserted that:

There are essential elements of an assessment that make it holistic and thorough to ensure the current and on-going safety of a child. Initial assessment should be of an inquiry and forensic nature but also have a child protection assessment focus that works towards a therapeutic outcome for the child. (pp. 49-50)

She found that many of the essential elements were absent, for example:

... subject children were not always sighted or interviewed, relevant people were not always contacted and often, limited contextual information was considered. Practice has tended not to include a risk assessment or consideration of protective factors. (Murray, 2003, p. 50)

In DoCS (NSW), the Community Services Centres (CSC) are responsible for conducting Secondary Assessments:

DoCS uses a guided professional judgement model known as Secondary Assessment – Risk of Harm Framework that included the collection and analysis of information and the exercise of professional judgement. The outcome is a professional opinion about safety, risk and harm that informs a decision about a child's or young person's need for care and protection and subsequent case planning. (Wood, 2008, p. 272)

The Secondary Assessment process is divided into two stages. The first stage does not involve direct contact with the child or the family but includes:

- Reviewing all pertinent information – recent assessments inclusive of child protection history; previous assessments; and information from other agencies and other professionals
- Confirming or altering *Helpline* assessment decision and initiating a review of risk
- Providing a rationale for DoCS intervention or non-intervention, and assigning priority for response
- Considering particular factors that may signal high risk and the need to progress to a Secondary Assessment. These factors include primary caregiver unable or unwilling to provide care due to substance abuse or mental health issues; history of suspicious deaths or siblings who have been injured; a report of serious injury; parental failure or delay in attending to the child's health needs; previous child protection history; a pattern of frequent harm and seriousness escalating; family living transient lifestyle; and a pattern of multiple reports indicating cumulative and chronic neglect (Wood, 2008, p. 275).

The second stage of the Secondary Assessment process is determined according to the immediate safety issues and the impact of potential harm for the child and young person:

Where there have been multiple previous reports about a child or young person, the DoCS policy states that potential for cumulative harm impacts for the child or young person must also be taken into account. Consideration must also be given to the characteristics of the child or young person such as the child's or young person's age, functioning or special needs that can increase reliance on a parent or carer, and any protective factors that may exist for the child or young person, such as a supportive school or the involvement of other services. (Wood, 2008, p. 275)

The second stage involves the caseworker making direct contact with the child and family, conducting interviews, gathering information from the family and other people or professionals involved with the child and/or family, assessing the information, and making a determination about the child's safety and wellbeing. If a child has been harmed or is at risk of harm, and the child or young person is in need of care and protection, a care plan is devised to ensure the child is safe and protected. "Ongoing work with the child or young person and family may be through intervention with parental agreement or through a care order in the Children's Court" (Wood, 2008, p. 276).

The New South Wales Ombudsman (2006) critiqued the quality of risk of harm assessments in child death reviews. While examples of effective assessments were identified, "we also continued to review cases that raised questions about the effectiveness of secondary assessment" (p. 25). Issues identified include: limited scope of assessments focusing on a particular event instead of conducting

a holistic assessment of the child and family's circumstances; inadequate collation and analysis of information; children not interviewed or sighted and the person who allegedly caused harm to the child not interviewed; and, in some situations, the secondary assessments were not completed before a final determination was made about the child's safety:

We found that in cases where DoCS assessed risk without full and relevant information, the results of the assessments in these cases did not adequately reflect the possible risks to a child. (New South Wales Ombudsman, 2006, p. 26)

### ***Case management***

Children found to be in need of care and protection require statutory intervention to ensure they are protected from further harm. In their comparison of child protection systems across Australian jurisdictions, Bromfield and Higgins (2005) identified that "statutory involvement comprising provision of child protection services is typically referred to as intervention or case management" (p. 21). Essentially, case management involves:

- A judgement as to whether a court order is necessary to ensure the safety of the child
- Ensuring that services or responses are provided to the child and family, and
- When the child's safety has been secured, the case is closed.

It is a managed process and the people involved are made accountable through a cyclical process of case planning, case management, re-assessment and review (Bromfield & Higgins, 2005). The Case Management Framework used in the Queensland DOF is consistent with Bromfield and Higgins' (2005) assertion that:

This case management framework is said to apply to all matters where a decision is made that intervention by the department is necessary to ensure a child's protection. It includes both cases where a child's family voluntarily allows the department to involve itself in and monitor a child's wellbeing and cases where the department obtains a court order to meet a child's protective needs. (Crime and Misconduct Commission, 2004, p. 21)

Murray (2003) discovered "identified gaps in practice and policy with respect to intervention after there has been a substantiated or substantiated risk outcome for children and young people in foster care" (p. 61), highlighting the chasm between rhetoric and reality.

The New South Wales DoCS also operates case management as a strategy:

... that aims to mobilise, coordinate and maintain a diversity of services for the individual child or young person and his or her family. It has been described as the "glue that holds the system together," or the "lynchpin for an effective interagency system". (Wood, 2008, p. 280)

The function of case management is to ensure that services are suitable, clinically appropriate and culturally relevant for the child and their family. DoCS is responsible for case management and case planning. Casework occurs through processes such as referral to other services, provision of services from other agencies, and monitoring and supervision of families. Monitoring is perceived as essential to the case planning process and requires "regular feedback from the child, carers, and

service providers as to whether services are being provided in the manner determined by the case plan and whether the needs of the child have changed” (Wood, 2008, p. 282).

In reviewing child deaths, the New South Wales Ombudsman (2007) identified that services were sometimes inadequate in ensuring the safety of children and that there was also a lack of effective interagency communication. The New South Wales Ombudsman (2007) determined that the strategies implemented by DoCS did not adequately meet the protective needs of some children:

We found that where this was the case, it was often linked to inadequate risk assessment. Narrow, incident-based secondary assessment did not provide a sound basis to determine the best protective measures, and mostly resulted in strategies that addressed only some of the risk factors present. (p. 56)

Bromfield and Higgins (2005) acknowledged the difference between documented accounts of practice and actual practice. This will be examined further in this study. Difference between rhetoric and reality occurs for many reasons, including lack of financial and human resources, excessive workload demands and inadequate professional assessments. The processes have contributed to systematic recognition, identification and definition of, and responses to, the abuse, but also to an increase in bureaucratic processes (Howe, 1992). The bureaucratisation of social work in the context of child protection has contributed to a diminished humanity, resulting in exclusion and dehumanisation for some vulnerable children.

## Chapter outlines

This study is comprised of nine chapters. In the main, it engages in a morally just discourse about children experience maltreatment and are recipients of statutory child protection services. Engaging with and analysing the narratives of the deceased children Dean, Jack, Ebony and Baby Kate contributes to the emergent discourse of childism that facilitates analysis and informs an agenda for transformation.

**Chapter 2. Enhancing the Moral Status of Children: Philosophical Considerations and Mid-range Theories** engages in philosophical discussion that centralises the moral importance and humanity of children. According to Wolff’s (2011) approach, engaging in a transformative agenda for statutory child protection requires an understanding of why child abuse and neglect, which trigger protective intervention, is such a troubling issue. The question *What is so bad about child abuse?* is asked and answered. Child abuse and neglect has a profound detrimental impact for some children’s emotional and physical being, and in some circumstances culminating in trauma, oppression and dehumanization which will be examined in more detail.

This is followed by a drawing of ethical threads deliberating on the moral status of children who are maltreated. Ethical threads are drawn from deontological and relational ethics. The discussion commences with an examination of moral status of children delineating the importance of duties and

obligations towards all children. The philosophical construct of moral status (Dwyer, 2011a; Warren, 2008) is firstly examined. Other compelling factors, including *ethics as ordeal* (Massey, 2000) and the *marginal humans* perspective (Fox, 2002; Kittay, 2005) are examined. Ethics as ordeal situates moral obligations towards individuals who are suffering, traumatised, vulnerable and afflicted. The marginal humans perspective asserts that it is morally repugnant to exclude individuals who are on the margins of personhood and that we, as moral agents, are obliged to care and protect them. These perspectives are used to mount a persuasive argument that children who are maltreated are worthy members of the human community and deserving of protection and moral concern. The transition from the philosophical and theoretical to practice contexts illuminates that the realisation of children's rights, needs and wellbeing occurs within the moral context of relationships. Recognition of children's humanity within statutory child protection is associated with concepts of *best interests*, relationships, *good enough parenting*, child development, wellbeing and resilience. The moral status of children and morally just practice is dependent on the interrelationship between extrinsic factors (relationships and environment) and intrinsic factors (child development, wellbeing and resilience).

**Chapter 3. The Moral Representation of Childhood in the Context of Child Protection: An Historical Perspective** takes us on a journey to examine the child in child protection from socio-historical and contemporary perspectives. The institution of child protection was established in the nineteenth century in Anglophone countries following industrialisation and the rise of capitalism in response to the increasing visibility of children who experienced abuse and neglect. Philanthropists were intent on responding to children's needs but also wanted to maintain a moral society. Consequently, adults' needs were prioritised over those of children. Superficially, however, it signaled an enlightened society that identified the moral imperative and advocated for the rights of children. Strategies employed were consistent with Young-Bruehl's (2012) analysis that children who experienced neglect and abuse were a threat to the moral order of society and schemes were devised to "further eliminate the destitute, to further manipulate the delinquent, and to further erase the neglected" (p. 282).

The twentieth century saw child protection evolve into a practice dominated by professionals and experts, and become increasingly complex. The rediscovery of child abuse in the 1960s was a watershed moment for statutory child protection. Child abuse was defined as a disease, and systems of identification, investigation and treatment were established in response to the medical paradigm. This simplistic and reductionist approach negated the complexity of child abuse and the multitude of interacting factors that culminate in the adversity, trauma and oppression of children. The medical paradigm continues to pervade contemporary statutory child protection systems and practices.

The children's rights movement emerged in the 1980s and the adoption of the UNCRC signalled societies' obligation to, and recognition of, children's humanity – children are subjects worthy and deserving of rights – although there is a dissonance between the rhetoric and reality. Both Wall

(2010) and Young-Bruehl (2012) articulate that the UNCRC and the ratification of children's rights were crucial in determining the factors that collude in childist practices (Young-Bruehl, 2012). Children's rights enables us to ask questions and understand why parents and governments are unable to fulfil their obligations towards children.

**Chapter 4. The “Child” in Child Protection: Situating their Moral Worth in Contemporary Child Protection** follows on from the previous chapter by providing an in-depth examination of the chasm that exists between the rhetoric of statutory child protection and the reality of child protection practice. The reality is that in the context of contemporary statutory child protection, children are lost or metaphorically missing (Brandon et al. 2009), and constructed *invisible* (Brandon et al. 2009; Ofsted, 2010), *silent, unheard or absent* (Parton, Thorpe, & Wattam, 1997), signalling the diminished humanity of children and the rise of childism. The best interests voice and centrality of the child does not always find its way from legislation to frontline practice. A review of the literature inclusive of child death reviews nationally and internationally illuminates some of the factors that culminate in childist practices. Some of the factors include: the social construction of children; the political economic neoliberalist agenda; struggles for power and control; professional ideology; and decision-making processes. Childism thrives within a context of uncertainty and complexity, which prohibits attentive, ethical, relational and responsive practice.

**Chapter 5. Methodology, Research Design and Critical Frames** delineates the critical frames, methodology and research design and question that ground this study. The research question that forms the foundation of this study is: *How might we understand the moral status of children within the context of child protection?* The critical frames of meaning, context, history, power and possibilities provide an analytical structure and articulate the purpose, beliefs and history of the project, thus building a bridge between theory and methodology. The analysis is informed by a critical-dialectical process that both deconstructs and reconstructs. The *Emergent Model of Morally Just Practice* (EMMJP), a synthesis of the *Just Practice Framework* (Finn & Jacobson 2003a, 2003b) and *Ecological-Transactional Perspective* (Cicchetti & Lynch, 1995), and informed by the *Capabilities Approach* (Nussbaum, 2011) is the interpretive conceptual framework. The EMMJP model was specifically developed for the purpose of this study by the author. The EMMJP is then trialled and utilised as the lens through which the children's narratives are deconstructed and reconstructed. A fundamental premise of morally just practice is that child protection workers are obliged to be attentive and responsive to the lives of children who experience adversity and disadvantage without compromising the realisation of social justice and human rights.

The multi-case research design centralises child death reviews as compelling case studies. The narratives, or case studies, as in-scope secondary data sources provide in-depth interpretations of the lives and experiences of some the most marginalised and socially excluded groups in society, bringing their plight to the forefront of public awareness (Stanley & Manthorpe, 2004). The use of

case studies or children's narratives is consistent with Aristotle's concept of *phronesis*, where knowledge and expertise is generated from the particular to the universal, thus enhancing reflexivity and social work practice. Studying individual case studies or narratives enables a comprehensive appreciation of the unique messages that illustrative the broader themes that sit at the heart of this study.

**Chapter 6. Engaging with the Narratives of the Deceased Children** further introduces the readers to the children whose narratives are central to the study. The chapter provides an overview of the vertical and horizontal readings that operationalised the critical social research (CSR) data analysis. An extended précis of their narratives is provided that specifies the need for examining other valuable information, including important people in their lives and in-scope documents, to inform the analysis.

**Chapter 7. Childism Number 1: Diminished Moral Worth in the Context of Relationships** provides an analysis of the vertical and horizontal readings of the narratives, which facilitates recognition and understanding that Dean, Jack, Ebony and Baby Kate were profoundly traumatised, oppressed and dehumanised. Childism in their families is exposed. The children were deprived of their humanity – Ebony ceased to exist and was targeted for exclusion; Baby Kate and Jack were unwanted and emotionally abandoned; and Dean was scapegoated, unwanted and eliminated. The parents were not able to provide “good enough parenting” because they were morally and psychologically disengaged from their children. Lack of parental empathy together with emotional and psychological disconnection colluded to objectify and morally exclude the children.

**Chapter 8. Childism Number 2: Diminished Moral Worth in the Context of Child Protection** is the second of the two chapters presenting the analysis central to this study. Dean, Ebony, Baby Kate and Jack were in need of care and protection. The previous chapter demonstrated that their rights were violated in a context of family relationships that were detrimental to their development and wellbeing. The children were not at the forefront of their parent's minds. There was lack of empathy. The parents were disconnected emotionally and psychologically, resulting in the children being objectified and excluded morally and socially. When children's caregivers are unable or unwilling to be responsible for their care and protection, the State is *parens patriae*.

This chapter exposes the multiple and interacting forces that deny children their rights; why the four children central to the study were refused protection and/or excluded from decision- making processes about their protection. There was a failure to focus on the children, which draws parallels between the child protection system and the way many families struggle to attend to their children's needs, interests and safety. Exclusionary strategies in statutory child protection constitute a basic form of childism. Responses provided to Dean, Jack, Ebony and Baby Kate lacked attentiveness and responsiveness, preventing intervention that was consistent with legislative obligations. The strategies inadvertently compounded the children's experiences of trauma, oppression and dehumanisation.

**Chapter 9. Children Must Come First: Morally Just Social Work Practice** is the final chapter. It joins the pathways of understanding, knowledge and development that have been travelled in the journey arguing the case to emerge from moral ignorance. It takes us into the reconstructive phase of critical social research (CSR), and the development of anti-childist practice. It offers concluding reflexive comments that evaluate the *Emergent Model of Morally Just Practice* (EMMJP) as an interpretive framework and deliberates on its applicability as a morally just social work practice framework in the context of statutory child protection. Final remarks inform a transformative agenda that has implications for future reform agendas. The enhancement of a child's moral status is dependent on humane, ethical and morally just statutory child protection and services provided by professional social workers who are confident, competent and morally courageous.

## Summary

This chapter has provided the context for this study and introduced readers to the children who are central to it. An overview of the child protection system in Australia, and more specifically statutory child protection in New South Wales and Queensland (the jurisdictions in which the four children were provided services) has illuminated the context and alerted us to the childism that is operational within families and statutory child protection contexts that degrade and erode children's moral status. My experience as a social worker in the field of child protection has engendered me with the motivation and commitment to raise the profile and moral status of children within the statutory child protection context. Thus, this chapter has also shared a dialogue about transformation of child protection or tertiary child protection within Australia. We have a moral imperative to identify childist strategies, and to develop an in-depth understanding about what hinders parents and statutory child protection systems from respecting the rights of children who are maltreated, and providing them with protection and moral consideration. The following chapters elaborate further on these focus areas.



## **CHAPTER 2**

# **ENHANCING THE MORAL STATUS OF CHILDREN: PHILOSOPHICAL CONSIDERATIONS AND MID-RANGE THEORIES**

### **Introduction**

It is clear from the previous chapter that developing an alternative discourse about children that recognises the tragic impact of childism on the lives of some is fertile ground for social work research. The philosophical concept of moral status articulates that children matter and “that we must pay attention to their interests or integrity when we consider actions that might affect them” (Dwyer, 2011, p. 9). Only in recent times has children’s position in the Western world been elevated politically and philosophically (Dwyer, 2011a). An increasing number of scholarly articles deliberate on the importance of children’s issues, but there is a dearth of literature focusing on the moral status of children despite the proliferation of literature on moral status of animals and the environment. “Moral theorists concerned with childhood have generally simply stipulated that children have a particular moral status relative to adults, and have focused on the implications of that presumed status” (Dwyer, 2011, p. 2). The recognition of children’s moral importance actively embraces them as valuable members of the human community, thus degrading childism and childist practices. Moral theory must step beyond the ideational to deliberate on the practical realities of this recognition. It must be applicable to public policies that are instrumental to social change and transformative agendas (Wolff, 2011).

Compelling factors emerge in this theoretical journey. First, literature advocating that children have moral status is not overtly and actively inclusive of children who experience adversity and disadvantage; there is a gap in this discourse. According children moral status – in this case children who have experienced maltreatment – highlights that they are morally worthy and deserving of care, compassion and recognition (Froggett, 2002); but this necessitates philosophical and theoretical depth. In writing about the senseless suffering of children, “we are encouraged to reflect upon the brute facts of intense experiences of adversity that seem to exceed the bounds of moral justification” (Wilkinson, 2005, p. 101). In recognition of this, ethics as ordeal (Massey, 2000) and the marginal humans perspective (Fox, 2002; Kittay, 2005) sharpen this theoretical focus, highlighting the centrality of obligations and responsibility.

Second, the transition from ideational rhetoric to practice realities illuminates the criticality of the moral context of relationships and rights in attending to children’s needs, interests and wellbeing. The lived experiences of children who have been severely harmed and marginalised are examined through a lens where their otherness will disrupt social relations, demanding change and decentring by attending to moral responsibilities and responsiveness to children’s humanity. In so doing, it is

anticipated that this study will make a small contribution to the emerging discourse of childism (Wall, 2010; Young-Bruehl, 2012) and anti-childist practice and embrace the moral challenge to search for child protection responses that are morally just.

This chapter is divided into three parts. Part B, consistent with Wolff's (2011) approach, examines why child abuse is a troubling social issue. Asking the question as to why child abuse is so troubling justifies the need for statutory child protection to be humane and morally just. Part B situates the study in the ethical literature and draws ethical threads together. The philosophical construct of moral status is deconstructed together with other compelling factors that ground the moral imperative to recognise, be attentive to and respond to the lived experiences of children's suffering, adversity and disadvantage. What emerges from this considered discussion is a significant gap in moral theory and philosophical literature that contemplate the importance of *all* children, but more specifically children who are maltreated. Part D considers the practical implications, in the form of mid-range theories, which should ideally inform policy and practice in the field of statutory child protection to enhance children's rights, development and wellbeing.

## **Part A: What is so bad about child abuse?**

This confrontational question forces us as practitioners, policy-makers and academics to pause and reflect on this profound social issue. The challenges in defining child abuse sits centrally in our responses as moral agents to children who experience adversity (Gelles, 1975; Archard, 2004). The readers' attention will be diverted from the pervasive discourse of incidence, notification, identification and intervention in order to focus on the challenges associated in engaging with the reality of the lives of children who are subjected to chronic adversity, suffering and harm (Garbarino, 2008). In this way, we, as practitioners, enter into an ethical and humane dialogue (Featherstone, White, & Morris, 2014) with the potential to ground the need for transformation and "unimagined moral possibilities" (Wall, 2010, p. 3).

Child abuse and neglect is the antithesis of child wellbeing; it is a moral assault on the importance of humanity and *otherness* (Wall, 2010). Children's wellbeing is synonymous with the realisation of their rights – safe and flourishing within the moral context of relationships. The discourse of child wellbeing is complex and contested. It is dominated by deliberations about definition and measurement rather than philosophical considerations. Yet, according to Skelton (2015), "philosophers have spent surprisingly little time theorizing children's wellbeing; consequently, there is no meaningful body of philosophical literature devoted directly to it" (p. 367). This is consistent with Dwyer's (2011a) assertion. This finding in itself diminishes the moral importance of children. Understanding the nature of children's wellbeing is of great important to moral, political and practical investigations that are relevant to how children are conceptualised and treated (Skelton, 2015).

### ***How is child abuse defined?***

Defining child abuse and neglect is problematic because it is subject to constant alteration and readjustment. It is controversial, complex, socially-constructed and highly-contested (Archard, 2004; Garbarino, 2008; Gil, 1975). Archard (2004) asserts that a defensible definition of child abuse must comply with plausible criteria, concluding that:

the definition of 'abuse' must be clear, unambiguous and substantive. It must not make impossible demands on caretakers. It must be uncontroversial and function to define the threshold of justified legal definition into family life (Archard, 2004, p. 195).

What emerges from the literature is that abuse and neglect of children is difficult to define with precision (Corby, 2006; Scannapieco & Connell-Carrick, 2005). The social and legal construction of child abuse and neglect (Reading et al. 2009; Parton, 2014) and how it is understood is "central to the way it is recognized, managed and prevented" (Parton, 2014). There is great variability. Reading et al. (2009) articulates that definitions range between those that focus on harmful acts perpetrated by parents or carers to those that define abuse and neglect in accordance with the social and cultural context. How child abuse is defined governs the incidence of child abuse and neglect. If the definition of child abuse and neglect focuses on injuries that are intentional, evident and observable, then the incidence of child abuse and neglect will be "comparatively small" (Gelles, 1975, p. 365). Persons who are identified as perpetrating harm against children will determine the factors contributing to the harm and adversity of children. Identifying what constitutes harm and who is responsible "have profound implications on the strategies of intervention designed to prevent and treat abuse" (Gelles, 1975, p. 365).

Orthodox definitions, prevalent in official documents, are narrow and limited to specific and serious types of harm. There are usually four subcategories of child abuse – physical abuse, physical neglect, sexual abuse and emotional abuse (Archard, 1999, 2004) perpetrated by adults, usually parents or other adults, close to the child. Orthodox definitions of child abuse stress that harm committed by individuals close to the child dictate professional responses to rescue the child from adult perpetrators. Narrow orthodox definitions focus on who acted in an abusive or neglectful manner towards the child, the severity of the behaviour and the likely impact on the child:

... it tends to shape thinking towards an incident-focussed conceptualisation of maltreatment in which a determination is made as to whether an act of omission or commission resulted in a child being harmed (Bromfield, Gillingham, & Higgins, 2007, p. 36).

Child abuse is a significant social problem and cannot be amended by narrow-focused, individualistic solutions or interventions. Such an approach fails to recognise the "collective harm and exploitation that can be caused by institutions' harmful policies and laws, conflicts, failure of governance and social disruption" (Parton, 2014, p. 188). Reading et al. (2009) and Parton (2014) argue for broader definition. Reading et al. (2009) favour the value based definition developed by David Gil (1975):

The inflicted gaps or deficits between the circumstances of living which would facilitate the optimum development of children, to which they should be entitled, and to their actual circumstances, irrespective of the sources or agents of the deficit (pp. 346-47).

In a similar vein, Parton (1985) defined child abuse and neglect as:

Any act of commission or omission by individuals, institutions or the whole society or the state, together with their resultant conditions, which deprive child of equal rights and liberties, and/or interfere with their optimal development, constitute, by definition, abuse or neglectful acts or conditions. (pp. 167-8)

These definitions encompass harms perpetrated to children at the institutional, societal levels as well as within the context of families and other individuals. Such definitions ground approaches that incorporate child abuse and neglect as a feature of the child wellbeing paradigm. The disadvantage is that such definitions are also too broad and all-encompassing, making measurement extremely difficult, “blurring the focus of possible targets, and hence risking the success of any intervention based on the definition” (Reading et al. 2009, p. 333).

The definition of maltreatment articulated in Article 19 (Child’s right to protection from all forms of violence) in the UNCRC stipulates that children should be protected from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child” (United Nations, 1989, p. 5). *The World Report on Violence against Children* by the United Nations utilised the Article 19 definition but also drew on the definition that child maltreatment is the “intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child’s health, survival, development or dignity” (WHO as cited in Pinheiro, 2006, p. 4). The inclusion of the abuse of power broadens the definition to include acts of commission or omission that may result in emotional harm and allows for the violence and harm perpetrated by social, political and economic systems.

There are compromises associated with every definition. On the one hand, precise, limited and orthodox definitions, that focus on harm that is intentional and evidence-based is necessary for “epidemiological and public-health monitoring and to engage constructively with governments and legislators over specific policy responses to maltreatment” (Reading et al. 2009, p. 333). On the other hand, child maltreatment that is grounded in a children’s-rights paradigm will always extend the boundaries recognising children’s lived experiences of adversity and suffering within their social and cultural context. The phenomenon of maltreatment and harm experienced by children must be inclusive of social, economic and professional relationships. It is within these relationships that children experience abandonment of nurturing, protection and safety (Reading et al. 2009, p. 333).

In deliberating whether a child has been harmed or is at risk of harm, it is imperative that the harm is understood in terms of the consequences to the child and their wellbeing (Corby, 2006). In turn, a child's wellbeing needs to be clarified in reference to normal development and functioning (Archard, 2004). A child has suffered harm if their basic rights are violated and they are denied an upbringing that is good enough (Archard, 2004). Accurate assessments are contingent on professionals having in-depth knowledge about definitions, dynamics and child wellbeing. In reality, outcomes of child death inquiry reports specify that professionals lack clarity and understanding of what constitutes child abuse and neglect. Buckley (2003) asserts that without a clear and universal definition of child abuse and neglect, child protection work is problematic.

Decision-making about whether a child is in need of statutory intervention is not solely determined about what constitutes child abuse and neglect. A study by Buckley (2003) identified that there are other motives at play: the veracity of information and informants; anxiety about potential impact of statutory intrusion on families, and pessimism about the benefit or likely benefit of effectiveness of intervention. The study also found that children who experienced chronic neglect in contexts of substance abuse, poverty, mental distress and marginalisation were less likely to receive a response. Children who experienced chronic neglect and received a response did so because the evidence was 'highly visible' (Buckley, 2003). This finding is consistent with Archard's (2004) assertions. Abuse is perceived in terms of its consequences and, in the case of physical abuse, where evidence is observable and detectable, the seriousness is apparent. This forensic approach, which is central to child protection responses, may result in the recognition of a narrow portion of the population of children who experience harm and adversity (Gelles, 1975). Physical evidence of injury is serious and a straightforward indication of seriousness however the serious impact of emotional injuries and neglect must also be recognised (Archard, 2004).

The 'neglect of neglect' is prominent in contemporary child protection literature, serious case reviews and child death inquiries (Frederico et al. 2006; Brandon et al. 2013; Daniel, 2015 ). The discourse of child neglect illuminates an irony. On one hand the prevalence of neglect is increasing (O'Donnell et al. 2008) and may result in long-term deficits for the development of children. On the other hand, it is the least understood form of maltreatment (McSherry, 2007), and children who experience neglect are less likely to receive statutory intervention (Daniel, 2015). Horwath (2007) identified that lack of definitional precision plays a role in whether children are referred for social work intervention. Horwath (2007) identified that the process of making a referral is dependent on a complex interplay of personal, professional and organisational factors which is consistent with some of Buckley's (2003) findings. A referral of neglect is influenced by the "way in which the practitioner defines neglect; the aspects of neglect that they consider most damaging; and the evidence based utilized to identify concerns" (Horwath, 2007, pp. 1298-1299). Making an assessment of child neglect is not only a technical-rational activity informed by research, theories and practice experience but it is also

a practice-moral activity whereby judgements about child neglect is influenced by the feelings, experiences, values, and beliefs of practitioners (Horwath, 2007).

This highlights the complexity and imprecise nature of child abuse and child protection practice. The social construction of child abuse and neglect and definitiinal imprecision impedes social responses to children ultimately determining their childhood and moral status. Morally just practice advocates that professionals must develop an in-depth understanding of children's lived experiences and needs, which in turn informs responsibility and responsiveness to their human otherness (Tascon, 2013; Tronto, 1993; Wall, 2010).

### ***What is the impact of child abuse and neglect?***

There is a vast knowledge base in relation to the consequences of child abuse and neglect which spans across many professional disciplines (Bolger & Patterson, 2003; Cicchetti & Valentino, 2006; Corby, 2006). Experiences of abuse and neglect in childhood has been identified as a significant factor in a range of emotional, behavioural and social adjustment problems. Empirical evidence demonstrates that children who are maltreated experience increased risk of physical injuries and disability, mental health issues, aggressive behaviour, anti-social behaviour, low self-esteem, poor peer relationships, poor academic achievements and poor development of autonomous self (Bolger & Patterson, 2003; Cicchetti & Valentino, 2006; Corby, 2006). There is significant variation among children in relation to the severity of the consequences of child abuse and neglect. Variations in experiences of maltreatment are attributed to the timing, type and severity of maltreatment, age of onset of maltreatment, and quality and proximity of relationships (Bolger & Patterson, 2003). For example, in a study conducted by Bolger & Patterson (2003) they discovered that experiences of neglect and sexual abuse were associated with "higher levels of internalizing problems and lower levels of perceived control, especially among children who experienced both of these forms of maltreatment" (p. 173). The authors also found that the severity of maltreatment was mediated by a "consistent, supportive relationship with an adult" (Bolger & Patterson, 2003, p. 175). Whereas, unrelenting and chronic maltreatment, otherwise known as cumulative harm (Bromfield, Gillingham, & Higgins, 2007), can be "profound and exponential" (Victorian Government Department of Human Services, 2007, p. 1) across many domains of a child's life and across the lifespan.

There are, however individuals who demonstrate resilience even though they have experienced significant trauma and adversity (Daniel, Vincent, Farrall, Arney & Lewig, 2009). Resilience is a concept that refers to an individual's capability in adapting successfully and being able to function competently despite experiencing adversity in the form of chronic stress or experiencing traumatic circumstances (Luthar & Cicchetti, 2000; Cicchetti & Valentino, 2006). Factors that enhance a child's resilience include self-esteem and autonomy in a context of nurturing relationships and supportive family and community networks (Australian Institute of Family Studies, 2014). Other critical factors include the child's age, dependency needs, and frequency and duration of maltreatment. In

accordance with a developmental and psychopathology perspective, there is multifinality in developmental processes. The way in which an individual responds to and interacts with vulnerability and protective factors present in each level of the ecology allowing for diverse outcomes across the lifespan.

Just as deviations from the average expectable environment potentiate some children toward the development of maladaptation, others evidence adaptation in the face of the same challenges (Cicchetti & Valentino, 2006, p. 165).

The impact of child abuse and neglect for children is complex and the result of numerous interacting forces subject to change over time. It is beyond the scope of this study to examine all these consequences. Some of the effects of child abuse and neglect may be understood in terms of trauma, oppression and dehumanisation which are consistent with the philosophical discussion that ensues in this study. A child who has been subjected to chronic maltreatment is more likely to experience significantly higher risk of “impaired social, emotional and cognitive wellbeing as an adult” (Kezelman, Hossak, Stravropoulos, & Burley, 2015, p. 14). In some situations and for some adults, this results in an intergenerational transmission of abuse, a particularly provocative issue and one that is difficult to prove definitively. There is evidence that some adults who have been abused as children are unlikely to provide parenting that is good enough (Corby, 2006). Young-Bruehl (2012) expands this further, stating:

People who cause a child harm have causes *in themselves*, not just from their habitats, for their actions, although their living conditions may be miserable and frustrating and conducive to violence. People have motivations, and they have beliefs that justify their motivations and their actions. Those parental motivations and prejudices lodge in their children along with the physical blows and attacks of the verbal blows and emotional attacks...researchers would say that children “catch” projections that parents have used to rid themselves of their own inner pain and conflict, and children suffer within the systems of discrimination that adults create to keep their projections lodged within their victims, out of sight, out of mind. (p. 104)

Child abuse, including its contributing factors, is multifaceted. Therefore, there is a moral imperative to ensure that those who are called to responsibility are professionally and morally competent (Tronto, 1993).

### **Trauma**

There is a growing body of literature in the field of child protection emphasising that normal childhood development of the body, brain and mind is likely to be derailed (Bloom & Farragher, 2013; Jones, LaLiberte, & Piescher, 2015) as a result of trauma. Trauma refers to events that overwhelm children’s coping abilities. These include episodes of physical, sexual or emotional abuse, parental neglect, and witnessing violence within the home or the community (Jones et al. 2015). Cumulative harm occurs when traumatic events are chronic and prolonged in nature (Bromfield et al. 2007), and when the child’s experiences are the outcome of multiple incidents of maltreatment or layers of neglect:

Cumulative harm is experienced by a child as a result of a series or pattern of harmful events and experiences that may be historical, or ongoing, with the strong possibility of the risk factors being

multiple, inter-related and co-existing over critical developmental periods (Victorian Government Department of Human Services, 2007, p. 1).

Specialists in the field of trauma refer to *toxic stress* (Shonkoff et al. 2012), *complex trauma* (Cook et al. 2005) and *trauma systems theory* (Bloom & Farragher, 2013). Herman (1998) states that:

... the child trapped in an abusive environment is faced with formidable tasks of adaption. She [sic] must find a way to preserve a sense of trust in people who are untrustworthy, safety in a situation that is unsafe, control in a situation that is terrifyingly unpredictable, power in a situation of helplessness. (p. 97)

Chronic childhood maltreatment occurs within a context of unpredictability and terror, where caregiving relationships are overwhelmingly disordered and the child's survival is dependent on the necessary development of attachment to the very person or people who abuse and neglect them (Herman, 1998).

The effect of an adverse environment that results in the maltreatment of children culminates in children's ontogenic development. As Glaser (2000, p. 101) explains, ontogenesis is "the development of the self through *self-regulation*.... Ontogenesis is conceptually located between...the child's genetic endowment and the environment". Therefore, developmental outcomes are more intricate than the definitive interactions between nature and nurture, "with the notion of ontogenesis allowing for the modification of the process by the contribution and adjustment of the individual child" (Glaser, 2000, p. 101).

At the level of ontogenic development, the ability to resolve critical developmental tasks at every developmental stage provides the foundation for one's developmental pathway that may lead to competence or incompetence. Ontogenic development is a life-long dynamic task, and the impact of trauma or "external forces" (Terr, 1991, p. 10) disrupts and harms children developmentally and existentially (Herman, 1998). Trauma is classified according to Type I or Type II, which has implications for service provision (McLean, 2013). Type I is where a child experiences trauma consequential to a single unpredictable event that temporarily threatens their safety, leading to feelings of helplessness, intense fear or horror. Type II trauma shares similarities with the concept of complex trauma (van der Kolk et al. 2005) in which a child experiences long-standing and chronic episodes of maltreatment that become normal. The sequelae to Type II trauma are profound alterations in the child (McLean, 2013; Terr, 1991; Victorian Government Department of Human Services, 2007) where "emotions are stirred by the trauma, including an absence of feeling, a sense of rage and unremitting sadness alongside the fear of the repeating event" (Victorian Government Department of Human Services, 2007, p. 21), and for some children, death.

In the context of "profoundly disrupted relationships" (Herman, 1998, p. 101), the child faces arduous developmental tasks. The field of neurobiology has explored the significance of attachment, regulation of emotion, the quality of the parent-child relationships and brain development. The brain



“processes information and experience, particularly emotional experience in the context of attachment relationships, and how its hard-wiring, biochemistry and neurological organization is shaped by those very experiences” (Howe, 2005, p. xv). The brain develops in such a way that it stores representations of affective experiences, which then influence “biological regulators that control physiological processes” (Egeland, Weinfield, Bosquet, & Cheng, 2000, p. 42), ultimately determining developmental pathways that regulate choices responding to experiences that are unhealthy, dysfunctional and pathological (Cicchetti & Valentino, 2006).

According to Bentovim (2009), a child’s developmental needs begin in utero from the moment of conception, with the majority of brain organisation and development occurring in the first four years of life (Perry, 2009). Exposure to chronic maltreatment “sensitises neural pathways” (Victorian Government Department of Human Services, 2007, p. 18) and overdevelops areas of the brain involved in anxiety and fear responses. Children who experience chronic and serious maltreatment focus their brain energy on survival and responses to danger in their environment. If the impairment occurs in utero or early childhood, “this cascade of dysfunction can disrupt normal development” (Perry, 2009, p. 242):

A child deprived of consistent, attentive, and attuned nurturing for the first three years of life who is then adopted and begins to receive attention, love and nurturing may not be capable of benefiting from these experiences with the same malleability as an infant. In some cases, this later love is insufficient to overcome the dysfunctional organisation of the neural systems mediating socioemotional interactions. (Perry, 2009, p. 245)

This scientific knowledge and research has profound implications for child protection practice. Early identification and aggressive responses are more effective than reactive responses. Lack of intervention has significant implications across the lifespan. Chronic neglect silently resides with other abuse types and is frequently a factor contributing to the cumulative harm of children (Victorian Government Department of Human Services, 2007). Defining neglect is controversial and elusive (Lonne, 2015; McSherry, 2007), nevertheless it is the most frequently reported type of maltreatment in the Western world (Lonne, 2015) and is recognised as having a more severe impact on child development than other forms of abuse (Chahine, Pecora & Sanders, 2013; Howe, 2005). Chronic neglect refers to persistent and ongoing failure to provide children with basic physical, psychological and emotional needs, which is likely to result in serious and profound impairment to the child’s health or development (Chahine, Pecora & Sanders, 2013; Turney & Tanner, 2001). More specifically, there is an ubiquitous failure to provide children with adequate food, shelter and clothing; protection from physical and emotional danger; adequate supervision; appropriate medical care and treatment; education, and unresponsiveness to children’s emotional needs (Brandon et al. 2013; Daniel, 2015; Wilson & Horner, 2005). Children who experience chronic neglect are situated within families who are characteristically extremely poor, with parents who have severe emotional and psychological injuries, and are suffering from mental health issues, depression, substance abuse and domestic violence (Wilson & Horner, 2005). As Howe (2005) explains:

Neglect is an insidious form of maltreatment. It starves the developing mind of stimulation. It denies the child information and interest about self and other. In some cases, neglect slowly and persistently eats away at children's spirits until they have little will to connect with others or explore the world. (p. 111)

In cases of extreme neglect, when the cries of an infant or very young child are left unheard and unattended for long periods of time causing substantial distress without comfort, help or safety, this abandonment propels a child into adverse developmental outcomes (Daniel, 2015; Howe, 2005; Perry & Dobson, 2013; Victorian Government Department of Human Services, 2007). In the absence of a significant attachment figure, a child does not have a relationship-based strategy to enable him or her to resolve traumatic emotional responses. This is enormously noteworthy and alarming. There is growing evidence that chronic neglect is a threat to long-term development and a contributing factor in mental distress. The emotional and physical abandonment of a young, vulnerable child places that child in peril:

The self is alone and exposed. There is no safe place to go. There is no adult in sight. No one has you in mind. The experience can produce such high levels of emotional arousal, children eventually shut down psychologically and dissociate. (Howe, 2005, p. 113)

### **Oppression**

All societies rest on the value that the family is the best place to raise a child. Therefore, attempting to keep families together is an ethical imperative. (Lonne et al. 2016, p. 133)

Children are born dependent and relatively helpless (Wood, 2008). On this basis, adult power over children is inevitable. Parents or caregivers have power over children whether it is "economic power, physical power or emotional power" (Coppock, 2004, p. 69), but morally speaking, adult power should be utilised to protect children, set health boundaries, and promote and sustain healthy development and wellbeing. Ideally, in fulfilling parental duties and responsibilities, power should incorporate deliberations, clarifications and fairness that is applicable to all family members. Children should be provided with opportunities to participate in family decision-making processes unless this compromises their safety and protection (Bishop, 2015). Adults' power must be utilised to attend to children's interests, needs and wellbeing. It becomes oppressive when it is *power over* instead of *power with*; when adults' needs and desires are prioritised, and raising children is centred on obedience and control rather than development and wellbeing (Bishop, 2015). "Obedience-centred childrearing undermines children's self-esteem and discourages them thinking for themselves" (Bishop, 2015, p. 48). Oppression of children occurs when adults dominate children and fail to acknowledge and respond to their otherness (Mullaly, 2010; Wall, 2010), thus violating their rights and wellbeing.

Oppression is dynamic, multi-dimensional and relational. Oppressive interactions delineate the powerful from the powerless, superior from the inferior:

These relations of domination consist of the systematic devaluing of the attributes and contribution of those deemed inferior, and their exclusion from the social resources available to those in the

dominant group. In creating oppressive relationships, those in the dominant group seek to deny agency in those whom they deem inferior. (Dominelli & Campling, 2002, p. 8)

Children experience multiple forms of oppression, including marginalisation, powerlessness and violence (Mullaly, 2010). Herman (1998) recounts the experiences of survivors of child abuse who articulated that totalitarian control is achieved through “means of violence and death threats, capricious enforcement of petty rules, intermittent rewards, and destruction of all competing relationships through isolation, secrecy, and betrayal” (p. 98). The oppressive tactics resulted in those survivors expressing not only the crippling fear of violence but extreme feelings of helplessness, forcing them into total submission and automatic obedience, both emotionally and physically. For some, survival was contingent on being invisible and silent, where feelings of safety were associated with special hiding places rather than seeking refuge within a relationship. Furthermore, isolation from other family members and the social world is powerful and perilous (Herman, 1998) because it precludes the child from useful and meaningful participation and flourishing (Mullaly, 2010), ultimately leading to exclusion and dehumanisation.

### ***Dehumanisation***

Experiencing violence, extreme feelings of fear and helplessness is an assault on, and denial of, a person’s humanity. Failure to ascribe moral status or recognise humanness in others is dehumanising (Bastian, Laham, Wilson, Haslam, & Koval, 2011). According to Haslam (2006), and Bastian and Haslam (2011), there are two dimensions of humanness that can be denied to others; *Human Nature* and *Human Uniqueness*. Human Nature includes qualities of “emotionality, warmth, and cognitive flexibility” (Bastian & Haslam, 2011, p. 296). When Human Nature attributes are denied to people, in this case children, “are explicitly or implicitly likened to objects or machines and seen as cold, rigid, inert, and lacking emotion” (Bastian & Haslam, 2011, p. 296). Human Uniqueness refers to features that distinguish humans from non-humans, and include “civility, morality, and higher cognition”. People denied those attributes are “likened to animals and seen as childlike, immature, coarse, irrational or backward” (Bastian & Haslam, 2011, pp. 296).

The work conducted by Bastian & Haslam (2011), while not considerate of children’s experiences, provides insight into individuals’ experiences of maltreatment and social exclusion as a basis for understanding dehumanisation. Experiences of interpersonal violence profoundly undermine personhood, moral status and individual identity. There are clear ramifications cognitively, emotionally and physically (Bastian & Haslam, 2011). If this is the situation for adults, it must be considered that the ramifications for children will be much greater given that they are vulnerable and dependent on adults (Young-Bruehl, 2012). A sense of belonging and connection is essential for a child’s survival and flourishing, and recognition of their humanity. Denying children connection with other individuals and excluding them from a human community is fundamentally dehumanising and a rejection of their moral status, thus breeding childism. Processes of moral disengagement (Bandura, 2002) and psychological disconnection (Haslam, 2006) exclude children from the moral

circle, thus denying them their rights and moral considerations. Exclusion, whether social or moral, renders people (children in this case) beyond the range of moral responsibility, justifying violence and persecution (Bandura, 2002; Oliver, 2011):

To be dehumanized is to be excluded from the community. It is to be perceived by the in-group as outside the moral kinship or scope of justice, and thus as a legitimate target for more active oppressions and exclusions...perceiving others as less human than ourselves increases the opportunities for moral disengagement or indifference. (Oliver, 2011, p. 87)

What does dehumanisation mean for the victims? Insight is provided through the narratives of others and summarised by Oliver (2011). It “means the loss of identity and spirit...loss of agency and recognition...It is the loss of physical health, strength and beauty” (p. 90). Acts of “physical and discursive or symbolic violence” (p. 90) render victims objectified, fractured, helpless and humiliated. The experience of dehumanisation also becomes an intensely embodied experience where “a body suffers, starves, and trembles in stark contrast to the strength and power of the torturer’s body” (p. 91). Intense feelings of physical suffering cannot be shared and are significantly isolating, further excluding the victim from the human community.

This revelation of the profound impact of child abuse and neglect has shifted the gaze momentarily from a narrow forensic approach to a discussion enhancing understanding of the debilitating and detrimental impact of child maltreatment. It highlights the urgency for morally just social work practice for children. The cessation of dehumanising processes, whether in large scale human atrocities or in everyday practice, is dependent on moral agents recognising and acknowledging the embodied suffering and lived experiences of people with severely diminished moral status:

It calls for us all as bystanders and spectators of suffering, to attend to the concrete and individual humanity of the one who suffers and to reclaim, through recognition, their status as members of the human community. To be human, as those who have suffered the effects of dehumanization will testify, is first and foremost to be included within the community of human beings to be recognized and accepted as part of this community and thus deserving of its protection. This recognition must occur on the concrete as well as the metaphysical level: our own humanity – always embodied, always situated, and at times suffering – depends upon it. (Oliver, 2011, p. 96)

This section has illustrated the profoundly destructive and detrimental impacts of child abuse and neglect. Engaging in a discussion removed from a medicalised and forensic driven perception of child maltreatment enables recognition and understanding of the psychological, emotional, physical and spiritual injuries caused by child abuse and neglect, culminating in trauma, oppression and dehumanisation. The next section consists of a philosophical deliberation of moral status; recognition that children who are maltreated are worthy of active protection and moral concern erodes childism and childist practices.

## **Part B: Ethical considerations**

Engaging with and understanding the experiences of children who have been abused and neglected requires the ability to engage in moral philosophy or ethics to help us “develop awareness and

deepen knowledge” (Lonne et al. 2016, p. 14) on the moral importance of children. Publications examining ethical perspectives relevant to child protection matters have received prominence in the last ten years (Lonne et al. 2009; Featherstone et al. 2014; Lonne et al. 2016). Nevertheless, these recent publications do not deliberate in any depth about the moral importance of maltreated children. Dwyer (2011) and Turner and Matthews (1998) recognise this gap. This study follows Dwyer’s lead; “Long overdue is a concerted examination of this most fundamental question in moral theorizing about proper treatment of children” (Dwyer, 2011, p. 2). In this pursuit, ethical threads and knowledge have been drawn together in this section to situate the moral importance of children grounding transformative policies in statutory child protection. Drawing on disparate ethical theories and perspectives demonstrates that there is fertile ground for ongoing deliberations on this topic (Lonne et al. 2016).

The philosophical discussion commences with an examination of *moral status* – a moral theory that is deontological or a duty-based morality concerned with duties and obligations. Moral status is particularly prevalent in the field of bio-ethics (Warren, 1997; Warren, 2008) although Dwyer (2011) and Brennan and Noggle (1997) extended the moral theory’s purview. Duties and obligations towards children are clearly delineated highlighting the importance of children’s rights although specific discussion about children who are maltreated is conspicuously absent. The *ethics of ordeal* (Massey, 2000; Caputo, 2002) and *marginal humans perspective* (Fox, 2002; Kittay, 2005) call attention that we, as moral agents, have duties and obligations towards people who are suffering and who live on the margins of society. These ponderings are relevant in clarifying duties and obligations towards individuals who are ordealing, although a fuller account is required.

To resolve this gap and be more inclusive of maltreated children, ‘*emergent*’ ethical theories are also examined. Emergent ethical theories are relational in nature and “an approach interested in what happens in the space between people in relationships...it weaves a narrative thread that combines the notions of ethics as a set of moral principles with a narrative of *relation*” (Lonne et al. 2016, p. 27). This exemplifies that relationships have moral and ethical dimensions and are focused on processes rather than bound by rules and formalities. Emergent theories are significant in this theorising and particularly within a complex and fraught child protection context. Relationships are vital for the rights, development and wellbeing of children (Brennan & Noggle, 1997; Warren, 1997; Dwyer, 2011a; Jaworska & Tannenbaum, 2013). *Ethics of care* (Tronto, 1993; Noddings, 2002; Held, 2006) and *ethics of responsibility* (Webb, 2006; Tascon, 2013) are grounded in the momentousness of relationships exemplifying ethical responsibility towards children who are abused and neglected (Featherston et al. 2014; Lonne et al. 2016).

## Moral status

### What is moral status?

The concept of moral status is prevalent within applied ethics, particularly bio-ethics, deliberating on how certain beings should or should not be treated. The decision-making centres on the theoretical questions about people's moral status and the grounds on which they are accorded moral status. Warren (1997) asserts that "To have moral status is to be morally considerable, or to have moral standing" (p. 3). Moral status is not tangible nor can it be observed such as an object or a phenomenon. The construct of moral status is a mechanism that stipulates that we, as moral agents, have moral obligations (Warren, 1997). An entity or being has moral status "if and only if it or its interests morally matter to some degree for the entity's own sake" (Jaworska & Tannenbaum, 2013, p. 1). Some philosophers assert that moral status comes in degrees, where full moral status (FMS) is the highest degree of status (Jaworska & Tannenbaum, 2013).

It is generally accepted that adults with unimpaired cognitive abilities have full moral status. Historically speaking, some groups within society, such as women, persons who experience physical disability, foreigners and minority groups were denied moral status. They were either completely denied moral standing or were accorded diminished status. In present society, their moral standing is not overtly denied although theorising about the moral status of cognitively impaired humans poses significant challenges. For example, deliberations about the rights of people who experience disabilities and the tolerability of eugenics is contingent on theoretical disagreements about moral status. There is little consensus on controversial topics such as moral status of human foetuses and humans incapable of consciousness (Jaworska & Tannenbaum, 2013).

Deliberations about moral status in the field of bio-ethics is recognised as controversial and confusing leading to a more common sense philosophical view. According to Jaworska and Tannenbaum (2013) there is some agreement among non-philosophers that:

All cognitively unimpaired human adults have the highest degree of moral status. But, in addition, non-philosophers in principle, if not always in practice, accept the same view regarding all cognitively unimpaired human infants and severely cognitively human beings... That is they hold, that infants and the severely impaired, whether their impairment is intellectual or emotional, not merely have high moral status than most animals but have FMS [full moral status]. (p. 4)

People with FMS are accorded this standing "not because they are persons, but because they are taken into the human community and treated as human beings" (Curtis & Vehmas, 2016, p. 42) and understood they have higher moral standing than non-human animals (Curtis & Vehmas, 2016).

Persons who are accorded moral status matter. Moral agents must heed their interests and consider consequences of any actions towards them (Dwyer, 2011a). Moral agents, in deliberations and ethical decision-making, are obliged to give weight to the needs, interests or wellbeing of people ascribed moral status (Warren, 1997). People with moral status must be protected from harm,

provided with aid and accorded morally just treatment (Tannenbaum & Jaworska, 2013). The characteristics that make us human ground our moral status. Bastian, Laham, Wilson, Haslam, and Koval (2011) argue that humanness, or more specifically personhood and moral status, “are tightly bound in philosophical and legal scholarship on moral rights and responsibility” (p. 470). Perceptions about humanity link to judgements about the moral worth of others. The field of psychology has identified that the denial of a person’s humanity is interconnected with reduced empathy and provides justification for dehumanising treatment (Bastian et al. 2011); an important point that will be explored in more detail later in this chapter.

The philosophical concept of moral status is important for two reasons. First, human beings have had, and continue to have, an amazing ability to harm others. Human beings are harmed daily in the context of domestic violence, child abuse and neglect, criminal behaviour and harassment. Second, and from an inverse vantage point, human beings have an immeasurable capacity to care for others. An ability to care for others “constitute[s] the essential and instinctive foundation of all morality” (Bastian et al. 2011, p. 12). Moral status governs the extent to which moral agents, including political and legal decision makers, should ponder and decide on the importance of a person’s needs, interests, wellbeing or integrity (Dwyer, 2011a).

The traditional determination of how moral status is ascribed is based on a *uni-criterial* approach. On one hand, moral status is ascribed on the basis of possession of a single intrinsic property such as personhood, genetic humanity, sentience and life. On the other hand, moral status is not determined by intrinsic properties; rather, relational is core (Warren, 2008). While the *uni-criterial* approach has merits, it also has weaknesses, as discussed later in this section. The standard approach in the moral philosophy literature is called the *personhood-bound* approach (Porter, 2012), which is particularly prominent in the field of bioethics (A. Buchanan, 2009). Theorists such as Tom Regan, John Harris, Michael Tooley and John Locke consider that a person includes any entity that is capable of thought and self-awareness (Dwyer, 2011). Immanuel Kant strongly proclaims that the concept of “personhood” should be reserved for people who are capable of rational moral agency and have the ability to regulate their own choices and behaviour (Dwyer, 2011; Warren, 1997). Adults are perceived to possess higher level cognitive functioning than children, incorporating rationality, autonomy and moral agency; thus, they are considered superior to children (Moskop, 1997; Warren, 1997).

The *genetic humanity* theory pronounces that all members of the human species have the same basic moral rights – a view espoused by some religious doctrines and pro-life groups (Warren, 2007). Alternatively, being *sentient* is a necessary intrinsic factor in being accorded moral status. Sentience “is the capacity to experience pleasure, pain, and other conscious mental states” (Warren, 2007, p. 442) as well as “more complex emotions, moods and passion” (Warren, 1997, p. 55). There is a belief that all sentient beings should be accorded moral status. Others, however, assert that while

all sentient beings have full moral status, some are accorded status based on their level of sentience, self-awareness and mental sophistication (Warren, 2007). Another view is that *organic life* is the only valid basis on which to attribute moral status because life matters morally; life is respected and protected (Warren, 2007). The organic view asserts that life is defined by having the will to live, a goal directed life, observable actions such as mobility, and the existence of internal activities such as digestion of food and neural activity. The proposition that all living beings are of equal moral status has attracted significant criticism because it is considered untenable for everyday moral practice (Warren, 1997, 2007; Dwyer, 2011).

Some theorists ground the attribution of moral status in the context of relationships. Ethics of care has been influential in advancing the notion that human caring advances moral considerability. The ethic of care stresses the importance of relationships and views people as essentially “relational and interdependent, morally and epistemologically” (Held, 2005, p. 13). It is a moral theory that offers hopeful and visionary thinking about living life and a good society (Held, 2005); a society that is assessed as morally admirable, embracing a stance of moral sensitivity (Bauman & Donskis, 2013). From a political perspective, it ensures that all citizens are provided with care (Tronto, 1993). The capacity to care for others within the context of a relationship increases moral obligations and safeguards the advancement of all citizens’ interests, needs and wellbeing.

Having described the most common approaches to moral status, I now critique them. The *uni-criterial* approach to moral status is claimed to be severely flawed (Dwyer, 2011a; Warren, 1997, 2008). Theories based on individual characteristics such as personhood, sentience, life, and social and ecological relationship are all relevant and offer diverse perspectives. However, it is the task of the theorist to combine the criteria and determine the moral significance of living entities. In a scaling exercise considering each criterion, all living entities have moral status. Those who are sentient will have higher moral status than those who are non-sentient, and moral agents who are autonomous and have higher cognitive functioning will have a higher moral status than sentience alone. Warren (2008) argues that notwithstanding each perspective’s importance, a *uni-criterial* approach is insufficient. It does not provide an explanation as to why, intuitively and morally, some entities have higher moral status than others. We must rely on the prominence of social and ecological relationships to understand these distinctions. For example, newborn babies are deserving of particular obligations by virtue of being members of the human community.

The combination of each criterion, or a *multi-criterial* approach, intensifies theoretical complexity while remaining practical. Warren (2008) expresses each criterion as a principle and each principle allows increased clarification. It is not the intent to examine these principles except to say that their impact is to infuse an ethos whereby people ascribed moral status are deserving of respect, protection and human rights. It is an ethos of compassion, recognition and responsiveness. Furthermore:



Human rights are social responsibilities to the human diversity of otherness. The most fundamental right is to be included as another social creator. It is to make one's society a difference. This means all at once being protected against marginalization, being provided social resources, and being able to participate as an other for oneself. The underlying purpose of human rights is painfully but joyfully to expand the circumference of a society's unfathomable humanity. (Wall, 2010, p. 138)

The work of Bastian et al. (2011), Bastian and Haslam (2010), and Haslam, Bain, Douge, Lee, & Bastian, (2005) offers an additional dialogue on the attribution of moral status from a psychological perspective. In researching dehumanisation (see Dehumanisation section in Part A of this chapter), they argue that judgements about a person's moral status are based on "ascribed or denied humanness" (Bastian et al. 2011, p. 470). The concept of dehumanisation is generally associated with large scale human atrocities and genocide (Oliver, 2011; Zimbardo, 2008), although diminished moral status or dehumanisation occurs on a daily basis. In particular, Haslam (2006) proposes that:

... dehumanisation is an important phenomenon in interpersonal as well as intergroup contexts, occurs outside the domains of violence and conflict, and has social-cognitive dimensions in addition to the motivational determinants that are usually emphasized. (p. 252)

### **What other factors impact moral status?**

The field of moral psychology ascribes moral status to perceptions of humanness and emotional reactions (Bastian et al. 2011; Dwyer, 2011). Empathy, awe and disgust play a significant role in ascribing moral status to people. The ability to connect and have a sense of commonality with others is more likely to elevate a person's moral status. For David Hume, the recognition of, and affinity with, someone else's lived experiences engenders emotional responses of empathy, caring and compassion. For Immanuel Kant, it triggers a rational response where, as individuals, we ascribe our own traits high level importance, claiming that those traits are universally important and attribute moral status to others with whom we have affinity (Dwyer, 2011a; Slote, 2007). Empathy is derived from a dynamic connection and deep understanding of the experiences and feelings of other people (Haslam, 2006; Howe, 2010). It arises when the vulnerability of others' is recognised, particularly when their freedom is constrained or their cognitive faculties are in decline. "And this sense of commonality does cause us to accept that others are worthy of consideration, as we believe our own autonomy – our own forming and pursuing of ends and our striving for meaning – commands respect and consideration" (Dwyer, 2011, p. 182). Conversely, the absence of empathy contributes to the dynamics of dehumanisation characterised by emotional distance, objectification and indifference (Haslam, 2006).

Awe and disgust also play a role. Recognition of moral standing and moral worth are elevated due to feelings of awe – feelings akin to reverence (Dwyer, 2011a). Conversely, feelings of disgust result in diminished moral status. "Disgust is a visceral, adverse reaction to things we perceive as especially base or vile, as threatening to contaminate us, reduce us to the level of nonhuman animals" (Nussbaum, 2004, pp. 87-98). Disgust is an emotion associated with fear and loathing of our own vulnerability and mortality (Nussbaum, 2004). Disgust has contributed to the denigration

and marginalisation of groups throughout the course of history, for example, its significant role in the labelling of Irish children institutionalised during the 1900s as *moral dirt*. They were perceived as contaminated and representative of poverty and social ills – shutting them away equated with societal cleansing (Ferguson, 2007a). Reports of fatal child abuse engender visceral feelings of disgust as media reports expose “social and cultural anxieties about imagined dangerous and perplexing social groups to which these children are seen to have belonged” (Warner, 2015, p. 45).

According to Warren (1997), the concept of moral status is a mechanism that can be used to organise a jumble of conflicting claims about what should or should not be done. Although it is a blunt tool, it specifies minimum standards of behaviour towards those with moral status, providing a guide in controversial practices and particularly relevant in the field of bioethics. Research in the field of social psychology demonstrates that whether a person is accorded moral status is not based solely on the possession of certain criteria. Being ascribed moral status is strongly influenced by perceptions of humanness and affective responses, thus illuminating the relational component of determining a person’s moral worth (Bastian & Haslam, 2010). But what does this mean for children? And more specifically, what does it mean for children who experience adversity and suffering?

## **The moral status of children: meaning**

Over the last thirty years, a veritable industry dedicated to the moral status of animals, embryos and extensive environmental literature discussing obligations to non-animal entities has emerged (Dwyer, 2011a). Despite this, the moral status of children has received minimal attention from philosophers. Moral theorists, including Freeman (1997), and Archard and Macleod (2002), recognise and acknowledge that children have moral status but focus on the implications of that accorded status (Dwyer, 2011). Ward and Donnelly (2008) discuss the concept of moral status in the context of human service provision, including child welfare, but limit their discussion to children’s participation rights.

Authors Brennan and Noggle (1997), and Dwyer (2011a) deliberate children’s moral status. Brennan and Noggle (1997) argue that children deserve to have equal moral status with adults, whereas Dwyer (2011a) proclaims that children are superior to adults. Kittay’s (2005) work on marginal human perspectives presents a different starting point and offers an alternative perspective as well as grounds for consensus on this area. The following section will examine these arguments and consider whether children have moral status, and on what basis moral status is ascribed.

## **Do children have moral status?**

The moral status of children is grounded in three claims, as asserted by Brennan and Noggle (1997). First, children deserve the same moral consideration as adults; the importance of children’s claims equals adults’ claims. Second, in some circumstances children must be treated differently from

adults. While this appears incompatible with the first claim, equal moral consideration does not equate to equal treatment in every aspect. It is necessary to account for the *differences* between children and adults. Although children have a total package of rights and duties, their interests and rights differ from those of their parents or other adults due to their developmental immaturity and increased need for nurturing and protection. Third, parents, in their *stewardship role*, are obligated to nurture and protect their children, and must make decisions in the children's best interests. Parental rights can be overridden if there is conflict between the rights of the child and the rights of the parents, particularly in circumstances where the parents or carers fail to meet their children's needs.

An important element of Brennan's model is the weight given to rights and relationships that "both enshrine and respect the same thing: the unique value of persons" (Brennan & Noggle, 1997, p. 15). Therefore, rights and relationships are compatible and inextricably linked. In the context of genuine relationships, people respect each other and their rights. Typically, the quality or genuineness of relationships does not become evident until there is a violation of someone's rights. The significance of strong and healthy connections between carers and their children is unfailingly associated with a discourse of rights. It is essential to consider rights because it provides a mechanism through which an assessment can be made about the quality of the relationship between the child and their parents/carers. "Rights are one tool for doing this: a pattern of systematic rights-violation by one partner in the relationship is certainly a sign that the relationship is pathological" (Brennan & Noggle, 1997, p. 15). On this basis, we are obliged to take children's rights seriously.

Dwyer (2011a), using a multi-criteria approach, disrupts and extends Brennan and Noggle's (1997) work by contending and arguing that children are morally superior to adults. He uses a weighting system in which he identifies various criteria across the lifespan. In applying the criteria, including rationality, autonomy, interpretation of sensory experiences and participation in social communities, competent middle-aged adults appear to come out ahead of pre-adolescent children – but only slightly. On all other criteria, including aliveness, being cared for, sentience, innocence, beauty and potential for future life, and coming to the realisation of advantages in adult life, children come out substantially ahead. If each criterion were weighted equally, children's moral status would still outrank that of adults. Justification for this argument is as follows:

They are on average much more alive in so many ways, living more intensely, more dear to others, more prepared to advance in their moral development, more innocent, more beautiful, more full of potential, and on the whole simply more empathy provoking and awesome than adults. But simply tallying the number of criteria on each side is unsatisfactory, for characteristics could be grouped differently and, in any event, we cannot simply assume that each criterion is equally important to an overall assessment of moral status. (Dwyer, 2011a, p. 181)

Higher cognitive functioning or the personhood-bound approach normally renders children's moral status inferior. Children are disregarded when recognition of human dignity is founded on rationality, autonomy and human agency (Wall, 2010). Authors Moskop (1997), McGee (2013), and Jaworska

and Tannenbaum (2014) concur on this point, although they restrict their deliberations on the moral status of babies. There is an irony associated with this reasoning. Dwyer (2011a) concludes that if higher cognitive functioning results in people being more deserving of moral consideration and protection, then it is ironic to ascribe a higher moral status to people who are less in need of consideration and protection by others. This logic is counterintuitive. As moral agents, in recognition of rationality and autonomy in others, our affinity is subdued by the perception that they can care for themselves and therefore deserve less attention.

Intuitively, the personhood-bound approach is not a strong basis from which to attribute moral status. Therefore, it does not outweigh all other factors that are favourable for children. Other authors concur with this view and assert that relational features take prominence in grounding moral status. Bioethicist H. Tristram Englehardt Jnr, cited in a review by Moskop (1997), asserts that theoretically, young children should not be ascribed moral status because they are “not persons in the strict sense” (p. 165). Moskop instead proposes the social conception of personhood, where infants, children and other persons are accorded rights and protection:

Social senses of personhood...are based on the social roles and relationships held by these individuals within human communities. We confer the status of personhood, Englehardt argues, because the practice has a number of good consequences. (Moskop, 1997, p. 165)

McGee (2013), who also writes from a bioethics perspective, concludes that the moral status of babies is conferred on the basis of deep instincts, emotional make up and relationship with family members. In their deliberations, Jaworska and Tannenbaum (2014) confer that deep relationality is critical when ascribing moral status; an infant being part of a caring relationship and able to engage in it is deserving of moral status.

The vulnerability and suffering of others – in this case children – generates a greater affective response. It is on this basis that Dwyer asserts that children should have a higher moral status than adults; a view consistent with essential elements of our moral heritage. The case for children’s superior moral status is grounded in the premise that there are social practices which “appear to reflect an implicit assumption that children are less worthy of moral and political consideration than adults” (Dwyer, 2011a, p. 4), resulting in their denigration. This is despite children’s recent elevation in social status. Citing legal cases in the United States and examining dominant child rearing practices in Western countries (ie corporal punishment), Dwyer (2011a) contends that practices used with children are adult-centric, and thus demeaning to children. Many authors concur with this view (Archard & Macleod, 2002; Freeman, 1997; Wall, 2010; Young-Bruehl, 2012). Dwyer (2011a), however, acknowledges limitations to his analysis. First, the discussion compares two developmental periods – pre-adolescent children (6–12 years) and middle-aged adults (40–59 years) – to enable manageability. While infants and children of other life stages are included, this is limited. Second, empirical studies do not fully support the application of some criteria. Discussions

are based predominantly on unscientific observations and intuitions, which may result in challenges to his deliberations.

Regardless of these limitations, Dwyer's (2011a) analysis makes a significant start towards advancing the plight of children, particularly those children who experience adversity and oppression. It contributes to the limited discourse and provides a useful launching pad for my own work in developing a transformative agenda for the rehumanisation of children.

The works by Brennan and Noggle (1997), and Dwyer (2011a) provide a basis for arguing that children have moral status; even a superior moral status according to Dwyer. A personhood-bound approach, which dominates philosophical discussions in the attribution of moral status, is found to be flawed and counterintuitive. Dwyer argues that other criteria need to be considered and given due weight, whereas Brennan and Noggle (1997), and authors including Moskop (1997), Jaworska and Tannenbaum (2014), and McGee (2013) exemplify the importance of relationships in the realisation of rights and provision of care. There is a clear foundation grounding the moral status of children in general, but what of the moral status of children who experience maltreatment?

## **But what of maltreated children?**

The construct of moral status and to whom or which entity it is accorded means that their interests matter morally. Authors have deliberated and are in agreement that infants (Jaworska & Tannenbaum, 2014; McGee, 2013; Moskop, 1997) and children (Brennan & Noggle, 1997; Dwyer, 2011a) are morally worthy. Therefore, we, as moral agents, are obligated towards them. Nevertheless, the literature deliberating on the moral status of children does not actively focus on children who are maltreated. Children who experience trauma, oppression and marginalisation, and have their normal developmental trajectories interrupted are, intuitively, morally worthy and more in need of consideration and protection than others. Caputo (1993) declares:

Beware of philosophers: they are too much occupied with strong or healthy people, with autonomous agents and aggressive freedoms. They miss the disasters. They pass right over those who are laid low by the cruelty of events... They pay no mind to people who are crushed by what happens, whose lives are not knit together but in shreds, people who are hap-less, who fall victim to what happens. (p. 236)

Ethically and intuitively, there is a moral imperative to be inclusive and responsive to children who need protection. Thus, a sharper theoretical focus is required on the study of children who are maltreated. Before the examination of other compelling theoretical perspectives are presented, it is important to comprehend why child abuse and neglect is so troubling. Appreciation of the destructive nature of child maltreatment necessitates statutory child protection intervention. The next section embraces an approach taken by Wolff (2011), who asserts that ethical practice in social policy requires a comprehensive understanding of the policy area, an ability to interpret why child protection

generates such moral difficulties, and an ability “then to connect those difficulties or dilemmas with patterns of philosophical reasoning and reflection” (p. 9).

### **What of ordealing and ethics?**

The ethics of ordeal developed by Massey (2000) is a powerful ethical perspective that advocates for those who are wounded or ordealing – people who are suffering, traumatised, vulnerable and afflicted. Ordeals are complex and intricate, and render vulnerable people harmed politically, socially, biologically and materially. Massey (2000) describes the ethics of ordeal as:

... an ethics of partiality. It is partial to those who are wounded and ordealing. It stands for them, with them, and by them. It is an ethics which is on standby, listening attentively and lovingly for the other, the *tout autre* or wholly other, who summons us to responsibility. (p. 32)

Massey (2000) joins with Caputo (2002) in a profound commitment to “people whose lives have been torn to shreds” (Caputo, p. 235). Ordeals plunge people into an *abyss* where those who face suffering and adversity seek to preserve their identities and dignity. The abyss is a sorrowful place where refuge is sought. There appears to be little joy but “within the chaos, however, joy may be lurking” (Massey, 2000, p. 26). The abyss is a place characterised by unspeakable fear, misery, indecision, uncertainty, suffering and torment. People who retreat into the abyss seem to live in their own world but simultaneously as part of this world. Fundamental to an ethical and morally just response is not overlooking the “scandal of deep and utter joylessness, of utter misery, of unspeakable, unwarranted suffering” (Caputo, 2002, p. 236) but to assist where possible and explore the potential of alleviating the hopelessness and joylessness through obligation. Obligations are central to the enhancement of moral status, restoration and healing, thus reducing feelings of hopelessness and suffering (Massey, 2000). This will be explored later in the final section in this Part.

### **Is marginal of lower moral status?**

A perspective that swims “against the philosophical tide” (Kittay, 2005, p. 100) is the marginal humans perspective (Porter, 2012, p. 40). Kittay (2005) asserts that it is morally repugnant to exclude individuals who are on the margins of personhood (infants, the severely cognitively disabled; comatose individuals, severely traumatised individuals). Kittay (2005) proclaims that:

I shall argue *against* the view that such intrinsic psychological capacities as rationality and autonomy are requisites for claims of justice, a good quality of life, and the moral consideration of personhood – that is, that these capacities are the principal qualifications for membership in a moral community of individuals deserving equal respect and dignity (my emphasis). (p. 100)

Kittay’s (2005) argument is consistent with Moskop (1997) and extends Dwyer’s (2011a) conclusion that assigning moral status only on the basis of personhood is counterintuitive and inhumane. Personhood is not the only basis on which to designate moral considerability. Kittay (2005) reminds us that:

Personhood in the past has also been used less capaciously to exclude specific humans: women, slaves, Jews, certain racial groups, the disabled – those who, for one reason or another, were

believed unworthy or incapable of rationality and self-governance. As current disputes over the moral personhood of foetuses and very premature neonates attest, personhood has been, and continues to be, a contested category. (p. 101)

If we, as moral agents, wish to stake a claim in the moral universe, we must appeal to common humanity. Moralities fabricated on the image of the “independent, autonomous, rational individual” (Held, 2006, p. 10) disregard the reality of human suffering and require an ethical response. People who fall short on autonomy and rationality, or who experience adversity and suffering, have interests. Attending to those interests through an ethic of care contributes to their wellbeing: “we attribute to that individual an egoistic concern, even if the individual herself or himself fails to be conscious of, or is unable to articulate, such a concern” (Kittay, 2005, p. 109). Fox (2002) is in agreement and pronounces that individuals who are severely handicapped or grievously disadvantaged, including children who are maltreated, are members of the moral community. Therefore, they are deserving of protection, respect and equal moral concern. This moral imperative is foundational to civilised society and failure to “cultivate and preserve this frail thread leaves the way open to systematic abuses of the dignity and rights” (Fox, 2002, p. 189) of people on the margins. As members of the moral community, children who experience abuse and neglect are entitled to rights, and moral agents have obligations to ensure those rights (Fox, 2002).

The starting point in this argument locates obligation as the first step towards asserting and examining criteria for moral status, rather than asking questions about them. Drawing a line between the full members of the human community and those who are on the margins is dangerous and unwise. All people, irrespective of capacities and vulnerabilities, are members of the human community and therefore deserving of moral consideration (Fox, 2002):

... it seems to me that charity, benevolence, humaneness, and prudence require such an extension and that it is not inconsistent with a theory of morality that makes rights and autonomy central...in everyday life. (Fox, 2002, p. 190)

The ethics as ordeal (Massey, 2000) and the marginal humans’ perspectives (Kittay, 2005) provide a sharper theoretical focus and the rationale that children who experience adversity, suffering and trauma deserve full moral status. Children, particularly young children, differ from adults in terms of their autonomy and independence. Children who are abused and neglected experience oppression and dehumanisation. As members of the moral community, their humanness must be recognised, respected and protected. Their rights will be realised within the context of nurturing relationships. It is on this basis that moral agents have obligations, which are examined in the next section.

### **What are the obligations of family and State towards children who are maltreated?**

According to Caputo (2002), obligations happen just as tragedies and disasters do:

The only response that is appropriate, the only response that is called for, is to offer to repair the loss, to lend a hand when the damage threatens to run beyond control, to help restore the possibility of joy, the rhythms of ordinary things. (p. 236)

Obligations are realised through an awareness or sensibility to others' lived experiences. Massey (2000) suggests that sensibility is:

being awake to the precariousness of the other, of exposing oneself, without holding back, of giving without receiving, of expenditure without reservation. However, I suggest a hermeneutic sensibility, a sensibility in which affect and intellect are coordinates, offers richer possibilities. (p. 30)

Hermeneutic sensibility is being open and attuned to the suffering, ordeals and lived experiences of others. It has an analytical vigilance of the factors that contribute to the experiences of ordeal. Thus, sensibility facilitates a critical analysis of dynamics in the suffering and maltreatment of children. For example, it is possible to be empathic and sensitive to the harm experienced by children, and concurrently observant of the insidious powers and transactional effects of chronic poverty, social exclusion and intergenerational abuse (Cicchetti & Toth, 2005; Massey, 2000; Porter, 2012).

Wall (2010), who theorises on the light of childhood, concurs with Massey's assertion that moral obligations are grounded in the ability to be responsive to others and most particularly to children. Grounding moral obligations in the language and constructs of autonomy, agency and individuality will only result in the enduring denial of children's humanity. Moral obligations, from a child inclusive perspective, require a process of decentering, where "shifting one's centre of gravity to include others insofar as they are *not* reducible to one's narrative alone" (Wall, 2010, p. 88) is required. A child's existence and interaction with others obliges other people to:

undergo constant and unanticipated self-transformation. It asks for disruption in the sense of new feelings, narratives, actions and relationships. Routines should change, sleep patterns be thrown off, priorities shifted, and relationships and institutions restructured...Being with children draws one into fresh and surprising horizons of meaning, as does being with adults. (Wall, 2010, p. 90)

From a social justice perspective, Wall (2010) contends that children's experiences and understandings have been interpreted through an adult centric lens. Children's marginalisation and oppression are intertwined with powerful social systems that are unresponsive to children's diversity and uniqueness. Child inclusive systems and societies decentre themselves around the most vulnerable children. Fundamentally, "the underlying moral obligation is to expand rather than contract the sphere of social inclusiveness in light of those most easily left out of it" (Wall, 2010, p. 104).

Wall (2010) and Massey (2000) draw on the works of philosopher Emmanuel Levinas, who summons us to enact responsibility to those who are wounded and suffering. Levinas developed an ethics of responsibility towards others. More specifically, the ethics of responsibility:

do not rely on sameness or on cultural or group homogeneity, nor on the assimilatory urge inherent in many traditional approaches to ethics, but allows a response of compassion towards (an)other across difference in a stance of human-to-human. (Tascon, 2013, p. 86)

Responsibility is neither technical nor bound by rules, procedures and programmes. Tascon (2013) emphasises that "it is one of the most deeply fundamental aspects of the human condition. It goes



to the heart of ethics” (p. 87), particularly where ethics is perceived as a process interwoven with obligations to others, in this case children, within a relational framework.

Levinas’ call to responsibility has been criticised because “it is an ethics that involves the self in an internal response to the Other” (Tascon, 2013, p. 89) in a one sided relationship of responsibility to the Other. An ethics of responsibility is fundamentally an ethical response based on recognition of others’ dignity and respect (Webb, 2006). This vision of responsibility is consistent with social work values and practice, particularly when working with people who are disenfranchised and on the margins of society; “The vision of responsibility, therefore, compels, but in a way that all of us are compelled, by virtue of being human in a world of other beings” (Tascon, 2013, p. 92). In the context of social work, and more specifically child protection social work, the ethics of responsibility challenges us to avert our gaze beyond neoliberalist practices of rules and procedures, and instead:

Relies on a response from human-to-human, allows social workers to respond their organizationally defined roles, and commands compassion for...the marginalized when their difference invites fear in others. It commands social workers to respond beyond the demands of their organizations to be accountable to the rules and prescribed roles, and reach out in a gesture of human-to-human because, ultimately, Levinas’s ethics of responsibility are not about making ‘moral life easier [but]...making it a bit more moral’. (Bauman as cited in Tascon, 2013, p. 94)

In his theorising, Wall (2010) proclaims that human rights, or in this case, children’s rights, are “markers of social responsibility to otherness” (p. 127). The vision of human rights for childhood is a society that will distend and decenter, and become more responsive to children’s humanity and lived experiences.

This section has argued that all children, and more specifically children who are abused and neglected, deserve moral status. Maltreated children are members of the moral community and are therefore deserving of care, respect and protection. The attribution of moral status requires moral agents to attend to the interests, needs and wellbeing of children, particularly when parents are unable to do so. Central to the philosophical deliberations is that children’s rights are realised within the moral context of relationships. In circumstances where the rights of children are violated and their safety compromised, their rights must take precedence, thus disrupting the dynamics contributing to their oppression and dehumanisation. Disruption of oppressive and prejudicial attitudes towards children is central to the goal of anti-childist practice (Pierce & Allen, 1975; Wall, 2010; Young-Bruehl, 2012). In accordance with Wolff’s (2011) contentions, the next section will translate the rhetoric of rights and relationships for children who experience abuse and neglect to mid-range theories that should inform policy and practice in the child protection context.

## **Part C: Rights and relationships: core constructs of children’s moral status**

The moral considerability of children positions relationships, rights and obligations as centrally important. The moral context of relationships facilitates the realisation of children’s rights, interests

and wellbeing (Brennan & Noggle, 1997; Dwyer, 2011a; Jaworska & Tannenbaum, 2014; Warren, 1997). In circumstances where children's rights, interests and wellbeing are not realised within the context of relationships, the State is mandated to intervene and secure their safety and protection within the broader community context (Freeman, 2007a; Melton, 2010; Zermatten, 2010). The moral and legal recognition of children as rights holders does not necessarily equate with advancement of children's wellbeing and their best interests. Children can only flourish if their rights are conceptualised and realised within the context of nurturing and loving relationships (Archard & Macleod, 2002).

Melton (2010) emphasises that the achievement of human rights is contingent on the criticality of relationships. Human rights, and in this case, children's rights are universal expressions of humanity and personhood. Rights provide a benchmark that are applicable to all governments and individuals within a democracy about "minimal norms and standards of action consistent with respect for persons" (p. 162). Roosevelt (as cited in Melton, 2010, p. 162) exemplifies that human rights is the province of every person everywhere:

In small places, close to home – so close and so small they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in, the school or college he attends; the factory, farm, or office where he works.

The discourse about children's rights is often conceptualised within the limited confines of parent-child relationships. The CRC is underpinned by a relational framework exemplifying the interconnectedness of children and family rights within the context of community and culture (Melton, 2010). The universality of children's rights and importance of relationships steps beyond the realm of families. In some situations, children have important relationships, like those associated with nuclear families, with individuals who are not family members. Special relationships must be recognised and protected by policy makers and practitioners (Howe, 2010; Fox, 2002).

In the seminal paper, Melton (2010) argues that there are three reasons that ground the recognition of children's right to the protection of relationships with family members and others within the community. First, the family and community are the source of socialisation and learning about societal values enabling children to function autonomously and have the ability to respect and value others. Second, children are unique and worthy of our respect and entitled to grow up in environments where they flourish developmentally and experience love, happiness and understanding. Third, and most fundamentally:

Relationships are critical to purpose in life, sense of personal fulfillment, and identity both as an individual and a member of a family or a clan, a religious community, and a nation or an ethnic group – in effect, the ingredients of personhood. Especially for children, relationships with trusted adults (both kin and nonkin) also provide a sense of personal security, minimally risky venues for new experiences, introductions to setting and people, and access to nurturance and protection - necessary elements in children's development as important participants in community life. (Melton, 2010, p. 165)

The realisation of children's rights are facilitated by growing up in a *family environment* (Melton, 2010). The CRC stipulates that children have a right not to "a *family* but instead to a *family environment*" (Melton, 2010, p. 167) as articulated in the preamble.

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. (United Nations, 1989, p. 1)

Melton (2010) argues that the concept of *family environment* is far superior to *family*. The concept is inclusive of individuals who are legally responsible for the child beyond the confines of the nuclear family structure. It encapsulates those relationships that are important and considered familial from the child's perspective, whether it is extended family or community members. It also is inclusive of professional relationships particularly in circumstances where children experience adversity and harm. The terminology used by the CRC accentuates government accountability and responsibility and that the "child's right to a family environment connotes numerous entitlements for parents" (p. 167) and other important caregivers including:

1. to know and care for the child; ... 2. to avoid separation from the child; 3. to receive assistance in rearing the child; 4. to receive assistance as needed in ensuring a standard of living adequate for the child's development; 5. to receive child-care services, and 6. ... to be shown deference by the government. (Melton, 2010, p. 167)

This has significant connotations for statutory child protection agencies. State authorities are legally and morally mandated to ensure that children grow up in a family environment in the context of a supportive community.

Children have a right to be free from violence. In circumstances where children experience adversity and suffering, child protection agencies have the authority to respond in "*ex ante or ex post*" (Archard, 2003, p. 142). Protective responses can either prevent a child from being harmed or implement interventions after a child has been abused and/or neglected. All actions must be in the best interests of the child and informed by the child's views according to their maturity and sensitivity to their circumstances. Young-Bruehl (2012) asserts that the UNCRC upholds that children are entitled to special care and assistance, and that the best interests of the child is of primary consideration. The UNCRC unifies the international community in committing to the enhancement of children's rights:

Their common goals are reducing and eventually ending child poverty and providing every child with the means and education to develop healthily and freely; protecting children from exploitation, abuse, and neglect; and promoting children's participation in familial and community life "to the extent of their evolving abilities". (Young-Bruehl, 2012, pp. 10-11)

Children's rights, as articulated in the UNCRC, delineate social responsibilities. According to Wall (2010), the purpose of children's rights is to create social relations that are expansive and able to respond to otherness. The UNCRC in general and the best interests of the child principle in particular ground policies and practices in child protection. The sections that follow will enhance understanding of the best interests principle, which is prominent in the discourse of protective rights and child

protection. Rights should function to distend and decentre social responsiveness, rather than “contract and consolidate social creativity among humanity” (Wall, 2010, p. 126). Social relationships should be fully responsive to the “humanity’s true diversity of lived experience” (p. 126). This examination will provide a foundation from which to evoke the analysis of the child protection responses provided to Dean, Jack, Ebony and Baby Kate. As Young-Bruehl (2012) suggests:

We must seek the underlying motive that helps explain why many adults do deny that children have rights; why they refuse to provision, protect, or encourage participation of their children in family and community affairs; and why they discriminate against their young – the future of their societies – in order to favour not just themselves but adults generally (p. 11).

### **How can we understand the best interests of the child?**

The best interests of the child is a prominent principle within the discourse of children’s rights and child protection practice (Archard, 2003; Freeman, 2007a; Goldstein, Solnit, Glostein, & Freud, 1996; Keddell, 2013; Kilkelly, 2012). It is fundamental to the UNCRC (Freeman, 2007a; Svevo-Cianci, 2009). The principle is constructed with reference to children’s needs, development, wellbeing and attachment to family. More specifically:

State Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. (United Nations, 1989, p. Article 3.2)

Social workers must make judgements about children’s best interests so that children are free from violence and adversity. Determinations about the child’s best interests include rights, child wellbeing, rights and duties of parents and what constitutes good enough parenting informed by theoretical perspectives of attachment, family preservation and relationship-based practice (Archard, 2003; Hansen & Ainsworth, 2009; Keddell, 2013; United Nations, 1989).

There is voluminous literature about, and considerable criticism of, the best interests principle because it is considered indeterminate, poorly defined, challenging and complex (Archard, 2003, 2004; Eekelaar, 2002; Freeman, 2007a; Parker, 1994; Vandenhole, 2015; Zermatten, 2010). The indeterminate and vague nature of the principle results in subjective and biased judgements (Brennan & Noggle, 1997; Parker, 1994). It is undermined by cultural relativism, although flexibility in the best interests principle must allow for cultural considerations (Freeman, 2007a). A determination about what is in a child’s best interests is complex and controversial (Hansen & Ainsworth, 2009). However, despite its indeterminacy, the best interests principle’s most important function is to guide decision makers to seriously consider the consequences of their decisions (Zermatten, 2010). In circumstances where parents are unable or unwilling to respond to the needs and interests of their children, the State must intervene and secure their protection (Freeman, 2007a; Zermatten, 2010).

Hansen and Ainsworth (2009) argue that the rhetoric of the best interests principle is difficult to achieve. Contemporary child protection practice is dominated by a narrow forensic paradigm, increasing workload demands and growing expectations of parents. The principle is a legal formula for resolving disputes, which causes problems for social workers; the adversarial nature of the system, lack of professional support and failure to incorporate historical information compromises their decision-making (Beckett, McKeigue, & Taylor, 2007).

Conceptions of children and childhood are influential in child protection terrain and determinations about the child's best interests (Keddell, 2013). According to Mason (2005), "[t]he way we construct or understand childhood is closely related to state policies around interventions in some families for the protection of children" (p. 91). Child protection policies define and delineate how children are perceived and the structure of adult-child relations (Mason, 2005).

Constructing children's best interests relies on interrelated concepts regarding children as having psychological needs relating to their attachment relationships, and having rights requiring both inclusion of their views and protection from harm, and right to family and identity. (Keddell, 2013, p. 337)

A children's rights discourse "holds the promise of much stronger empowerment of children's status" (Woodhead, 1997, p. 79). The needs discourse is a construction of a "standardized model in which childhood is a period of dependency, defined by protectionist adult-child relationships in which adults are dominant providers and children are passive consumers" (Woodhead, 1997, p. 78). These distinctions are not straightforward because the safety and protection of children is inseparable from the needs and interests of the parent-child relationship (Keddell, 2013). In her study on decision-making, Keddell (2013) identified that:

Needs and rights concepts were...used to consider the child both as an individual *and* as a person whose needs were profoundly influenced by their family relationships. This did not mean they were invisible, but instead recognised the role of family relationships, which were combined with an understanding of them as having agency and rights. (p. 322)

Woodhouse (2008) re-considers the language of children's rights, merging a rights and needs discourse. A proposal is made to divide rights into *needs-based* and *capacity-based* rights. The division of rights is in recognition of a child's dignity and humanity when they are vulnerable, dependent and lack autonomy, but also have the capacity for growth and potential for autonomy. Needs-based rights include "positive rights to nurture, education, food, medical care, shelter and other goods without which children cannot survive, let alone develop into autonomous adults and productive citizens", while capacity-based rights are reflective of, and responsive to, the child's development, and "recognize children's agency and voice even before children reach the state of maturity" (pp. 35-36).

## How do relationships interact with the best interests of the child?

The importance of relationships, particularly family relationships, is exemplified in the preamble of the CRC, which states:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. (United Nations, 1989, p. 1)

A child will feel secure if his/her parents are available, responsive and mindful to his/her needs, fears, achievements and pleasures. Parents who are mindful, nurturing and emotionally responsive are influenced by their own relationship history as well as the supports and stresses they experience in the caregiving environment (Brandon et al. 2009; Brandon et al. 2008). Secure relationships and emotional connectedness (Buchanan, 2013) stem from positive, consistent and nurturing experiences of care. These positive experiences will contribute to the development of an individual who is competent socially, academically and emotionally, and can engage in nurturing relationships. In contrast, children who “experience erratic, uninvolved and unresponsive caregiving or parenting can develop insecure attachment styles...which can manifest in behaviours such as aggression, detachment, anxiety, attention-seeking, coercive behaviour, anger, bullying or any combination of the above” (Tilbury, Clark, & Wilson, 2007, p. 27).

More recently, the field of neurobiology has explored the significance of attachment, regulation of emotion, and the quality of the parent-child relationships and brain development. The brain develops in such a way that it stores representations of affective experiences, which then influence “biological regulators that control physiological processes” (Egeland, Weinfield, Bosquet, & Cheng, 2000, p. 42). Therefore, the individual differences in early experience can determine biologically-based inclinations towards specific emotional responses in the face of stress. Securely attached children are more able to manage emotional stress, allowing adaptation and self-regulation. Conversely, children who are insecurely attached do not have the capacity to change their internal states and adapt in the face of stress (Egeland et al. 2000). For example, children who are traumatised experience the world as:

... frightening and dangerous, and yet no-one is able or willing to help them make sense of it. The psychological self remains troubled and anxious. ‘Relational trauma’ adversely affects memory perception, and the formation of an integrated, coherent self-identity. These developmental impairments mean that social relationships are difficult, stressful and even puzzling. (Howe, 2005, p. 41)

Ultimately, trusting and nurturing relationships enable children to survive physical, emotional or psychological trauma. Relationships with others can “both create and destroy, nurture and terrorize, traumatize and heal each other” (Perry & Szalavitz, 2007, p. 5).

Attachment theory is utilised extensively in the child protection literature and field of practice, and facilitates social work decision-making that assesses the parent-child relationship (Keddell, 2013;

Tilbury et al. 2007). The strengths of this particular perspective lie in its “convincing and detailed explanation of the process whereby abuse and neglect potential can be derived from poor adult-child relationships and be transmitted through them” (Corby, 2006, p. 159). The increasing use of attachment theory has coincided with the rise in a neoliberalist ethos and evidence-based practice (Buchanan, 2016). Rigid and unquestioning application of attachment theory (Keddell, 2013) has received criticism, particularly from feminist writers who argue that the mother-child dyad is severely scrutinised (Krane & Davies, 2000), resulting in blaming mothers (Buchanan, 2016) while failing to account for the many social and structural factors that impinge on family life (Corby, 2006; Tilbury et al. 2007).

The quality of care between the child and the carer affects the child’s wellbeing, feelings of safety and security, and the birth of the child’s psychological self. The most important factor that lies behind the way “carers nurture and protect the child is their mind and the character of their adult psychological self” (Howe, 2005, p. 4). Howe (2005) claims that empathy and mind-mindedness lie at the core of parenting and caring, facilitating attunement to the needs of the child. Within this moral context, children are beheld as “sentient, thinking and intentional beings” (Howe, 2005, p. 20). Held (2006) emphasises that caring is profoundly emotional and relational, allowing people who are morally concerned to have insight into the child’s needs. Conversely, the harming of children is a result of failure to care; “violence done by people who have not been cared for themselves, and the miseries people inflict on intimate others because they have not learned how to care” (Noddings, 2002, p. 33). Noddings, as well as others (Brandon et al. 2008; Cicchetti & Valentino, 2006), highlights the transactional nature of caring.

In situations where parents lack skills and abilities, and the child’s safety is compromised, the State is mandated to empower and support parents so they can meet their obligations to care for and protect their children (Hodgkin & Newell, 2007). Parents who bring a child into the world are obligated to ensure that their child is nurtured and protected. They have a “stewardship role” (Brennan & Noggle, 1997, p. 11) in which they have prerogatives that allow them to make choices in relation to their children’s development and education (Archard, 2003; Brennan & Noggle, 1997; Westman, 1999). Ideally, parents should be the staunchest advocates for their children’s best interests and wellbeing, and government authorities are obliged to support them. Nevertheless, state intervention is warranted when the best interests of the child are compromised (Ife, 2008; Reichert, 2013; Reynaert, Bouverne-de-Bie, & Vandevælde, 2009) and children need protection from violence, manipulation and abuse. In the context of child protection, the dichotomy of children’s rights and parental rights takes centre stage but the best interests of the child trumps the right to protection of family life (Reynaert, Desmet, Lembrechts, & Vandenhole, 2015).

Society’s most important task is the “flourishing of children and the development of caring relations” (Held, 2006, p. 18) at the personal and political level. A society that attends to the needs of every

child requires the State to facilitate social arrangements and practices where children have access to economic, educational and health resources. Every citizen should concern themselves with issues of rights and justice because it is social connectedness that facilitates the realisation of rights. Every effort is made for children to flourish within a context of “a healthy, supportive family and community” (Perry & Szalavitz, 2007, p. 232), thus ensuring that they are safe and protected; their needs, interests and wellbeing are prioritised (Goodman & Trowler, 2012).

Care as a practice involves more than simply good intentions. It requires a deep and thoughtful knowledge of the situation, and all of the actors’ situations, needs and competencies... Those who engage in a care process must make judgements about needs, conflicting needs, strategies for achieving ends, the responsiveness of care-receivers, and so forth. (Tronto, 1993, pp. 136-137)

Howe (2010) proposes that the safety of the child, within the context of their family, is contingent on child protection workers being able to develop “good-quality parent-worker relationships” (p. 340) and keep the child in mind. The criticality of relationships grounds the ethic of care. It is a moral theory asserting that care is a complex social practice, situated and contextual, and implicated within power structures (Parton, 2003; Tronto, 1993). Care, as a political and moral practice, arises from the four ethical elements of *attentiveness, responsibility, competence and responsiveness*, which facilitate judgements and interventions informed by an in-depth assessment of needs in a social, political and personal context. The ethic of care is consistent with relationship-based practice (Ruch, 2005; Ferguson, 2011), which enables a deep understanding of “the complexity of human beings, the uniqueness of the person, the problems at hand and what is happening” (Ferguson, 2011, p. 8). The approach facilitates analysis that encapsulates the transactions between factors that impact people’s life chances and structural factors that impinge on their daily lives and capacities to be loving, safe, nurturing individuals. Relational work is the medium through which social work with children and families is conducted; the relationship or the encounter is a primary means of intervention (Ferguson, 2011; Ruch, 2006) and is the primary driver for change (Turnell & Edwards, 1999).

The ethics of care has been criticised for not considering violence and power. Held (2010) acknowledges this scepticism but asserts that care ethics is a comprehensive morality that provides direction within the context of violence. In circumstances where a person’s safety and wellbeing are compromised, such as domestic violence and child protection, the ethics of care recognises that a legal response is necessary. In the context of child protection, the legal response ensures the respect, autonomy and protection of the child. Harm experienced by a child is the result of a failure of care, not just harm to an individual. A caring world and professional responses entail understanding and responsiveness towards those harmed with the aim of “fundamentally transform[ing] the oppressive social structures that produce misery and increased violence” (p. 120).

The flourishing of children and realisation of their rights occurs within the moral context of nurturing and caring relationships. Social workers in the field of child protection are mandated to make



judgements about the parent-child relationship and whether parents are meeting their obligations and duties. The next section will examine the concept of good enough parenting and its application in statutory child protection.

### **Is good enough parenting good enough?**

The moral and legal right of children to be safe and protected is well recognised (Bevan, 1989; Choate & Engstrom, 2014; Department of Human Services, 2002; Eekelaar, 1986; Freeman, 1983; Westman, 1999). Parents are obligated to provide a “minimum standard of care” (Archard, 2003; Hodgkin & Newell, 2007) and good enough parenting (Choate & Engstrom, 2014), or more accurately the good enough mother, a phrase developed by Winnicott in the 1960s:

The good-enough mother meets the omnipotence of the infant and to some extent makes sense of it. She does it repeatedly. A True Self begins to have life...the mother who is not good enough is not able to implement the infant's omnipotence, and so she repeatedly fails to meet the infant gesture; instead she substitutes her own gesture which is to be given sense by the compliance of the infant. This compliance on the part of the infant is the earliest stage of the False Self, and belongs to the mother's inability to sense her infant's need. (Winnicott, 1965, p. 145)

What good enough parenting actually means in a contemporary context is in dispute. Daniel (2000) proclaims that when social workers use the term, it may mean either that children are receiving consistent and optimum physical and emotional care or may be in receipt of care that is of a minimal standard. It is also suggested that:

... the term “good enough parenting” is in fact used to represent a ‘lesser’ version of parenting... There is some evidence that social workers will accept poorer standards for children than other members of the community...and work to a ‘rule of optimism’ whereby poor parenting is given the benefit of the doubt. (Daniel, 2000, p. 92)

Good enough parenting as a concept is often cited in child protection literature but poorly defined (Freeman, 2007b). Thus, it is open to interpretation and moral judgement (Dingwall, Eekelaar, & Murray, 2014). The intent of using the term is to determine minimum standards of parenting instead of identifying parenting characteristics that maximise child safety and wellbeing (Keddell, 2013; White, 2005). According to Eekelaar (1986), at a minimum children are to be provided with the basics in their physical, emotional, and intellectual care and wellbeing. Westman (1999) concurs and elaborates that children are to be provided a place of residence; clothing, shelter, education, health care, social and recreational activities; love, security and emotional support; intellectual, social and moral development; limits to encourage socially acceptable behaviour; protection from physical, emotional and social harm; and maintained family relationships. This is consistent with Woodhouse's (2008) construct of needs-based rights.

The challenge within the context of child protection is to determine whether parenting practices are good enough. Most definitions include constructs that parenting should be warm and nurturing (White, 2005). Choate and Engstrom (2014) recommend that good enough parenting is contingent on providing children with physical safety (reasonable housing, clothing, food); the ability to keep

children safe from harm; recognition of the detrimental impact of certain parental issues such as substance abuse, addiction, mental health and interpersonal violence; ability to nurture and connect emotionally; form and maintain social connections; and possess a capacity to change. Daniel (2000) conducted a study in Scotland examining the interrelationships between what social workers believe are important traits of parenting and how these influence decision-making in working with children who experience maltreatment. Significant differences were found among participants. Some social workers identified that the overall parenting environment and emotional wellbeing of the child is more important than the physical environment. Others found that emotional wellbeing is more important than physical care, although there was some resistance to prioritising one form of abuse over another. A third group highlighted quality of attachments as most important (Daniel, 2000; Keddell, 2013). Donald and Jureidini (2004) summarise that at its most fundamental, assessment of parenting capacity involves “advocat[ing] for a parenting assessment that centres on the primacy of the parent’s capacity to provide empathic, child-focused parenting” (p. 6). Howe (2010) extends this notion, stating that a parent who is empathic and attuned to the physical and emotional needs of the child – keeping the child *in mind* – is more likely to ensure the child’s safety.

Reder and Duncan (2001), in their research into child death reviews, indicated that attachment is not the most decisive consideration in whether parenting is good enough. Instead, they offered the concept of unresolved care and control conflicts, which is a synthesis of attachment theory and “crises in parental relationships precariously organized around care and/or control conflicts” (p. 423). They uncovered that parents or caregivers who experience care conflicts were subjected to “abandonment, neglect or rejection as a child, or feeling unloved by parents” (p. 412); as adults they demonstrate over-reliance on others or excessive distancing. Control conflicts are grounded in “childhood experiences of feeling helpless in the face of sexual abuse, physical abuse or neglect” (p. 412); as adults they are prone to violence and controlling behaviour. This is significant because it highlights the importance of assessing parenting capacity and making a determination of whether it is good enough or not good enough, which has direct relevance to the impact of child development and child wellbeing.

Caregiving is the medium through which children are protected and supported. Vulnerable and dependent, children require their carers to be available and responsive both physically and emotionally. A child will feel secure if his/her parents are available, responsive and mindful to his/her needs, fears, achievements and pleasures. Mindful, nurturing and emotionally responsive parents are influenced by their own relationship history as well as the supports and stresses they experience in the caregiving environment (Brandon et al. 2008; Brandon et al. 2009). The next section will examine child development and wellbeing, and theoretical approaches that assist in social work judgements towards determining the best interests of the child.

## How do intrinsic factors fit? Child development, child wellbeing and resilience

Child wellbeing is a dominant concept within child protection discourse (Jones et al. 2015). The implementation of the UNCRC shifted children's development and wellbeing from charity to entitlement. Wellbeing equates with the realisation of children's rights and the provision of opportunities and resources to facilitate their flourishing and protection (Ben-Arieh, Casas, Frønes, & Korbin, 2014; Doek, 2014). Philosophically, wellbeing is concerned with a moral life associated with justice and just access to goods to thrive (Bagattini, 2014; Ben-Arieh et al. 2014). The concept of child wellbeing is complex and contested, and has been explored in some depth (Bagattini, 2014) across many disciplines (Ben-Arieh et al. 2014):

The evaluation of the distribution of wellbeing with regard to children is especially complex because children are developing and because they are dependent on caretakers on the micro level as well as on politics and economy at the macro level. Children's wellbeing is rooted in the interplay of a series of factors on the micro level, framed by the social structures of the wider society. (Ben-Arieh et al. 2014, p. 3)

Most definitions of child wellbeing emphasise the concept's complexity and include factors that examine the child from a holistic perspective across multiple domains, including physical, mental and behavioural health; psychological and emotional health; safety and the physical environment; economic context; and educational outcomes (Jones et al. 2015). It is aligned with the ecological perspective which recognises that children's wellbeing and development are intricately associated with the environment in which they are situated (Bagattini & Macleod, 2014; Cicchetti & Toth, 2005; Jones et al. 2015). Axford (2009a) maintains that the domains of needs, rights, quality of life, poverty and social exclusion are indicators of child wellbeing. A range of instruments that objectively and extensively measure child wellbeing are valuable in the systematic collection of data but have significant limitations (Barber & Delfabbro, 2000; Hamilton & Redmond, 2010; Pollard & Lee, 2003), particularly in a pressured context such as frontline child protection (Jones et al. 2015).

Child wellbeing is poorly defined by the UNCRC (Freeman, 2007a) and even criticised as idealistic (Hodgkin & Newell, 2007). Notwithstanding parental responsibilities, the State has an obligation to ensure the wellbeing of vulnerable and disadvantaged children. Despite the increasing imperative to ensure child wellbeing, there is a dearth of commentary in relation to the concept within the context of statutory child protection (Axford, 2009b; Jones et al. 2015; S. Mason, 2012; O'Brien, 2014) and common usage in formal documents. For example, *Protecting Children is Everyone's Business* (Council of Australian Governments, 2009) is a visionary plan that drives improvements across all systems and jurisdictions to enhance children's safety. A specified target is that "Children who have been abused (or at-risk of abuse) receive timely, appropriate, high quality child protection and other support services to secure their safety and promote their long-term wellbeing" (Council of Australian Governments, 2009, p. 25). The issue of child wellbeing challenges the philosophical foundation of statutory child protection as the pendulum shifts between the ever-present tension of child rescue and family preservation and family support (Healy, 2010; Jones et al. 2015; Sammut, 2015).

Whatever the philosophical position, “child wellbeing is critical to the mission of child protection” (Jones et al. 2015, p. 67) and consistent with a morally just approach.

The imperative for understanding and responding to a child’s wellbeing is well recognised. What is lacking in statutory child protection is an agreed framework to inform policy, practice and research (Jones et al. 2015; O’Brien, 2014). Two perspectives will now be discussed, and their synthesis will provide a holistic approach to child wellbeing that incorporates a developmental perspective with a rights approach. The *Ecological-transactional perspective (ETP)* was first developed by Cicchetti and Lynch (1995), and modified by Cicchetti and Valentino (2006). ETP is merged with the *Capabilities Approach (CA)*, originally developed by Amartya Sen and philosopher Martha Nussbaum, and gaining increasing momentum in the field of child protection (Lonne et al. 2016). This approach will be adopted, although not in its entirety. This combination, where rights allow for the child’s wellbeing in the here and now and their development in the future, acknowledges that “the child’s being and becoming are the two sides of the same coin” (Stoecklin & Bonvin, 2014, p. 279).

Child development must be understood within a broader child wellbeing paradigm because childhood is not static but a series of evolving and changing stages influenced by people and systems with whom children interact. The ecological-transactional model (ETP) of child maltreatment integrates Belsky’s (1980) etiological model and Cicchetti and Rizley’s (1981) transactional model. Belsky’s etiological model includes the **macrosystem**, the **exosystem**, the **microsystem** and **ontogenic** development. The **macrosystem** includes those cultural beliefs and values that impact on individuals, community and family, and contribute to maltreatment (for example, condoning physical chastisement of children). The **exosystem** situates individuals within a larger social structure, including formal and informal supports such as school, work, socioeconomic status and social services. The **microsystem** includes the immediate environment in which maltreatment occurs, including the family system, the maltreatment, and both parent and child characteristics. There is interaction between the parent’s childhood history and experiences, and other factors that occur within the family such as violence and substance misuse. Development in the **ontogenic** system includes childhood experiences and development that may or may not contribute to maltreatment (Scannapieco & Connell-Carrick, 2005). For example, attachment is a critical issue for child development that has life-long ramifications (Belsky, 1980; Cicchetti & K. Valentino, 2006; Scannapieco & Connell-Carrick, 2005).

The ecological-transactional model extends Belsky’s approach to not only on the “etiology of maltreatment, but also...the developmental consequences to the child” (Scannapieco & Connell-Carrick, 2005, p. 31). The transactions amongst risk factors result in child maltreatment. *Potentiating* factors *increase* the likelihood of child abuse and *compensatory* factors *reduce* the chance of child abuse. In addition, risk factors may change over time. *Transient* risk factors vary and alter over time

whereas *enduring* risk factors represent those circumstances that tend to be permanent characteristics (Cicchetti & Rizley, 1981; Cicchetti & Lynch, 1995).

Wall (2010) cautions us against the use of a purely developmental perspective. Childhood is a distinctive period in the human lifecycle “with its own unique but not entirely separate characteristics. A developmental view, whatever its particulars, sees in humanity its unfolding potential over time” (p. 28). A developmental perspective can be dehumanising towards children. First, it strips children of diversity and “[i]nsofar as human goodness is defined through a developmental lens, whether in discrete stages or more fluidity, it is necessarily orientated toward a single developmental goal” (p. 29). Second, the stage of childhood is characterised by “what children *are not yet*, namely developed adults” (p. 29):

Most adults would feel it dehumanizing to be considered primarily as preparing themselves for a later phase of moral capability. Children are also full human beings who inhabit and create fully meaningful moral worlds for themselves. Children just as much as adults contribute to humanity’s remarkable moral diversity. Children are not just undeveloped adults or adults-in-the-making but full participants in the broad sea of human moral experience. (p. 29)

The CA provides a framework for assessment and analysis that enhances understanding and recognition of wellbeing. Lonne et al. (2016) articulate that the human capabilities approach is used as a flexible framework to assess human well-being and social arrangements with the intent of developing transformative policies and practices. It fundamentally examines quality-of-life and theorises about basic social justices (Nussbaum, 2011). The CA is informed by Aristotelian thought about what people require for human flourishing and societal conditions that will promote and engender the development of human capabilities. The approach is well utilised in many disciplines in examining what conditions are necessary for people to flourish and live well. The capabilities approach does not appear to be well-known in child protection and child welfare publications (Lonne et al. 2009). Dixon and Nussbaum (2012) have deliberated on CA and children’s rights and, contend that CA is effective in enabling the assessment of the rights and wellbeing of children inclusive of their unique vulnerability and powerlessness. The authors articulate that “rights are not fully secured unless the related capabilities are actually present: otherwise rights are mere words on paper” (Dixon & Nussbaum, 2012, p. 561). There is a growing number of publications exploring the relationship between children’s rights and the CA (Stoeklin & Bonvin, 2014), and children and CA (Ballet, Biggeri, & Comim, 2011). Children, perceived as subjects of capabilities, concludes that they are “endowed with agency and autonomy, able to express their points of view, values and priorities” (Ballet et al. 2011, p. 22) exemplifying their humanity and dignity. An essential element of the theorising is that it is a shift away from a narrow individualistic analysis of children’s rights by underscoring “the importance of understanding all of us, children included, as relational beings” (Lonne et al. 2009, p. 64).

Nussbaum (2011) identifies core capabilities that are essential for wellbeing in a just and humane society (Gupta, Featherstone, & White, 2014). A dignified and minimally flourishing life requires that

individuals have an abundant threshold of the ten capabilities: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment (Nussbaum, 2011). "Given a widely shared understanding of the task of government...it follows that a decent political order must secure to all citizens at least a threshold level of these ten Central Capabilities" (Nussbaum, 2011, pp. 32-33). In the case of children and because of their special vulnerability, the State must remain more deeply involved in the maintenance and protection of children's capabilities (Dixon & Nussbaum, 2012).

Applying CA to children and childhood is not straightforward and has several layers of complications. A vital consideration is that children are not a homogenous group. For example, an infant has different capabilities determined by neurological functioning whereas a ten year old child has many developed capacities and is able to interpret the world. Capabilities need to be perceived as dynamic and not static. Dynamic capabilities need to be perceived as the idea of evolving capabilities. According to Ballet et al. (2011), theorising "the notion of capabilities refers to 'potentials' (as functionings refer to 'actualizations' of these potentials)" (p. 34). So, for children, dynamic capabilities are those that change over time; they have a beginning, a flourishing and then change into something different.

The child is central to the ecological development process. The child's interactions with their families, schools, communities and service agencies can either enhance or constrain capabilities. The child's evolving capabilities that flourish and actualise are dependent on relationship contexts and interactions with people around them, and those people's attitudes (Ballet et al. 2011; Biggeri & Karkara, 2014). This highlights the criticality of relationships.

The interactive characteristic of capabilities may potentially expose the child to processes of capability reduction or expansion. According to Ballet et al. (2011), the dynamic quality of the CA is affected by feedback loops or interactive processes at the individual or child level:

The achieved functionings of the child shape the future capability set of the child as well as the behaviour attitude of the child. The feedback loops are related to the family and the community, which also influence the potential resources and constraints that face the child. (Ballet et al. 2011, p. 35)

### ***But what capabilities are relevant for children?***

There appears to be a lack of consensus on the capabilities that should be considered for children. Clark and Ziegler (2014) believe that Nussbaum's ten central capabilities are relevant for both adults and children, whereas Biggeri, Libanora, Mariani and Menchini (2006) argue that little attention has been given to the approach in relation to children's wellbeing. The central capabilities developed by Nussbaum (2011) are considered to be "broadly universal and...intended to reflect common human values and experiences" (Biggeri & Mehotra, 2011, p. 49) although they may be subjected to alteration at the local level. In progressing this argument, Biggeri and Mehotra (2011) cite Amartya Sen, who stresses that a selection of capabilities should be the "product of a democratic process

that includes public scrutiny and debate” (p. 49), similar to the process undertaken by Wolff and de-Shalit (2013) in *Disadvantage*.

Biggeri and Mehotra (2011) outline an extensive process undertaken to identify domains of child wellbeing. This involved consultation with experts, analysis of existing data, collating survey data, linking with UNCRC and consultations with children at the first children’s world congress in 2004 (Biggeri et al. 2006; Biggeri & Libanora, 2011):

The capability approach is per se a powerful framework for understanding children’s well-being in terms of capabilities since it forces us to think about the complexities that characterise their lives. (Biggeri & Karkara, 2014, p. 37)

The CA is incomplete if it does not have an operational legal framework. A children’s rights perspective and CA can complement and dialogue with each other, where rights call into question the deprivations. The legal framework can focus on the causes and assessment of contributing forces. In further work, Biggeri and Karkara (2014) identified children’s capability domains, and the direct and indirect link to articles that have direct and indirect links to UNCRC (see Figure 3). The capabilities that link directly or indirectly to the best interests of the child and their protection include life and physical health; love and care; mental wellbeing; bodily integrity and safety; participation; and respect. There is an evolving interest in analysing the development of children’s capabilities in vulnerable situations, although its application has yet to be scrutinised (Robin, 2014). These capabilities will be further examined in this study in Chapter 7.

**Life and physical health:** Being able to be born, being able to be physically healthy and enjoy a life of normal length. Inherent right to a full and decent life

**Love and care:** Being able to love and being loved by those who care for us and being able to be protected. This is fundamental in accordance with the age and maturity of the child. This is consistent with “the best interests principle”. The care and protection of children in the areas of safety, health, competent supervision and appropriate assistance and protection.

**Mental well-being:** Being able to be mentally healthy. Such as all forms of mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

**Bodily integrity and safety:** Being able to be protected from violence of any sort. Such as all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

**Social relations:** being able to be part of social networks and to give and receive social support. Family friendship affiliations.

**Participation:** Being able to participate in and have a fair share of influence and to receive objective information. Children should not be voiceless. At least they must participate initially within the family and among friends and later with the community.

**Education:** being able to be educated. Freedom of expression and the right of all children to relevant and good quality education. The development of the child’s personality, talents and mental and physical abilities to their fullest potential.

**Freedom from economic and non-economic exploitation:** being able to be protected from economic and non-economic exploitation.

**Shelter and environment:** being able to be sheltered and to live in a safe and pleasant environment.

**Leisure and activities:** being able to engage in leisure activities and undertake projects.

**Respect:** being able to be respected and treated with dignity.

**Religion and identity:** being able to choose to live or not to live according to a religion. Freedom of thought, conscience and religion and to preserve the child’s identity.

**Time-autonomy:** being able to exercise autonomy in allocating one’s time.

**Mobility:** being able to be mobile.

**Figure 3: Children’s capabilities domains (Biggeri & Karkara, 2014, p. 27)**

In her theory, Nussbaum (2011) asserts that all the capabilities are linked and that some are *architectonic* in that “they organize and pervade the others” (p. 39). In Biggeri and Karkara’s (2014) model, the capabilities of *love and care* and *respect* can be considered in the same way; they are consistent with the notion that children are morally important and that relationships are critical to their survival and development (Cicchetti & Valentino, 2006; Howe, 2005).



The CA has been subject to substantial critique. The approach “advocates egalitarian, political conceptions of social justice which are concerned with the cultivation, maximization and just distribution of (real) freedom of individuals” (Clark & Ziegler, 2014, p. 215). The framework facilitates assessment of the development and wellbeing of individuals within their contexts (Clark & Ziegler, 2014). It is an approach that promotes evaluation of children’s rights (Bonvin & Stoecklin, 2014; Dixon & Nussbaum, 2012; Gupta, Featherstone & White, 2014). Although this approach is in its infancy in the field of child protection, CA has enormous potential and will be further explored in the context of this study for its ability to:

... [develop] critical and ethical social work practice that promotes human dignity, incorporates a multidimensional analysis of factors that impact on individuals’ lives, and works with families to promote the capabilities of parents and children. (Gupta et al. 2014, pp. 13-14)

An examination of child wellbeing must incorporate a brief discussion about resilience, a concept that refers to an individual’s ability to function competently despite experiencing adversity (Cicchetti & Valentino, 2006). It is dynamic and accounts for individual disparities in outcomes among individuals who have experienced noteworthy trauma and hardship (Daniel, Vincent, Farrall, Arney, & Lewig, 2009; Rutter, 1989, 2012). Understanding factors that promote resilience has enormous value in the field of child protection because it informs and enables professionals to shape interventions and promote child wellbeing by shifting interacting forces away from being harmful:

Resilience reflects the developmental process by which children acquire the ability to use both internal and external resources to achieve positive adaptation despite prior or concomitant adversity. Developmental history plays a key role in resilience: it is relevant to the acquisition of coping capacities as well as the ability to draw upon resources from the environment. (Yates et al. 2003, p. 25)

Two landmark longitudinal studies provide insight into the dynamic construct of resilience. These are the *Minnesota Study of Risk and Adaptation* (Sroufe, 2005) and the longitudinal study of underprivileged children of Kauai by Werner and Smith (2001). Children identified as resilient had developmental histories of support and early positive care (Sroufe, Egeland, Carlson, & Collins, 2005; Yates et al. 2003). Werner and Smith (2001) discovered that some children, despite experiencing adversity in their lives, coped successfully. Factors contributing to their resilience included temperamental characteristics that elicited positive responses; smaller sized families; fewer separations from their primary caregiver; and the opportunity to form a close relationship with at least one caregiver. Nurturing caregiving, either by family members or carers, was also consistent, and resilient children found emotional support external to their own families (Werner & Smith, 2001). Both studies underscore the importance of positive and caring relationships across the lifespan, signalling that the capability of affiliation may be considered a fertile functioning factor.

This section has demonstrated the complex nature of statutory child protection practice. The shift from the philosophical construct of moral status to policy and practices illustrates the criticality of rights, relationships and obligations. These vital elements are encapsulated within the construct of

the best interests of the child that is enshrined in the UNCRC and domestic legislation. Social work judgements about children's best interests must incorporate the interdependence between extrinsic (relationships and environmental) and intrinsic (child development, wellbeing and resilience) factors. The merging of the ETP and CA, particularly with the child sitting at the centre of the ecological level, informs the development of the framework for analysing the best interests of the child and how to ensure that their rights are realised within the moral context of relationships.

## **Enhancing the moral status of maltreated children**

Wolff and De Shalit (2011) argue that public policy must be informed by philosophical perspectives but cannot remain at the abstract level; it must be grounded in the empirical world. The challenge of designing transformative statutory child protection policies and practices, and enhancing the status of children cannot occur without a proper philosophical and conceptual discussion about the abuse and neglect of children. This chapter has provided the philosophical foundation for a morally just discourse for children who experience abuse and neglect. The impact of maltreatment is profound and detrimental, culminating in a violation of their rights, trauma, oppression and dehumanisation. Engaging in discourse of moral status and other compelling factors, including *ethics of ordeal* and a marginal humans perspective, provides a sharper theoretical focus in which children who experience trauma, oppression and dehumanisation are given status as valuable members of the human community, deserving of protection and moral concern.

The translation from philosophical rhetoric to policy and practice within a statutory child protection context illuminates the criticality of relationships, rights and obligations. The UNCRC in general and the best interests principle in particular ground policies and practices in statutory child protection. The best interests principle is determined by the interrelationships between extrinsic factors (relationships and environment) and intrinsic factors (child development, wellbeing and resilience). The merging of ETP and CA provides a valuable framework that is considerate of relationships, rights and wellbeing.

# CHAPTER 3

## THE MORAL REPRESENTATION OF CHILDHOOD IN THE CONTEXT OF CHILD PROTECTION: AN HISTORICAL PERSPECTIVE

Childhood is morality's most profound test. Children may be the most important reasons for moral reflection and practice in the first place. The purpose of thinking in light of children is to imagine a more expansively shared humanity. (Wall, 2010, p. 10)

### Introduction

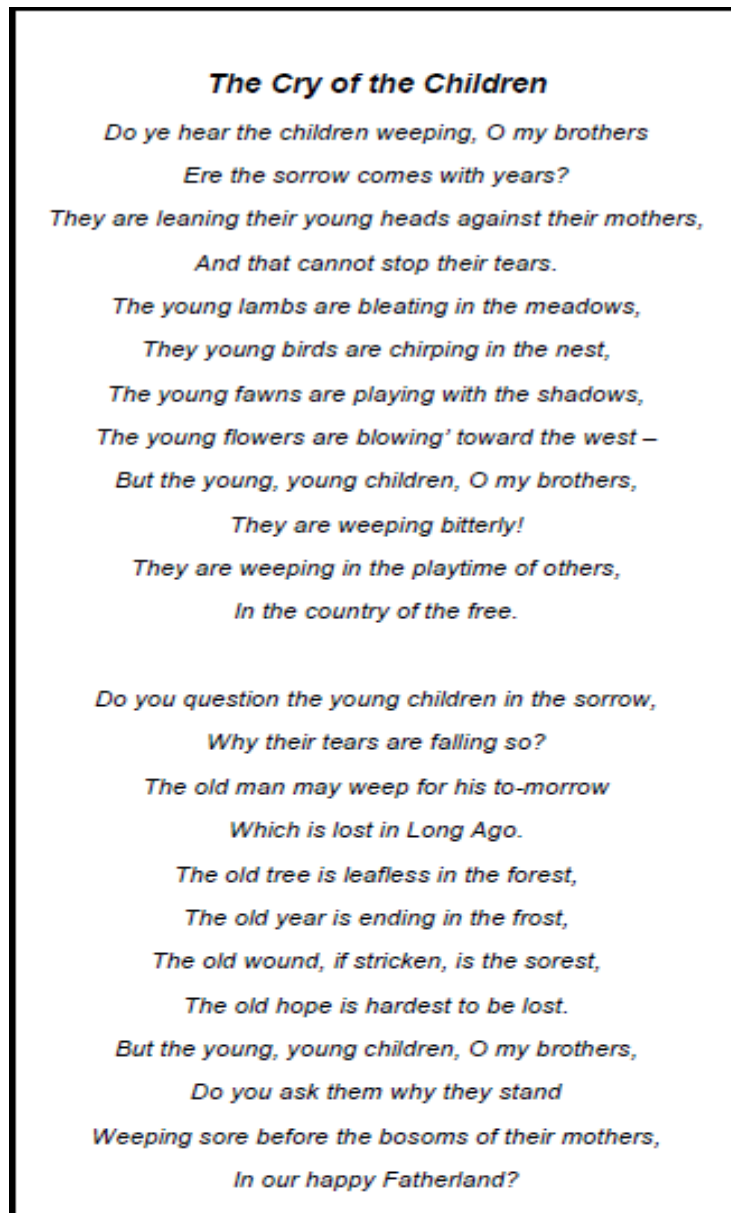
The prevailing perception of the ideal childhood within Western culture is one of “innocence and joy: a period of fantastic freedom, imagination and seamless opportunity” (Goldson, 1999, p. 1). Moral agents are responsible for the protection of children, and serving their best interests and attending to their needs. Such a populist view is founded in “emotional, value laden and moralistic rhetoric” (Goldson, 1999, p. 1). Children who are subject to adversity, disadvantage and abuse experience an alternative reality where they are subject to dehumanisation, exclusion and marginalisation. Child protection agencies were established in the mid to late nineteenth century in Anglophone countries (Lonne et al. 2009) where adults were bestowed the responsibility to ensure that children were safe and protected. This remains the central purpose of contemporary child protection practice. On closer examination, there is a fundamental paradox. On one hand, statutory child protection was designed with the fundamental goal to respond to the plight of maltreated children. On the other hand, system responses inadvertently exacerbate the adversity and oppression of children (Houston & Griffiths, 2000; Stanford, 2010), failing to make paramount the needs of children over the needs of adults (Young-Bruehl, 2012).

The history of the past is crucial to understand the present (Parton, 1991, 2014; Young-Bruehl, 2012). Young-Bruehl (2012) advocates that “for the future, we have to look further into the past, like analysts going into the parental histories that their present clients know but may not have raised to consciousness” (p. 281). This historical analysis brings to the fore the moral representations of children within the context of child protection (Harvey, 1990). The chapter is structured accordingly: the invisible child; the victim child; from sacralised to silent; the innocent and silent victim; the stolen children; and the liberated child bringing us to the present. It is not an exhaustive analysis but examines the genesis and evolution of statutory child protection within its social and political contexts (Harvey, 1990).

In her analysis of child savers in American history, Young-Bruehl (2012) identifies basic strategies that provide evidence for three basic forms of childism – “eliminative (obsessional), role-manipulative (hysterical), and erasing (narcissistic)” (p. 281). These strategies were in operation when child saving originated and have been in operation for over a century. Young-Bruehl (2012) argues that they will

be in operation in the future and that we, as practitioners and policy-makers, must be alerted to their existence. This historical examination is informed by Young-Bruehl's work.

## The visible child: childhood discovered



**Figure 4: “Cry of the Children”**  
(Excerpt from Browning, Stone, & Taylor, 2009, p. 151)

*The Cry of the Children* was written by Elizabeth Barrett Browning in 1844 to alert factory owners to the appalling conditions experienced by children who, in many instances, were “stunted, illiterate, deformed, and mutilated” (Browning, Stone & Taylor, 2009). The birth of industrialisation, urbanisation and capitalism that occurred in the nineteenth century in Anglophone countries (Lonne et al. 2009) and some parts of Europe (Donzelot, 1997) resulted in critical changes to the concept of childhood and the family, and redefined the adult-child relationship (Donzelot, 1997). Children were not ignored prior to the nineteenth century but during this era, the innocent and malleable child

was replaced by the official separation between childhood and adulthood (Jenks, 2005; Piper, 1999). Social policy for poor and disadvantaged children commenced in the sixteenth century with the implementation of the Poor Law, where children who were deprived of family connections were placed in institutional care. The intent was to protect and rehabilitate, but instead children were viewed with distaste and fear, and subjected to overcrowding and overwork. Their perceived immoral beginnings were deemed in need of expert handling (Hendrick, 2003).

Children institutionalised under the Poor Law experienced severe adversity and trauma. In 1849, Charles Dickens published a series of articles in *The Examiner* exposing the inhumane and abusive experiences of children in the care of Mr Drouet (Dickens, 1849; Higginbotham, 2012a). Mr Drouet ran a school for children at Tooting (London) and was charged with manslaughter because one hundred and eighty children died of cholera in his care:

The hunger and thirst were proved; the bad food, and the insufficient clothing; the cold, the ill-treatment, the uncleanliness; the diseases generated by filth and neglect; the itch...the scald head, the sore eyes, the scrofulous affections, the pot bellies, and the thin shanks. (Dickens, 1849, p. 241)

Dickens concluded in *The Verdict for Drouet* (Dickens, 1849; Higginbotham, 2012b) that although Drouet evaded conviction:

... the child-farming system is effectually broken up by this trial. And everyone must rejoice that a trade for which derived its profits from the deliberate torture and neglect of a class the most innocent on earth, as well as the most wretched and defenceless, can never on any pretence be resumed. (Dickens, 1849, p. 242)

The harsh realities of industrialisation increased the visibility of poor children who were silenced and exploited through hard labour in factories, mills, mines and workhouses (Cunningham, 1991, 2005; Jamrozik & Sweeney, 1996; Jenks, 2005). Some children of the upper classes were subjected to rigid regimes and oppressive parenting practices, but historical commentary tends to focus on the plight of the poor who were more visible and became the focus of increasing intervention and social control (Cunningham, 1991; Parton, 2006). Exploited and victimised, children were given voice through literature (Behlmer, 1982; Cunningham, 2005; Piper, 1999). Charles Dickens and Elizabeth Barrett Browning personified the predicament of powerless and silent children who experienced physical and moral deprivation (Piper, 1999). As Gavin (2012) states:

Dickens was a pre-eminent writer of Victorian childhood, not only because he created so many memorable literary children, but also because his works epitomize – helped to create – so many characteristics of Victorian child writing; sentimentalized child deaths, humanizing of child characters, focus on children as victims, and didactic or symbolic use of child figures. (p. 9)

The factory reform movement in England and the United States (Hawes, 1991) initiated the recognition of children's rights, advocating for their protection and liberation (Behlmer, 1982). The implementation of the *Factory Acts* in the 1830s legally sanctioned the imperative of protecting children from exploitation. It stipulated ages at which children could engage in wage-earning employment. The *Factory Acts* were heralded as humane and progressive, liberating children from

barbaric industrial servitude, although Goldson (1999) asserts that destitution was compounded by their liberation and ostracism:

... the urban juvenile population rapidly exceeded the restricted employment opportunities bringing a serious escalation of child vagrancy and unemployment. Without employment opportunities, children were often abandoned and this swelled the poor population leaving unsupervised children adrift on the streets. (p. 5)

Another example of the changing status of children and recognition of their humanity and individuality was the enactment of the first *Infant Life Protection Act* (1872) to counteract the practice of baby farming (Parton, 1985; Reder, Duncan, & Gray, 1993), in which unmarried mothers needed to hide their infants away by seeking someone to care for their children for a fee. It was alleged that some of the infants met their demise due to poor care (Parton, 1985). During the early 1860s, England was witnessing the “slaughter of the innocents” (Behlmer, 1982, p. 17). “London newspapers told of infants found stuffed down privies, tossed into ornamental ponds in Regent’s Park, or simply left in gutters, their necks either slashed, or discoloured from strangulation” (Behlmer, 1982, p. 17). Infant mortality, as a public phenomenon, generated panic, and was not restricted to the streets of London.

Infanticide was a prevalent issue in the Australian colonies, although it failed to generate concern until the highly-publicised trial of British baby farmer Margaret Waters in 1870 (Scott & Swain, 2002). Baby farming scandals did not emerge in Australia until approximately twenty years later, including the trial of Mr and Mrs Makin in 1892 (Cossins, 2013) The much-publicised cruelties of baby farmers Margaret Waters and Sarah Ellis provided insight into the abuse and suffering experienced by the infants. The appearance and practice of baby farming represented the erosion of traditional mothering (Kociumbas, 1997), but the responses emphasised the changing status of the child and the fundamental importance of the emotional bond between mother and child (Swain, 2005).

The emergence of modernity characterised by industrialisation, capitalism and their unintended consequences was the first step in the social construction of universal childhood and recognition of children’s right to safety and protection. The identification of childhood signalled to society that children were the innocent casualties of a booming capitalist society and working class families, and there was a moral imperative and a call to responsibility to alleviate their suffering and deprivation (Fassin, 2012).

## **The victim child: the birth of child protection**

The social practice of child protection originated in the late nineteenth century, firstly in the guise of philanthropy and followed by the establishment of formal institutions with a legal mandate to intervene and protect children from abuse and neglect. It was a historically specific social process that developed as a result of the industrial revolution and the rise of capitalism, where families moved from rural lifestyles to seek work in the cities. The process of modernisation was demonstrative “of rapid and explosive transformation in human experience and time, of consciousness, home, work,

social relations and the state” (Ferguson, 2004, p. 26). Industrialisation and the rise of capitalism was a celebration of modern life and dynamic creativity. The advent of bourgeois creativity was tinged with “despairing depths of its radical antithesis: the many and tragic human and social problems of the vast moral, social and psychic abyss” (Ferguson, 2004, p. 27) – increasing poverty, homelessness, criminality and vulnerability. Modernisation, although welcomed, raised bourgeois fears of social disorder and revolution among those experiencing deprivation and marginalisation (Ferguson, 2004; Hendrick, 2003).

Child saving activities were generated by the middle class, who saw the poor and displaced as a dangerous class of people who threatened social order and society. The poor were considered to be people who “carried a physical disease, pauperism”, which rendered them inferior and possessing a penchant for criminal behaviour (Young-Bruehl, 2012, p. 282). The increased public visibility of children suffering neglect provided the motivation and commitment to alleviate personal and political anxieties, and attend to their needs (Piper, 1999). Residential institutions were established to accommodate neglected, destitute and disabled children, and legal systems were established to protect and control dependent and delinquent children (Cunningham, 2005; Jamrozik & Sweeney, 1996). There was a new moral vision where justice and protection for children took precedence over the claims of parenthood (Behlmer, 1982). However, this was also a period that heralded increasing powers of control and surveillance, particularly of the poor (Cunningham, 1991, 2005; Parton, 2006). Increasing visibility of neglected and suffering children became representative of the moral corruption and degradation increasingly evident in society (Fassin, 2012; Scott & Swain, 2002). Jamrozik and Sweeney (1996) state that:

The child saving movement became a moral crusade, seeking to correct and control the poor. At the same time it also served as a ‘rhetoric legitimisation’ of the prevailing conditions of the extreme social and economic inequality prevailing in the rapidly industrialising societies. (p. 26)

Young-Bruehl (2012), who writes about the American experience, concurs with the view that although child saving activities were intended to save needy children, philanthropists saw them as a threat to their own needs, or their status, their lifestyle and the moral order. “The needy children they saw were undermining, wild or rebellious. The philanthropists were full of self-righteousness and self-legitimation” (p. 281). Needy children were deemed a threat to the good society.

In the nineteenth century, the *first wave* of the child rescue movement commenced in the United States, then the United Kingdom, followed by Australia (L. Gordon, 1988; Lamont & Bromfield, 2010). The well-known story of Mary Ellen McCormack, who had experienced extreme forms of cruelty and neglect, is heralded as the catalyst for the establishment of the New York Society for the Prevention of Cruelty to Children (Tomison, 2001). The proposal to establish a similar institution in the United Kingdom was met with some opposition as the abuse of children, although reprehensible, was initially “of so private, internal, and domestic a character, as to be beyond the reach of the legislation” (Behlmer, 1982). Regardless of this sentiment, there was enthusiasm among Liverpool

philanthropists for the proposal leading to the establishment of the Liverpool Society for the Prevention of the Cruelty to Children in 1883, followed by the London establishment in 1893 (Behlmer, 1982; Hendrick, 2003; Lamont & Bromfield, 2010; Tomison, 2001). Australia embarked on a similar journey with the New South Wales Society for the Prevention of Cruelty to Children established in 1890 and the Victorian Society for the Prevention of Cruelty to Children established in 1894 (Lamont & Bromfield, 2010; Scott & Swain, 2002).

Between 1884 and 1914, the National Society for the Prevention of Cruelty to Children (NSPCC) embarked on a strategic struggle to clean up the streets and move practice away from public view into the private domain. This fundamental change in social practice resulted in a substantial increase in the numbers of children who experienced neglect requiring intervention (Cunningham, 1991; Hendrick, 1997; Parton, 1985). Over 50,000 cases of child maltreatment were investigated in England, Wales and Ireland, which was five times the 1892 figure. This phenomenon was attributable to intersecting factors, including the increasing number of social workers, an improvement in communication and transport technology, and an increase in the geographical area covered by management committees and professionals undertaking child protection practice. Despite the developments in transport and communication technology, increasing numbers of professionals and growing casework demands, more children were dying who were in receipt of child protection intervention (Ferguson, 2004).

Up until the early 1900s, child protection was practised within a social context of serious poverty and high infant mortality rates. Practitioners became involved with families and identified children who were dying due to illness and impoverished circumstances. This suggests that the deaths of some children were inevitable despite becoming recipients of child protection services. According to Ferguson (2004), information about child deaths was published in NSPCC annual reviews, even though the rates “were still considered high by society as ‘cases ending in death’ had a high symbolic importance” (p. 39). Symbolically speaking, child deaths were construed in a way that implied practice was effective, children were reached and prevention of child maltreatment was functioning, not failing (Cunningham, 2005; Ferguson, 2004; Scott & Swain, 2002).

The methods employed to protect and ensure the safety of needy children were either working with families so they could care effectively for their children in the home, or placing the children in institutions (Cunningham, 1991; Ferguson, 2004). Whichever intervention strategy was used, children were effectively sequestered from public view where politicians, philanthropists and reformers were building a co-operative society “with a cohesive social and moral fabric, to replace the chaos and immorality that appeared to be widespread, even in an increasingly respectable mid-Victorian Britain” (Hendrick, 1997, p. 97). Several key authors (Cunningham, 1991; Ferguson, 2004; Hendrick, 1997) concur with the view that removing children from the streets acutely demonstrates the reform and control functions of child protection work.



By clearing the city's high and low areas of the pitiable, offensive and threatening evidence of childhood corruption and parental indiscretion, Inspectors must only be seen as 'protecting' children, but the quality of life of the bourgeois philanthropic supporters of child protection supporters was also enhanced: as agency representatives and ordinary citizens they could protect children and at the same time gain the freedom to walk the streets with ease. (Ferguson, 2004, p. 36)

Young-Bruehl (2012) takes the analysis further by arguing that this attitude to child protection established the foundations for institutional prejudicial attitudes towards children. Philanthropists were committed to protecting society from poor, neglected and suffering children, but the strategies employed were to "further eliminate the destitute, to further manipulate the delinquent, and further erase the neglected" (p. 283). Children were simultaneously victims and threats (Hendrick, 2003).

The situation for Aboriginal children removed from their families and culture will be discussed in the section titled, *The stolen children: the scandal of the Stolen Generation* later in this chapter.

### **From sacralised to silent: rise of the expert systems**

The early twentieth century heralded a profound transformation in the value and moral importance of children, however there was also a sense of confusion about the moral obligations owed to them (Hendrick, 2003; Scott & Swain, 2002). The implementation of child labour laws and introduction of compulsory schooling resulted in children being transformed from the economically viable non-child in the nineteenth century working class poor into the category of the economically useless child scholar (Ferguson, 2004; Zelizer, 1985). By the 1930s, children were no longer economically useful but were emotionally priceless; the sacralisation of childhood had emerged. Zelizer (1985) proclaims that the term sacralisation is used "in the sense of objects being invested with sentimental or religious meaning" (p. 11). The suffering and death of children or waste of child life was no longer tolerated. The visibility of child suffering and death had become an archaic feature of western societies that was replaced by a steadfast commitment to enhancing children's rights and welfare. Professionals embraced the cultural image of the sacralised child, altering the thresholds for child death and suffering; "the death of all children – rich and poor – emerged as an intolerable social loss (Zelizer, 1985, p. 27), thus cementing a public ideology that all children should, and could, be saved through child protection intervention (Ferguson, 2004), thus enhancing the moral imperative to ensure their safety and wellbeing.

In the early 1900s in the United Kingdom (Ferguson, 2004) and United States (L. Gordon, 1988), cruelty to children was reconceptualised as family violence, a paradigm within which there was an emphasis on child neglect. The focus was on the "incompetent, insensitive, and possibly untrained mothers in need of professional guidance" (L. Gordon, 1988, p. 61). The issue of neglect exemplified confused moral obligations towards children. A focus on child neglect resulted in the social construction of the "'dirty', 'dysfunctional', 'neglectful', 'problem family'" (Ferguson, 2004, p. 64). Such families were marginalised and perceived as dangerous. Emotions of disgust and horror pervaded

practice where fears were held not only for the children but also for those who worked with them; workers feared contamination. The presence of dirt and smell symbolically represented parental failure to reform, resulting in children being removed from home and even socially excluded from their communities (Ferguson, 2004). The focus on neglect was in the context of addressing sources of delinquency or in support of surveillance and control of families (Hendrick, 2003; Parton, 1985). Juvenile immorality and moral neglect also increased under the gaze of the authorities. Protecting children from moral corruption was a way of preserving a childhood based on purity, innocence and asexuality in contrast to the corrupt and unclean adult world (Scott & Swain, 2002). Scott and Swain (2002) identify a similar trend in Victoria in the focus of the Victorian Society for the Prevention of Cruelty to Children, which:

... was subtly shifted from 'carnal abuse', with the perpetrators overwhelmingly male, to 'moral neglect', in which the girl was indicted by her 'loose' behaviour and the mother implicated by her failure to properly supervise her child. (p. 69)

The economic and social impact of World War 1 diverted humane attention from the plight of children, although societies had established social practices to protect children that were in readiness to "separate parents and children [and begin] to draw from the new professions of social work and child psychology" (Behlmer, 1982, p. 226). Gordon (1988) hailed the period between 1900 and the 1920s as the progressive era, when the foundations for contemporary child protection practices were cemented. Child protection work became "professionalized and secularized, ending the influence of religiously motivated charity volunteers" (p. 61). The institutional framework of child protection was expanded to include professionals from medicine, police, social work and the courts. Despite its increasing complexity and demand for child protection work, its visibility and public interest began to wane. During the early 1900s, the public had a good understanding of the objectives and practices of the child rescue movement in responding to and preventing child abuse, which were well integrated into local communities. Intensive home visiting and low prosecution rates began to replace the social control functions that had become increasingly punitive and unworkable. "Increasingly, the objective of intervention was seen as the need to support and preserve the family, to get its emotional economy running along the right lines through acting on the inner feelings and interrelationships between family members" (Parton, 2006, p. 17). The *normal* family that produced well-adjusted children was reconstructed in terms of psychological relationships between its members, with a focus on the relationship between the mother and the child. Parton (2006) adds that "the problems of children were to be conceived in terms spanning and linking both the dangerous and the endangered, the villains and the victims, along a single dimension of adjustment and maladjustment" (p. 17).

Ferguson (2004), in adopting Giddens' (1990) concept of sequestration, proclaims that there was no decline in interest but a "structured concealment of potentially troublesome information which threatens the trustworthiness of expert systems, especially with regard to welfare practices which have at their core a concern with child life and death" (p. 81). By 1914, there was an expectation that

“children could and should be protected in time” (Ferguson, 2004, p. 80). The institution of child protection now operated in partnership with the evolving welfare systems that provided resources to improve parental capacity to care for their children safely. A public dependence on expert systems had evolved, and thus “sequestration of child protection became essential to the sustaining of manageable routines and the maintenance of optimum levels of trust in expertise and feelings of ontological security” (Ferguson, 2004). Prior to the 1970s, information about children who died and were in receipt of child protection intervention were not made public, and therefore professionals and agencies were spared scientific scrutiny and censure. Information that was made available was portrayed in a highly optimistic and authoritarian fashion, reinforcing societal expectations that child protection responses would continue to protect children in time:

The faith in technical expertise that held that it was possible to protect children in time now expressed itself in every way other than references to death which, while still, having a presence in practice, had become shameful and hidden in professional discourses. (Ferguson, 2004, p. 90)

The 1960s proved to be a fateful time for contemporary child protection. Young-Bruehl (2012) professes that “the discovery of child abuse, then, was also the discovery of blindness to child abuse” (p. 102). It is of critical importance that publication of the *Battered Child Syndrome* resulted in the advent of the disease model of child abuse. Kempe, Silverman, Steele, Droegemueller, & Silver (1962) rejected the notion that the maltreatment of children was a consequence of poverty and disadvantage. They instead posited it was caused by parents they described as “immature, impulsive, self-centred, hypersensitive and quick to react with poorly controlled aggression” (p. 18). Kempe and his colleagues recognised that child abuse had been an ever-present feature of human societies but the problem of child abuse had taken on a new form because of changing social practices, changing social perceptions of children and a changed meaning of childhood:

He is not, however, insisting that our practices in relation to children have become necessarily more refined and less abusive, but that our social attitude towards children in general have become more alert, caring and loving...as a collectivity we are more watchful and attentive. (Jenks, 2005, p. 99)

The publication of the *Battered-Child Syndrome* had an enormous influence on the perception of child abuse and ensuing responses (Lonne et al. 2009; Melton, 2005). The medicalisation of child abuse encouraged society to recognise the suffering of children and their experiences of adversity, although it also diminished the complex realities of their lives (Fassin, 2012). The work of Kempe et al. (1962), although influential, is not without criticism:

Kempe and his colleagues made one fundamental error. Although they justly asserted society’s moral responsibility to ensure the safety of dependent children, they grossly underestimated the complexity of the problem. The assumption early in the history of the modern child protection system was that the problem of child maltreatment was reducible to “syndromes” – in effect, that abusive and neglecting parents were either very sick or very evil and that they thus could be appropriately characterized as “those people” who were fundamentally different from ourselves. (Melton, 2005, p. 11)

Young-Bruehl (2012) concurs, and extends her analysis by arguing that Kempe's premise and identification of the battered child syndrome was flawed; it facilitated a system that was oppressive and prejudicial towards children who experienced harm and adversity:

People are not germs. A blow that breaks a child's bone is not a bacillus. Identifying a parent as a perpetrator is a frightening and complicated matter for all concerned, not least the child. People who cause a child harm have cause in themselves, not just from their habitats, for their actions, although their living conditions may be miserable and frustrating and conducive to violence. People have motivations, and they have beliefs that justify their motivations and actions (p. 104)

The impact of the rediscovery was immediate in the United States (Lonne et al. 2009) but slower in Australia (Scott & Swain, 2002). Child abuse, in the form of the battered-child syndrome, received a prompt response for three reasons. First, it established a clear message that the abuse and neglect of children was not to be tolerated. Second, the definition was narrowly framed and specific. Third, the issue had a seemingly inexpensive and simple response. Child abuse, conceptualised within a medical paradigm, was perceived as a "small scale problem but which had horrendous consequences for some, particularly very young children, and this could be addressed by the introduction of a new, statutorily-based system of reporting" (Lonne et al. 2009).

Child protection became "incidence driven, forensically-focused, reactive" (Bambllett et al. 2010, p. 81). Systems were established for reporting, assessment and treatment. The ramifications continue to be experienced in contemporary child protection practice (Buckley, 2003; Parton, 2014). Child protection, instead of protecting children, had become largely engaged in the gathering of evidence, preparation of court documents and ticking of boxes in relation to parental risk characteristics. This policy and practice imperative resulted in a profound shift from a moral to a medical model dominated by professionals and grounded in knowledge rather than common sense and practical experience (Scott & Swain, 2002). It established societal expectations that child abuse was objectively identifiable and therefore preventable (Buckley, 2003). A system that accentuated parental psychopathology ignores the complex social context of child maltreatment (Scott & Swain, 2002) where children have become silent and invisible (Parton et al.1997). The medicalisation of child abuse was, and continues to be, reductionist, thus negating the complexities, uncertainties and experiences, and the voice of children whose needs should be central and paramount.

Systems and structures evolved that were built around a forensic, investigative core and practitioners became highly focused on the investigation of, and response to, incidents of physical and sexual abuse, and the more chronic issue of neglect became eclipsed. (Daniel, 2015, p. 84)

Daniel (2015) also argues that responding within a forensically-driven system has made social work more tangible and purposeful and effective in the assessment of discrete incidents "rather than the grind of trying to carve out a small niche for individualised intervention within the mire of the all-too-evident effects of poverty" (p. 84). On this assertion, Young-Bruehl (2012) would concur. Many children who experience neglect are less visible. The medicalisation of child abuse grounded

forensically driven systems that averted attention from the complex nature of child maltreatment and children who experience neglect and deprivation (Scott & Swain, 2002):

Neglected children are to be found in their homes, with their neglecters, who neglect on a daily basis, chronically, without pause, but (usually) without episodes of violence that require urgent hospital care. The neglected wither away, like children laboring in a factory, a sweatshop, or a refugee or concentration camp. (Young-Bruehl, 2012, p. 153)

The impact of the work by Kempe and colleagues is still evident in contemporary child protection practice. The designers of the modern child protection systems misjudged the “scope and complexity” (Lonne et al. 2009, p. 24) of child maltreatment. The construct and diagnosis of the battered child syndrome dominated practice until the 1980s when the definition of child abuse and neglect was broadened to include emotional abuse, neglect, sexual and physical abuse of children between the years from birth to 18 years of age. Systems that were established to provide forensic responses to reports of child abuse and neglect. Notifications of child abuse were investigated according to “clearly defined rules and procedures according to strict time frames” (Lonne et al. 2009, p. 36) eclipsing the needs of children who experienced chronic neglect and cumulative harm.

### **The innocent and silent victims: moral panics and child death reviews**

Cohen (2002) defines moral panic as “a condition, episode, person or group of persons emerg[ing] to become defined as a threat to societal values and interests” (p. 1). The history of moral panic within the context of child protection reportedly commenced with the death of Maria Colwell in 1973 (Butler & Drakeford, 2005; Hendrick, 2003; Merrick, 2006; Parton, 1985, 2006, 2014). Goldson (1999) contends, however, that the history of moral panic and political concern date back to the early nineteenth century when the child rescue movement was galvanised in response to the increasing problem of juvenile delinquency and children who were often abandoned and wandering the streets without adequate supervision and nutrition; “Concepts of immorality, irreligion, corruption and contagion combined with constructs of dangerousness, sedition and political subversion and were frequently applied in analyses of crime in general, and juvenile crime in particular” (p. 5).

The previous discussion identifies that child abuse was reconceptualised as an individualistic illness rather than within the context of “sociological and political malaise” (Hendrick, 2003, p. 166). The seminal works of Gil (1975) and Gelles (1987) present convincing arguments that educate us about the societal nature of child abuse. “If one steps out of the psychopathological framework, it can be seen that the strategies are designed to cure symptoms that in many cases do not exist” (Gelles, 1987, p. 60). The disease model provides a simplistic solution to a complex problem and, as a consequence, ignores the suffering and oppression experienced by many children. Advocates questioning the disease model paradigm position child abuse within a social structural and ecological perspective, which is a stark reminder that the focus of social welfare was, and continues to be, about moral obligations to suffering children (Hendrick, 2003).

The level of anxiety and professional tensions consequent to the rediscovery of child abuse exploded into a moral panic following the death of six years and eight months old Maria Colwell in 1973 after being assaulted by her step-father (Mr Kepple). Maria had been returned to her mother and step-father after living with her aunt for over five years (Butler & Drakeford, 2012; Department of Health and Social Security, 1974; Parton, 1985). Parton (1985) cautions his readers that the moral panic following Maria Colwell's death, although a national scandal, cannot be solely attributed to societal concerns about child abuse and injuries to children. The heightened reaction must be viewed in the context of wider social anxiety about substantial social changes such as the decline of the traditional family, the growth of violence and permissiveness, increasing poverty and urban deprivation, and apprehension accorded to the relationship and tensions between problem families and welfare professionals, particularly social workers (Parton, 1985, 2014). Maria Colwell embodied the innocent victim. The abuse and neglect she experienced leading to her demise represented societal corruption and degradation (Hendrick, 2003):

If the family is seen to be under assault then it is the child who suffers most, for children are especially vulnerable from exposure to permissiveness and are seen as the 'innocent victims' of social indiscipline. (Parton, 1985, p. 79)

Moral panic in response to the abuse and demise of children has continued since the death of Maria Colwell. Social workers are held accountable for those failures. More recently, as demonstrated by the media frenzy surrounding the death of Peter Connolly (R. Jones, 2014), there has been increasing vilification of social workers and parents who have become the folk devils (Cohen, 2011) and cultural scapegoats (Parton, 2014) for societal guilt and ambivalence in response to growing anxieties about the abuse of children. According to Buckingham (2013), the child has always been central to adults' anxieties, fears and fantasies. Nevertheless, "the depth of emotion and anger projected onto social work and social workers has the effect of increasing the social denial of the level of suffering and harm involved for many children" (Parton, 2014, p. 172), thus eroding the insurmountable moral obligations owed to children. Fassin (2012) concurs with this notion. Although his analysis centres on the massacre of innocent children in South Africa as a result of the AIDS epidemic, he proclaims that the sensationalist coverage of the maltreatment or fatal abuse of children apports blame to individuals, thereby masking recognition of the suffering and adversity experienced by children within society.

The nature and definition of child abuse was transformed during the 1970s in an attempt to respond to increasing complexity in childhood adversity. "What became different ... was the social context in which child protection work went on, which significantly reconstituted its focus" (Ferguson, 2004, p. 108). Child protection was operationalised under the gaze of heightened public awareness and professional anxiety. All professionals involved in child protection, particularly social workers (Butler & Drakeford, 2012), were operating in a context of emerging knowledge about the risk and adversity experienced by children, and that child protection systems were struggling, if not failing to protect children from further harm (Ferguson, 2004). Child protection systems, in modern times, are dealing

with fewer dying children but high profile scandals and inquiries portray a contrasting perception wherein professionals' ability to protect children is in doubt in a context of waning trust in expert systems (Butler & Drakeford, 2005; Ferguson, 2011; Munro, 2004; Parton, 2006).

## **The stolen children: the scandal of the Stolen Generations**

The moral history of Aboriginal children in Australia warrants special consideration. "Indigenous children have been forcibly separated from their families and communities since the very first days of the European occupation of Australia" (HREOC, 1997, p. 22). The childist strategies of elimination and erasure were evident and demonstrative of humanity's capacity for inhumanity and atrocity (Zimbardo, 2008). The systematic racial discrimination and forced removal of Aboriginal children from their families and culture was a gross violation of human rights and constitutes cultural genocide (HREOC, 1997; Bennett, 2013):

From the nineteenth century to the 1970's, the Australian government authorities assumed legal guardianship of all Aboriginal children and removed large numbers of these children away from their families in order to assimilate them into European society and culture. This has become known as the Stolen Generations. (Bennett, 2013, p. 10)

Thus, the experiences of Aboriginal children in post-colonisation Australia were far removed from the liberation and emancipation that dominates the discourse of child protection and moral history of children in the early 1800s. The template of the ideal childhood espousing the rhetoric of liberty and equality was uppermost in the minds of the British invaders. White settlers and missionaries from Britain employed child saving tactics that involved separating children from their families and using them as sources of information about Aboriginal culture, as well as a supplementary labour force. Aboriginal children performed heavy duty unskilled work and were committed to a life of domestic servitude; a life far removed from the little *Emiles* identified by Rousseau (Jenks, 2005; Kociumbas, 1997). Children were removed from their families and communities, and banished from their social and cultural identity that is essential to Aboriginal being (Bennett, Green, Gilbert, & Bessarab, 2012). Even worse, children were killed in the guise of progress:

The fact that many missionary attempts at child-saving had done as much as squattocrat violence to annihilate Aboriginal children was not recognised in philanthropic circles. Missionaries also seemed to ignore the fact that by attacking the family they had struck at the very heart of Aboriginal society. (Kociumbas, 1997, p. 20)

Since the late nineteenth century, each Australian jurisdiction has developed specific statutes to control and segregate Aboriginal people. "Protectionism" began in the late 1800s, grounded in the belief that Aboriginal people needed to be isolated and protected while their numbers dwindled or died out. The government established settlements and missions to facilitate the removal of Aboriginal people from their lands and not interfere with land claims made by colonists. Children were housed in separate dormitories and contact with their families was strictly controlled (Bennett, 2013; HREOC, 1997; Tilbury, 2009).

“Assimilation” policy, based on the assumption that the Aboriginal culture was of little value to Australia’s new order, was adopted in the 1930s. Aboriginal culture was to be assimilated into the dominant Western European white culture (Bennett, 2013). “Assimilation was a highly intensive process necessitating constant surveillance of people’s lives, judged according to non-Indigenous standards” (HREOC, 1997, p. 27). The Chief Protector in Western Australia developed a three-point plan for the assimilation process: first, the full descent Aboriginal people would die out; second, the mixed descent Aboriginal children would be removed from their mothers and families; and third, marriages among the mixed descent people would be strictly controlled and marriage within the white community would be encouraged with a view to eliminating Aboriginal people in Australia (Bennett, 2013).

The assimilationist welfare model was influential in reshaping the Indigenous welfare system in the 1940s. The removal of Aboriginal children was governed by the general welfare law and children could only be placed in the care of government authorities if they were found to be neglected, destitute or uncontrollable. According to HREOC (1997), assessments of the children’s circumstances and protection were more readily applied to Aboriginal children than non-Aboriginal children. The definitions and interpretations of neglect, destitute and uncontrollable were measured according to a non-Indigenous child rearing model. Poverty became tantamount to neglect. Under the general welfare law, the removal of children was based on issues of neglect instead of Aboriginality.

The removal of Aboriginal children continued in large numbers during the 1950s and 1960s. These children were placed in overcrowded institutions and with non-Aboriginal foster families where there was denial and disapproval of their cultural identity. “Not only were they removed for alleged neglect, they were removed to attend school in distant places, to receive medical treatment, to be adopted out at birth” (HREOC, 1997, p. 28). It was not until the 1970s and the election of the Whitlam Labor Government that a policy platform of Aboriginal self-determination provided the impetus for Indigenous groups to challenge the assimilationist policies and challenge the removal of their children.

There are no accurate records of the numbers of children removed from their families. Bennett (2013) cites several references. The HREOC (1997) estimated that 50,000 Aboriginal children were removed from their families between 1788 and 1997. Other authors estimate that the number is closer to 100,000, while another estimate is that between 1912 and 1962, “two out of three mixed descent Aboriginal children spent some of their lives away from parents as a result of the removal policy” (Bennett, 2013, p. 11). Furthermore, between 1910 and 1970 at least one in ten, and as many as one in three Aboriginal children were forcibly removed, affecting a great number of families over several generations (Bennett, 2013; HREOC, 1997).



Aboriginal children, like non-Aboriginal children in post-industrialisation nineteenth century, were perceived as a threat to the moral order of society. In a newly colonised Australia, systematic processes were operationalised to promote their elimination and erasure. The removal of Aboriginal children continues to be a significant contemporary social issue because Aboriginal children are over-represented in the statutory child protection system. This over-representation is attributable to the legacy of the “past policies of forced removal and intergenerational effects of previous separations from family and culture” (Bennett, 2013, p. 11). On this basis, statutory child protection interventions must be attentive and responsive to the special needs of Aboriginal people and their children.

## **The liberated child: children’s rights**

Historically, children have been denied human rights (Powell & Scanlon, 2015) and their status has been inextricably linked to their parents, who have almost unlimited power over them (Hart, 1991). Paternalism was expressed through the writings of Hobbes, Locke and Mills (Worsfold, 1974). Hobbes espoused a view of rigid paternalism whereas Locke and Mills promoted benevolence in the treatment of children, although neither would have accorded children rights of their own (Worsfold, 1974). The writings of Rousseau in the 1800s advocated that children should be held in reverence (Kociumbas, 1997; Simon, 1998) and that “the 19<sup>th</sup> century marked the...separation of children from adults as a special vulnerable class in need of protection because of being judged innately good” (Hart, 1991, p. 53)

A series of statutes and processes were enacted recognising the individuality and humanity of children. The notion of rights of the child seeking protection from employers and parents were set in train in the early 1830s in England and Australia (Cunningham, 2005), although Hawes (1991) declares that the foundations of children’s rights were established in 1640 in a colony of Massachusetts Bay. In Britain, followed closely by Australia (Scott & Swain, 2002), the establishment of the *Infant Life Protection Act* of 1872 was the first legal step in recognising children’s individual qualities and importance, followed by the compulsory registration of births and deaths in 1874 after the baby farming scandals. Enactment of the *Factory Acts* that began in 1833 and were completed towards the end of the century established laws for all children, protecting them from mistreatment by employers (Reder, Duncan, & Gray, 1993). Towards the end of the nineteenth century, children’s rights extended beyond issues of maintenance, education and protection to advocate more specifically that children had a right to childhood (Cunningham, 2005). Wiggin (2013), who had published works in the nineteenth century, wrote that “the child has a right to a place of his [sic] own, to things of his [sic] own, to surroundings which have some relation to his [sic] size, his [sic] desires, and his [sic] capabilities” (p. 15).

Cunningham (2005) contends that there is evidence to suggest that:

... on balance [children] did not feel themselves to be beneficiaries of this discourse of rights. In its name, some of them were removed from their families, incarcerated in institutions and transported across oceans. Some undoubtedly felt it was the saving of them. But most who were rescued found it difficult to come to terms with institutional norms and practices which now shaped their lives. (p. 162)

The journey towards children's rights was an extension of the human rights movement. Many iterations of children's rights agreements emerged in the twentieth century, representing:

a creative and expansive struggle, albeit with varying degrees of success, to apply human rights to the one group in history that has been most systematically denied them. Through these concrete struggles, rights have in effect approached nearer to children's moral otherness. (Wall, 2010, p. 121)

The first attempt at reaching an agreement about children's rights began with the League of Nations' 1924 *Geneva Declaration of the Rights of the Child*, which contained five provisional rights with a subtheme of protection rights. These rights articulated duties owed to children, including normal development, nutrition and health, entitlement to aid if in distress, and protection from harm or violence. Following the atrocities of World War 2, children's rights were expanded. The next progression resulted in the *United Nations Declaration of the Child* in 1959 (Hart, 1991; Wall, 2010), which shared all the rights' provisions from 1924 but added more protection rights that were deemed necessary after the "terrible violence, genocides, and discriminations of the war" (Wall, 2010, p. 122). Traditionally and historically, families were the primary source of protection for children but the outrages of war shattered this myth. There was a societal recognition that children required protection from publicly mandated authorities (Wall, 2010).

The *United Nations Convention on the Rights of the Child* (UNCRC) is the finale to a long historic deliberation recognising children's humanity; subjects worthy and deserving of rights (Reynaert, Desmet, Lembrechts, & Vandenhole, 2015), and asserting an ethos of inclusiveness and responsibility (Wall, 2008). The UNCRC was finally adopted internationally in 1989, thirty years after its declaration. Children's rights have been taken seriously. The UNCRC has been ratified or acceded to by 195 States parties (Archard, 2003, 2004; Freeman, 2007b; Reichert, 2013; Reynaert et al. 2009). It is the most widely sanctioned international treaty in the world, although the United States and South Sudan are yet to endorse it (Verhellen, 2014; Wall, 2010). The UNCRC is a powerful international legal document, founded on moral and ethical principles, specifying the provision, participation and protection rights of children, and almost universal in its application (Archard, 2004; Reading et al. 2009; Reichert, 2013; Reynaert et al. 2015). It announces that children have rights and that adults and governments are obligated to ensure the realisation of those rights (Young-Bruehl, 2012).

Wall (2008) offers a postmodern ethical conceptualisation of these children's rights grounded in the ethics of otherness, claiming that they are more than expressions of individual freedoms or privileges (Wall, 2008). Reynaert et al. (2015) add that they are more than rules and structures. The UNCRC

is about relationships and processes, inviting us to imagine what rights might look like in practical and concrete terms. Rights are expressions of responsibility to each other, in this case towards children:

Each human right is a social construction aimed at reconstructing the circle of society in a more expansive way...rights function to stretch out or distend social relations in ways that make them more rather than less responsive to the genuine diversity of humanity. They function to expand the circle or horizons of society. (Wall, 2008, p. 539)

Philosophically speaking, the UNCRC has created an international context in which children are deserving of respect, their humanity is acknowledged and they possess essential entitlements (Archard, 2004; Doek, 2009):

It is the right of the child to live in an environment that is peaceful, loving and free of all forms of violence. In the context of the full Convention, it provides the basis for a transformation in child protection towards a child rights approach. (Hart, Lee & Wernham, 2011, p. 973)

However, the UNCRC is not without criticism. First, the designation children's rights is not without controversy. Some theorists assert that the very nature of children's vulnerabilities and limited capacities should exclude children from being rights holders (Archard & Macleod, 2002; Dwyer, 2011a), a debate informed by the notions of autonomy, moral agency and the ability to make choices, as exemplified in "Will or Choice" theory (Archard, 2003, 2004; Brennan, 2002; Dwyer, 2011a, 2011b; Freeman, 2007b; Griffin, 2002). Second, even though countries have ratified the UNCRC, they have difficulties in meeting some of their commitments (Reichert, 2013). Lawrence (2004) argues that the challenges stem from a lack of consensus about cross cultural definitions of childhood and child maltreatment, which is an emerging issue in many countries, including Australia and the United Kingdom. Third, despite established child protection systems in most Western countries (Svevo-Cianci, 2009), the systematic abuse of children around the globe continues and the UNCRC has not yet had a significant impact on domestic legislation. Nor have its effect been proportionate to the significance of the Convention (Archard, 2003, 2004). For example, the UN Committee recently observed that "many children in Australia are falling through the gaps in human rights protection, and their wellbeing threatened in fundamental and serious ways" (National Children's Commissioner, 2013, p. 19).

Australia ratified the CRC in December 1990. In signing the CRC, Australia has become a State party to the Convention meaning that the Australian Government recognises and acknowledges special obligations to children under international law (National Children's Commissioner, 2013). A study by Svevo-Cianci et al. (2010) identified that Australia has a high level of successful national child protection measures in place. More specifically, Australia has the necessary features designed to protect children. Measures include an established integrated platform of child protection policies, legislation, systems, services, programs, resources, research, education/training and information. The study also revealed that Australia possesses a data surveillance system, population research, a reporting system, and education and training for professionals. Irrespective of established child

protection systems, children continue to experience abuse and neglect in highly industrialised countries such as the United Kingdom, Belgium, Canada and Australia. Irrespective of the sophisticated infrastructure, the adequate resources are not assigned to service provision for all vulnerable children, indicating that a country's financial wealth does not guarantee the safety and protection of vulnerable and disadvantaged children. The theme of inadequate resources is a consistent finding echoed in child protection inquiries (Crime and Misconduct Commission, 2004; Cummins et al. 2012; Munro & Hubbard, 2011; Wood, 2008). Australia, although recognised as having extensive systems in place to protect children, many children "are falling through the gaps in human rights protection, and their wellbeing is threatened in serious and fundamental ways" (National Children's Commissioner, 2013, p. 19). This has been noted in the Concluding Observations on Australia issued by UN Committee in 2012. Issues that received particular comment was "largely related to a lack of overarching legislative and policy measures to specifically address the implementation of the CRC" (National Children's Commissioner, 2013, p. 19). Federalism in Australia and disparate legislations across each jurisdiction has resulted in the implementation of children's rights being fragmented and inconsistent (National Children's Commissioner, 2013).

In 2011, the United Nations published *General comment no. 13* (GC13) (Committee on the Rights of the Child, 2011) with the intent to provide State parties with guidance and information to operationalise *Article 19* and promote the transformation of child protection priorities, policies and practices through the infusion of a child rights approach. The trigger for the development and implementation of the documents was recognition that despite the UNCRC, children continue to experience high levels of violence (Hart et al. 2011). *GC13* advocates for a paradigm shift, and the appreciation and application of *Article 19* towards "securing children's rights to survival, dignity, wellbeing, health and development, participation and non-discrimination" (Hart et al. 2011, p. 973). Major elements informing the paradigm shift include a human rights approach; a holistic approach; primary prevention as the predominant strategy; all forms of violence defined; a comprehensive definition of caregivers; obligations to and responsibilities of the family; child participation and agency; comprehensive intervention; and accountability. Arguably, these elements are clearly specified in domestic statutes and policies but there appear to be significant difficulties in translating the rhetoric into reality.

## **Conclusion**

This chapter has demonstrated that the practice of child protection was originally designed from philanthropic roots, with the core intent of attending to the safety and protection of children who experience abuse and neglect. Such children have diminished moral status in the context of family relationships. Superficially, the introduction of child protection signalled an enlightened society responding to the call of responsibility and advocating for the rights of children. However, the protection strategies employed were consistent with Young-Bruehl's (2012) analysis that children

who experienced neglect and abuse were a threat to the moral order of society and schemes were designed to “further eliminate the destitute, to further manipulate the delinquent, and to further erase the neglected” (p. 282).

The twentieth century saw child protection evolve into an increasingly complex practice, dominated by professionals and experts. The rediscovery of child abuse in the 1960s has been a watershed moment for child protection. Child abuse was defined as a disease, and in response to the medical paradigm, systems of identification, investigation and treatment were established. This simplistic and reductionist approach negated the complexity of child abuse and the multitude of interacting factors that culminate in the adversity, trauma and oppression of children. The medical paradigm continues to pervade contemporary child protection systems and practices. The children’s rights movement emerged in the 1980s and the adoption of the UNCRC signalled societies’ obligation and recognition of children’s humanity; that they are subjects worthy and deserving of rights, although there is a dissonance between the rhetoric and reality.

The next chapter will examine the status of the child within the context of contemporary child protection practices. The legacy of the early to mid-twentieth century continues to hamper the development of a system and practices that are attentive, responsible and responsive to children who experience adversity and disadvantage.

# CHAPTER 4

## THE “CHILD” IN CHILD PROTECTION: SITUATING THEIR MORAL WORTH IN CONTEMPORARY CHILD PROTECTION

### Introduction

The aim of this chapter is to examine contemporary discourses about the child in child protection and extend the discussion from the previous chapter, which illustrated historically that childism in the context of child protection has been operational since philanthropic origins in the nineteenth century. Consistent with Young-Bruehl's (2012) analysis, child savers perceived poor children as a threat to good society and therefore strategies were put in place to preserve the moral order. Childist strategies were intended to “eliminate the destitute, to further manipulate the delinquent, and to further erase the neglected” (p. 283). More contemporary child protection practices centred on the development of expert systems for identification, investigation and treatment. The voices and experiences of maltreated children were silenced. The medicalisation of child abuse saw treatments implemented for the disease rather than attending to its complexity.

Ferguson (2011, p. 80) argues that the “child should be at the centre of child protection but so often they are lost sight of, which can result in tragic circumstances”. Discourse about centrality of the child focuses on concepts such as invisibility (Brandon et al. 2009; Ofsted, 2010; Willow, 2009), silence or lack of voice (Kitzinger, 1997; Mudaly & Goddard, 2006; Murray, 2006; Parton et al. 1997), absence or presence (Parton et al. 1997). Murray (2006) conducted major reviews of child protection responses to children and young people in alternative care across three Australian jurisdictions and found that children were not always central in the assessment of child protection notifications:

Sometimes children's voices can get lost in the noise of child protection work and part of the noise is the disharmony between agencies and jurisdictions. There is noise generated by the expression of views, concerns, opinions, agendas and the voices of parents with needs of their own or the noise of the political and media milieu; all of this can rise above the voices of children and their best interests. (p. 1)

The best interests, voice and centrality of the child must find their way from legislation to frontline practice (Daniel, 2015). Yet multiple interacting forces constrain morally just practice, obscuring the child in child protection and fostering childism. The core business of protecting children is at the mercy of the construction of childhood within the context of child protection (Buckley, 2003; Keddell, 2013; Mason, 2005; Parton et al. 1997), the political economic neoliberalist agenda (Gillingham, 2014; Lonne et al. 2009; Lonne et al. 2016; Parton, 2014; Rogowski, 2013), struggles for power and control (Reder et al. 1993), professional ideology and moral reasoning (Keddell, 2011). Consequently, child protection practitioners, as professionals, are restrained and powerless due to the lack of definitional precision within a context that is dominated by rules, procedures and high-level accountability. Judgements and decision-making occur within a context of uncertainty and

ambiguity (Daniel, 2015; Saltiel, 2014; Taylor & White, 2006), prohibiting practice that is attentive, ethical, relational and responsive to children in their otherness (Wall, 2010).

The following critique will facilitate an opportunity to “hear the noise” (Featherstone et al. 2014, p. 13) that is generated and engender a sophisticated analysis of the interacting forces that contribute to the sequestration of the child in child protection and thus inform an agenda for transformation.

## **The child in child protection**

The core purpose of statutory child protection practice is the safety and protection of children who have been harmed or are at risk of being harmed. Children should be positioned centrally in discourse and in practice but are largely silent and invisible (Buckley, 2003; Parton et al. 1997), marginalised and oppressed (Young-Bruehl, 2012). The internationally ratified UNCRC (United Nations, 1989) asserts that the children have the right to be free from violence and the right to participate in decision-making processes that have a bearing upon their lives. Children’s right to participation is embedded in child protection statutes in Australia, making it a legal requirement (Bromfield & Higgins, 2005), but there is also a moral imperative to implement it.

### **Children speak out**

Existing studies demonstrate that recipients of child protection services are extremely dissatisfied with the services they receive (Lonne et al. 2016; Salveron, Finan, & Bromfield, 2013; Woolfson, Heffernan, Paul, & Brown, 2010), do not understand what is happening to them and around them (Butler & Williamson, 1998; Gadda & Fitzpatrick, 2012), and their level of participation is unsatisfactory throughout most phases of the child protection processes (Pölkki, Vornanen, Pursiainen, & Riikonen, 2012). Conversely, most children interviewed by Bell (2002) on their involvement with the child protection system reported “a positive relationship with their social worker” (p. 1), which contributed to their safety and protection. It is absolutely critical that the voices and experiences of children are heard, both negative and positive (Young-Bruehl, 2012). It is also essential to develop insight into the contributing factors, processes and practices within child protection that culminate not only in their dissatisfaction, invisibility and silence, but also in understanding what empowers them and attends to their needs, interests and wellbeing (Wall, 2010). This goes beyond issues of user satisfaction and opinions to institutional forces that either constrain or enhance the safety and protection of children.

### **Face-to-face practice with children: fleeting not intimate**

The ability to form relationships, and engage, listen and communicate with children and their families is the foundation of effective and morally just practice (Mudaly & Goddard, 2006; Munro & Hubbard, 2011). Ferguson (2011) proclaims that a burgeoning number of laws, procedures and guidelines has generated a retreat from intimate and face-to-face practice that was developed to improve practice and interprofessional communication (Brandon, Sidebotham, Bailey, & Belderson, 2011). In the

narrative of Baby Peter, there was a criticism that professionals from a number of agencies had failed to communicate:

But the key point is that before any information can be shared, *someone has to find that information*. And to do that, you have to go and see the child and carers and, in the process, try and figure out their genuineness and whether any deceptions may be occurring by trying to get the 'truth' by entering into the kinds of unpredictable encounters, invariably on home visits, that lie at the heart of the child protection practice. (Ferguson, 2011, p. 38)

Without a doubt, children are central to child protection (Ferguson, 2011) and therefore there is a moral and professional imperative to ensure that workers have an intimate understanding of the child's world and experiences. It is on this basis that intervention can be formulated to enhance the moral status of children by ensuring their future safety and wellbeing. Practice, where children are centrally positioned, "requires workers to maintain a focus on the child and their needs throughout the assessment and subsequent intervention" (Horwath & Tarr, 2015, p. 1380). This can be achieved by giving the child a voice, observing their behaviour and interactions with people around them, and developing an understanding of their experiences and the impact of those experiences on their development and wellbeing (Horwath & Tarr, 2015). Maintaining a focus on, and developing relationships with, children while simultaneously relating with parents, although seemingly a banal process, is extremely complex, particularly in a context of violence, neglect and differential power relationships (Ferguson, 2014).

There is a dissonance between the rhetoric and reality around child protection practice (Helm, 2010). The bureaucratisation of social work (Howe, 1992) has contributed to the emergence of practices that have lost their humane dimension (Broadhurst, Hall, Wastell, White, & Pithouse, 2010; Ruch, 2014). The failure to engage and communicate with children is a dominant and consistent theme in child death reviews (Brandon et al. 2012; Department of Family and Community Services, 2011; Laming, 2003; Munro, 2011; New South Wales Ombudsman, 2005, 2013; Ofsted, 2010), inquiries into child protection systems (Munro, 2011; Murray, 2003) and research studies (Buckley, 2003; Ferguson, 2014; Horwath & Tarr, 2015; Ruch, 2014). In her study of child protection practice, Buckley (2003) identified that only in a minority of instances had social workers laid their eyes on the children who had allegedly suffered harm; where they had direct contact with the children, it was only by chance. In an ethnographic study, Ferguson (2014) established that when children are seen on their own it is often inadequate, thus diminishing opportunities to develop an understanding of the children's experiences. Horwath and Tarr (2015) identified that direct contact and engagement with children who experienced chronic neglect was superficial in nature. Although there was evidence that the workers documented wishes of children (for example, X would like mother to stop drinking), there was a lack of depth, meaningful engagement and communication with the child.

The ability to engage and build relationships with children has been severely constrained. Ruch (2014) conducted a study in which social workers participated in reflective case discussion with the aim of examining their experiences in working with children and what factors constrained or



facilitated child centred practice. Workers disclosed that they were challenged by competing parental, organisational and professional demands, which resulted in children being severely disadvantaged. A persistent finding was the organisational expectations of “practitioners’ focus on gathering evidence, reaching thresholds, keeping to timescales and following the criteria” (p. 2154), which ultimately detracted workers from face-to-face contact with children. Workers believed the organisation did not value the importance of relationships, nor did other professionals, which weakened the workers’ sense of confidence and ability in communicating effectively with children. Ferguson (2014) concurs with many of these findings and asserts that “the culture of practice in child protection needs to become more organised around children’s worlds, experience of time and playfulness and prepare workers to truly get down to children’s level” (p. 10).

The importance and complexity of workers being able to engage and communicate with children is undervalued. This process is not simply talking to children but borne out of the requirement to engage, build relationships, empathise and feel confident in using good authority, particularly in circumstances where parents are resistant and workers feel intense emotional experiences (Ferguson, 2014, p. 10). Workers expressed that they did not possess the necessary knowledge and skills to communicate effectively with children who experience adversity (Banks, 2013; Ferguson, 2014), nor were they comfortable with the use of professional touch or children touching them, particularly young children who are unable to communicate verbally (Ferguson, 2014). Horwath and Tarr (2015) emphasise a number of factors that detract from the centrality of the child who experiences chronic neglect. These factors include lack of genuine insight into the lived experiences of children; assessments are generalised and lack depth; social workers have difficulties in maintaining focus on children as individuals; and planning and intervention is grounded in changing parental behaviours and improving parenting, not focusing on the needs of the child. Horwath and Tarr (2015) proclaim that:

If practice is to be truly child centred, then we require systems under-pinned by the construction of the child not as ‘Chloe the neglected child’ but ‘Chloe who is living with parental/carer neglect and is experiencing this in a unique way’. By bringing the distinctive experiences and realities of each child to the fore, assessments and interventions should be more child-centred. (p. 1390)

### **Neoliberalism, risk and decision-making: children eclipsed**

The ones who lose out most are the very children the system is intended to protect. The reforms have driven compliance with regulation and rules over time, with social workers increasingly operating within an over-standardised framework that makes it difficult for them to prioritise time with children, to get to know them, and understand their feelings, wishes, and worries. It is then in turn difficult to provide the flexible and sensitive responses that match the wide variety of needs and circumstances that are presented. (Munro, 2010, p. 7)

A pervasive discourse in child protection is the impact of the political, economic, neoliberalist agenda on child protection practice (Gillingham, 2014; Keddell, 2011, 2013; Lonne et al. 2009; Lonne et al. 2016; Parton, 2014; Rogowski, 2013) and the centrality of children. Child protection, as a complex system and practice, requires a high level of organisation, although the level of bureaucratisation

and proceduralisation employed has become antithetical to the practice of social work with children who suffer maltreatment (Rogowski, 2013).

At the heart of Beck's "risk society" are the processes of "reflexive modernisation". Giddens (1990) states that "reflexivity of modern social life consists in the fact that social practices are constantly examined and reformed in the light of incoming information about those very practices, thus constitutively altering their character" (p. 38). Consequently, increased proceduralisation and managerial demands are common responses following child abuse inquiries, moral panics and scandals. These responses aim to reduce risk and eliminate the existing gaps that seemingly contributed to systemic failures. The implementation of risk management strategies is to intensify control of the future and enhance safety for children experiencing adversity and dangerous environments (Houston & Griffiths, 2000; S. Houston, 2001). In the USA, Canada, Australia and New Zealand, formalised risk assessment tools and procedures have become popular in child protection services (Lonne et al. 2009). Risk assessment instruments are designed to predict future harm to children and aim to improve professional judgement. "Templates purportedly standardise responses and limit the possibility of error, reflecting an ideological commitment to scientific/instrumental rationalism" (Broadhurst, Hall, Wastell, White & Pithouse, 2010, p. 1048). The implementation of risk assessment tools and corresponding procedures is consistent with the neoliberalist agenda that aims for "efficiency and accountability, with an apparent faith by policy makers in 'top-down' enforcement" (Broadhurst et al. 2010 p. 1047), which generates fear and anxiety in frontline child protection workers (Littlechild, 2008):

... managerialism and procedures have brought indispensable existential gains for professionals in helping to manage anxiety and create areas of relative security for the containment of professional life in preventing child suffering in the context of such open, uncertain futures. On the other hand, bureaucratization has now developed to a problematic stage where it imposes clock time and instantaneous time to serve the anxiety management of the organization to the extent that the lived time and authentic needs of children and families, and indeed workers, are subordinated. (Ferguson, 2004, p. 135)

The imposition of rigid rules and standards intrudes on the importance of professional judgement, use of imagination, or nurture and enlarged mentality (Passerin d'Entrèves, 2000), thus distancing professionals from the adversity experienced by the child (Swift & Callahan, 2009), rendering the child invisible, and compounding their exclusion and suffering (Featherstone et al. 2014); even inadvertently contributing to further harm (Sim, 2015). Face-to-face relationships are minimised between the client and the practitioner; "rather, it resides in managing and monitoring a range of abstract factors deemed liable to produce risk for children" (Gillingham, 2006). The aim is to predict future harm to the child, which removes the focus from prioritising the harm and cumulative trauma already experienced by the child (Gillingham, 2006). Stanford (2010) extends this argument and highlights that negative ramifications of risk management strategies result in clients being actively constructed "as objects of risk to be studied, measured and corrected, which works against their own and social workers' interests" (p. 1067). As objects of high risk, clients are subjected to interventions

that are disciplinary, reforming, controlling and may even result in further harm. On the other hand, children and families who are assessed as being of low risk may be denied provision of services despite identified need:

In this respect, the rise in 'risk-thinking' dovetails with neo-liberal politics in their joint focus on individual responsibility and personal life planning. (Keddell, 2011, p. 1254)

The rise in risk-thinking (Keddell, 2011) aligns with neoliberal politics. Risk management strategies legitimate the power, knowledge and expertise of the child protection system on behalf of state authorities. Social workers become mediators of powerful expert-based relations instead of enacting values of "egalitarianism and partnership" (Keddell, 2011, p. 1254). Rogowski (2013) adds:

One could even go so far as to argue that unless a child is defined to be at substantial risk of abuse then little or no help or support will be provided by social workers. In addition, risk assessment in itself constrains social work practice, and in turn service users, by privileging notions of predictability rather than uncertainty and ambiguity of everyday practice. (p. 61)

Social workers become deskilled and increasingly reliant on bureaucratic processes instead of available knowledge and theory (Brandon et al. 2009; Buckley, 2003). This erodes professional judgement and enhances "regulatory quantifiers of risk" (Keddell, 2011, p. 1255). Howe (1992) asserts that is not that social workers become deskilled but "that their skills are no longer under their exclusive control" (p. 492). The use of risk assessment tools eclipses the child's lived experiences and circumstances. Therefore, practitioners who resort to the sole use of checklists rather than engaging in analysis of available information and observations may underestimate the impact of existing interacting factors that are significant for predicting future harm (Gillingham, 2006).

The child in child protection is configured within the paradigms of organisationally defined child abuse and child protection, thus becoming objects of concern (Buckley, 2003; Parton et al.1997). In examining child protection work, Buckley (2003) and Parton et al. (1997) discovered that the focus of intervention was not on the needs of the child but on the actual incident that activated the response; who was culpable, the risk of further incidents and whether the mother was able to heed warnings given to her. The child's emotional and psychological wellbeing did not feature as the primary concern. Only in a minority of instances did social workers sight the child or children (Buckley, 2003). Parton et al. (1997) assert that children were only present if they supported and provided justification for the proposed intervention and assumptions. Most files were not inclusive of the child's wishes, feelings, experiences, state of wellbeing, or observations about development or interaction, other than descriptive information such as their gender and age. The category of age is deemed important because it plots the child's life stage and conceptually provides a reference point delineating the child's daily life experiences that are produced and controlled (Parton et al.1997).

Contemporary social work practice has been redefined (Gillingham, 2014) and relationships between executives, managers, professional staff, and children and families renegotiated and reshaped, allowing power to sit with the former rather than latter (Lonne et al. 2009; Rogowski, 2013). The

focus on performance measurement is politically driven and shapes child protection in relation to ideas about outcomes, effectiveness and quality (Tilbury, 2006), thus diminishing social workers' capacity to engage with children and exercise professional judgement to act in their best interests (Munro, 2011). This is a resounding theme in many child protection inquiries (Bamblett et al. 2010; Cummins et al. 2012; Munro, 2011; Wood, 2008) and child death reviews (Department of Family and Community Services, 2011; Frederico, Jackson, & Jones, 2006; New South Wales Ombudsman, 2013).

## **Family preservation**

Adding to the complexity of the child protection landscape is the ideological shift from a child rescue approach to one of supporting and preserving the family (Gillingham, 2014; Lonne et al. 2009; Parton, 2014), or family maintenance (Keddell, 2011). Preservation of the family is aligned with the best interests of the child and importance of attachment and relationships (Keddell, 2011), as enshrined in the UNCRC and domestic statutes. The preservation of families is grounded in the belief that families should be empowered and responsible for the care and protection of their children. This is reflective of the perspective that the segregation of children from their families exacerbates trauma and suffering, and that the maintenance of the family promotes connection, belonging and attachment (Gillingham, 2014; Keddell, 2011). According to Sammut (2015), the ideological shift from child rescue to family preservation has contributed to the madness of Australian child protection associated with the radical social work movement. Sammut (2015) stalwartly opposes the "prevention-focused credo" (p. 44) and pronounces that early removal of children from the new "underclass" (p. 47) and adoption into more deserving families is the paramount solution, which aligns with the conservative political Right.

In reality, the family preservation movement has been stifled by the neoliberalist agenda. For example:

Not only have we seen a significant reduction, privatization and restructuring of a range of welfare benefits for children and families, we have also seen a clear shift away from the family service orientation in children's social care. There has been a greater emphasis on 'authoritative child protection', including a reframing of the idea of 'early intervention' towards taking more children into care at an earlier stage together with an increased investment in and mainstreaming of adoption. (Parton, 2014, p. 157)

A child-focused orientation has been influential in contemporary child protection practice (Featherstone et al. 2014; Gilbert, Parton, & Skivenes, 2011; Lonne et al. 2016; Parton, 2014). It allegedly strikes a balance between a child protection and family service ethos. It has a "qualitatively different character" (Gilbert et al. 2011, p. 253), influenced by the *social investment state* and *individualisation*. The child-focused orientation concentrates on the child in the here and now as an individual who has an independent relationship with the State. This approach may be construed as opposing the institution of the family. Nonetheless, it is positioned towards improving children's overall development and wellbeing:

With a child-focused orientation, the state took on a growing role for itself in terms of providing a wide range of early intervention and prevention services. The child-focused orientation also often involved arrangements that were adjusted to meet children's needs, competences and maturity by taking into account the views and wishes of the child. (Parton, 2014, p. 9)

The social investment approach is future orientated and considers children as worthy investments. Although these perspectives are potentially contradictory, Featherstone et al. (2014) conclude that "despite the tensions between them, the child-focused orientation puts children's rights above parent's rights and emphasises parents' obligations" (p. 8). Enhancing parental responsibility and family relationships has been critiqued as infringing on neoliberalist notions (Keddell, 2011), leading to paternalistic policies and practices that result in *defamilialisation*, and endorsing increased oppression, vulnerability and marginalisation of children (Lonne et al. 2016; Mason, 2004, 2005).

Despite child protection work being centrally concerned with judgements and assessments about children, children are largely objectified (Mudaly & Goddard, 2006) and categorisations are culturally bound to their parents (Ofsted, 2010; Parton et al. 1997) or attributed by other adults (Mudaly & Goddard, 2006). Children are largely referenced in accordance with parental capacity and risk factors. The safety and protection of children is inextricably linked to their parents, nevertheless Parton et al. (1997) argue that "noting that child wellbeing is culturally bound to maternal constructs and behaviour may be contradictory to reconstructing children as persons" (p. 121). In their seminal work, Dingwall et al. (2014) theorise that the status of children is determined by the "rule of optimism", inclusive of institutional devices of "cultural relativism" and "natural love", whereby workers are required to think the best of parents, thus obscuring the harm and adversity of children. This is a theoretical concept still active in contemporary child protection (Buckley, 2003).

The status of children within the context of child protection and more broadly will remain unchanged until children are recognised for their otherness or difference, rather than from a lesser position. As Mason (2004) explains:

At the practical level this means conceptualising children not as passive dependents on adults and not as "becomings", but as persons with agency and lives in the present, who are in relations with adults characterised by reciprocity and interdependence. (p. 53)

## **Professional and family systems**

The failure to keep the child "in mind" draws parallels with the way many families are unable to keep the needs, feelings and safety of their children "in mind" and perhaps has other links with practitioners' reluctance to connect with the child, understand the child, or even touch the child. (Brandon et al. 2009, p. 41)

The work of Reder et al. (1993) and Brandon et al. (2009) emphasises the importance of the transactions across the family-professional system. The dynamics are illustrative of parents attempting to exercise a level of power to keep social workers at a distance (Reder et al. 1993). Parton et al. (1997) identify that relationships are negotiated denoting the use of control by both parents and social workers (Buckley, 2003). Amidst the struggle for control, "the rage or disaffection

towards children from carers is missed” (Brandon et al. 2009, p. 64). Although power is complex, if we accept that it is relational in nature there is potential to modify or change these relations (Finn & Jacobson 2003(a)).

The chaotic behaviour in families can be “mirrored in professionals’ thinking and actions and both families and professionals can ignore and neglect the child and baby” (Brandon et al. 2009, p. 41). Negative cycles develop and professionals appear powerless and pessimistic when confronted by the complexity and chronicity of issues experienced by families; a situation made worse by not having the necessary supports or resources to achieve and sustain change for the stability and safety of the children. Workers who are overwhelmed by workload demands and confronted by hard to engage families who experience complex and seemingly intractable issues feel impotent and pessimistic about their abilities to facilitate sustainable change (Brandon et al. 2009; Buckley, 2003; Daniel, 2015; Keddell, 2011; Taylor & White, 2001). The issue of professionals employed within agencies depleted of adequate resources and support is consistently highlighted (Bamblett et al. 2010; Cummins et al. 2012; New South Wales Ombudsman, 2005, 2013; Wood, 2008). Lonne et al. (2009) are critical of the notion that an increase in resources, efficiency and accountability will solve the problems of any system that “objectifies the children whom it seeks to protect and the parent whom it accuses” (Melton, 2009, p. xii).

Social workers feel particularly powerless and pessimistic when confronted by reports of children experiencing chronic neglect. The value, benefit and likely effectiveness of intervention was questioned specifically for ecologies that were assessed to be “‘convoluted’ situations...those presenting with ‘chronic’ neglect and all its associated conditions such as addiction, poverty, mental illness, and general marginalization” (Buckley, 2003, p. 182). A forensic, investigative approach, which continues to dominate child protection intervention, is perceived as having little to offer the families of children who experience chronic adversity and cumulative harm (Bromfield, Gillingham, & Higgins, 2007; Buckley, 2003; Frederico, Jackson & Jones, 2006). Also, State intrusion into the family is perceived as destructive rather than beneficial.

Unresolved care and control conflicts within the family system are played out in family interactions with professionals. In some instances, professionals become enmeshed, with parents offering practical and emotional support resulting in dependency. Professional attentiveness and responsiveness to parental dependency needs emerge as a conduit through which parental capacity is enhanced. Relationships are critical to effective social work, but as stated earlier, meeting parental demands can obscure the needs and interests of the child, as Willow (2009) reinforces:

The child’s needs and concerns are too easily eclipsed when a parent has chronic needs of his or her own...Parents with a history of substance misuse or mental health problems often struggle to give priority to the child’s needs. In these situations, the parents’ needs can easily become all consuming for professionals with little time or energy left over for smaller and less demanding family members. (p. 21)

This type of interaction was exemplified in the death of Jasmine Beckford (Munro, 2004; Reder et al. 1993). Alternatively, parents may intermittently or permanently tighten the boundaries where children are hidden from view. These were the circumstances for Maria Colwell (Lonne et al. 2009; Munro, 2004). Hostile, evasive and unco-operative families present particular challenges. Families who withdraw contact from professionals and enact closure of the system, sometimes accompanied by recurrent flight or disguised compliance, signals danger for children because their isolation and invisibility becomes pronounced (Brandon et al. 2009; Brandon et al. 2013; Reder et al. 1993). The complex dynamics of closure or disguised compliance originate out of fear, negative experiences of services, denial of problems and being overwhelmed by the intrusion of services (Brandon et al. 2009). These complex interactional patterns are well recognised in child death reviews (Blom-Cooper, 1985; Brandon et al. 2009; Brandon et al. 2012; Jones, 2014; Queensland Ombudsman, 2003; Vincent, 2010) and inquiries into child protection practice (Buckley, 2003; Dingwall et al. 2014; Parton et al. 1997).

An interactional pattern exemplified by the work of Reder et al. (1993) is when children cease to exist for the parents and workers are “caught up in a double binding interaction with the parents” (p. 107). The double bind is a concept developed by Bateson (1956) in his work with people experiencing schizophrenia. It illuminates a pattern of communication infused with confusing contradictions. The authors identified circumstances where professionals recognised that the child/ren had not been sighted and attempted to sight them. Parents did not allow the workers to see or speak with the child but reassured the workers that the child was well. Reassurances from the parents provided confirmation that there was “no need to worry because the child existed” psychologically and physically for them. Workers can prevent being drawn into a “double bind” by “anchoring themselves in just one belief, namely that the child’s actual wellbeing must be physically confirmed” (Reder et al. 1993, p. 127).

### **Advocating for the visible and heard child: manifestos for change**

The elusiveness of the child in child protection is well recognised and well documented. The invisibility and silence of children exemplifies their suffering, diminished moral status and social exclusion, and epitomises the loss of the humane dimension in social work (Ruch, 2014). Social workers need to be able to practice in a manner that is creative, intuitive and soulful, where ontological security is promoted and they have the capacity to form meaningful relationships with children and families while “understanding the psychodynamic and symbolic dimensions of work and accepting the inherent risks to child protection” (Ferguson, 2004, p. 135). Over the last decade there has been an increasing number of publications in the field of child protection, child welfare and, more generally, in social work literature (Bamblett et al. 2010; Munro, 2011; Wood, 2008) proposing reform agendas in an attempt to redress the challenges in child protection towards practices that are ethical (Lonne et al. 2016; Lonne et al. 2009), humane (Featherstone et al. 2014), intimate (Ferguson, 2011)

and critical (Rogowski, 2013), aimed at enhancing the safety, protection and humanity of children who suffer adversity and disadvantage.

Some of these reform agendas will be reviewed here, however this review is not exhaustive. There are a number of writers and academics, who have recognised the crisis in child protection and devised alternative manifestos so that children's humanity is central to discourse and practice. Goodman and Trowler (2011) reflected on their journey in *Reclaiming Social Work* and identified that they were no longer willing to tolerate the status quo where "the profession suffered from a conveyor belt, risk-averse mentality to the inevitable detriment of the children and families it sought to serve" (p. 161). They made the following pact:

... we agreed that we could not spend the rest of our careers overseeing mediocre social work, which frequently led to the decimation of family life, often without any serious attempt to keep children with their families. (p. 162)

Ferguson (2011) proposes that the way forward is intimate child protection practice. The construct of intimate child protection practice sharpens the focus on processes "where the work goes on and their influence, and the centrality of the emotions and the body and mind of the worker and service user in doing and experiencing the work" (p. 206). The core of intimate child protection practice is relational and intimate where the worker is prepared to move within spaces occupied by the family "in order to relate to children, and to go deeply into all the rooms in the family's home and their private selves and lives" (p. 207). Intimate child protection practice needs to be conducted ethically and informed by empathy, negotiation and good authority. Ferguson (2011) proclaims that it is not a platform to intrude into a family's life in an authoritarian and paternalistic manner. Child protection practice is intrusive and this must be acknowledged and embraced by the worker (Ferguson, 2014), but "it cannot be done without the use of 'good authority' and being prepared to exercise it in the name of seeking to keep children safe" (p. 207). "The idea of intimate practice also seeks to capture the humanity of the encounter; the fact that it involves facilitating and listening to children's disclosures of any harm that has been perpetrated on them" (p. 4).

Ferguson (2011) contends that the notion of intimate practice is not new but that this aspect of professional practice has not been articulated and published in the child protection literature. Understanding and discussing intimate child protection practice has been neglected due to increasing concerns about restructuring of social work, particularly since the 1980s. There has been a growing obsession with "rules, procedures, audit, information sharing, interprofessional collaboration and greater accountability as a way of managing risks of system failures and child deaths" (p. 5). These practices have reinforced a dominant image of social workers as "static practitioners bound to their desks" (Ferguson, 2011, p. 39).

Sidebotham (2013) extends the notion of authority, proposing that the gap between rhetoric and reality so often highlighted in the child abuse inquiries and reviews can be addressed through



authoritative child protection. The concept of authoritative child protection is grounded in Baumrind's notion of authoritative parenting. "This parenting style combines high levels of affection, nurture and responsiveness with high expectations, incorporating boundaries and discipline" (p. 1). Sidebotham (2013) includes authority, empathy and humility as the three categories of authoritative child protection. *Authority* is earned by the practitioner and reliant on knowledge, skills and position of the worker, enhanced by competence and confidence. *Empathy*, within the context, originates with the voice of the child and the "ability to keep the child at the centre at all times, to recognise and respect his or her rights and needs, and to consider his or her experience" (p. 1). *Humility* is not disparaging or condescending but is a positive characteristic that enables the worker to recognise their own limitations and seek to enhance their knowledge and skills through reflective practice and collaborative professional relationships.

In a similar vein, Featherstone et al. (2014) advocate for humane social work with children and families who are recipients of child protection services. There is an imperative to re-imagine child protection and confront current issues: victimisation of both children, parents and social workers; a perceived loss of social justice underpinning the ethos of child protection; child centric practices misrecognising the importance of children's relational ties, resulting in ethical and practical dilemmas; and objectification and dehumanisation of children whom it seeks to protect. Humane practice is the way forward and central to humane practice is using a relational approach to recognise and understand the suffering and adversity experienced by children and their families. A relational approach:

... embraces the twin interlocking priorities of respect for persons and social justice, emphasising the importance of social relations. It sees the individual and family as embedded in a network of social relationships and uses these connections to help people restore their coping capabilities. (Lonne et al. 2016, p. 133)

At the core of the book *Re-Imagining Child Protection* by Featherstone et al. (2014), child centric practice is challenged for "its narrow focus on the child to the exclusion of parents, extended family...as well as community" (Ainsworth, 2014, p. 253). It is suggested that the child wellbeing movement and the political imperative towards individualism view children as separate from the family. There is evidence to suggest that the state child protection authorities take responsibility for children to the exclusion of their families when they are removed and placed in alternative care (Keddell, 2013). On the other hand, intelligence that emerges from child death reviews is that children are predominantly invisible and silent in the context of child protection practice. The value of Featherstone et al.'s (2014) vision is that humane child protection work is fundamentally relational and that the protection of children can be achieved by working in partnership with parents. Howe (2010) concurs on this point:

The key component of safer practice is the parent's sense of being understood by a worker who is able to keep both the parent and the child 'in mind'. (p. 339)

Parton (2014) takes a system wide and critical approach to reform as he argues for a union between “a children’s right orientation with one that takes a broad public health approach to child maltreatment” (p. 192), providing a framework for policy and practice in the future. His manifesto for change is grounded in the recognition that child maltreatment has cultural, institutional and structural dimensions in addition to individual ones, and that these all require considered deliberation and resolution. This is in contrast to the small scale, narrowly defined problem articulated in the *Battered Baby Syndrome* (Melton, 2005).

A practice framework that is gaining international momentum (Ainsworth, 2014; Keddell, 2014; Stanley & Mills, 2014) is the *Signs of Safety* developed by Turnell and Edwards (1999) in response to a child protection system that had become increasingly “punitive and adversarial” (Salveron, Bromfield, Kirika, Simmons, Murphy & Turnell, 2015, p. 127). *Signs of Safety* is:

... a practise framework designed for both statutory and non-statutory services by practitioners with family in which children have been or who are at risk of abuse and neglect. *Signs of Safety* posits that the heart and soul of effective child protection practise is found on establishing constructive working relationships between children, parents, families and practitioners and between practitioners themselves to create a shared focus and agreed understanding to address identified child abuse and neglect. (Salveron et al. 2015, p. 127)

It is a solution-focused approach where the goal is to build strengths and safety around children, and simultaneously problem solve dangers and harm. Whilst aiming to achieve child safety, the *Signs of Safety* in the context of child protection is a risk assessment strategy, inclusive of a toolkit (Stanley & Mills, 2014) “that brings together the seeming disjunction between problem solving and solution focus within its practice framework by utilising a comprehensive approach to risk” (Turnell, 2011, p. 13) that is both forensic in nature whilst prompting and investigating strengths and safety; both grounded in professional and family knowledge and wisdom; risk assessments are conducted with the full participation of all interested parties; and it is a holistic approach (Turnell, 2011). Turnell (2011) proclaims that the model opposes a culture of paternalism in child protection. Instead, it is established and informed by the importance of working relationships; thinking critically and fostering a stance of inquiry; and frontline child protection workers’ experience and wisdom (Salveron et al. 2015; Turnell, 2011).

It is a model that engages with the contemporary child protection ideology and is focused on frontline practice, advocating cultural rather than policy and structural changes. In an evaluation of the implementation of *Signs of Safety* in Tower Hamlets in the United Kingdom, Stanley and Mills (2014) identified some challenges associated with its use. The organisation has adopted the toolkit but frontline staff have been somewhat reluctant to embrace its philosophical underpinnings. “[S]ome prefer a professionalised approach to practice where risk remains the definition task of the worker, rather than accommodating the perspectives of families; it feels safer for them” (Stanley & Mills, 2014, p. 33).

Future orientated practice models and strengths-based perspectives such as *Signs of Safety*, although valuable as contemporary practice models, have received some criticism as being “naïve to the barriers, particularly structural obstacles, that service users experience in realizing small goals” (Healy, 2014, p. 143). Future orientated approaches place great onus on people’s ability to make changes in their immediate environment by altering their behaviour.

## **Conclusion**

This review of the literature exemplifies that multiple interacting forces foster childism in statutory child protection, thus further diminishing children’s moral status. The child in child protection is constructed as silent, invisible and absent. Children are lost sight of as the demands of adults, organisations and economic imperatives are prioritised. The best interests, voice and centrality of the child do not always find their way from legislation to frontline practice, illustrating the chasm between the rhetoric and reality.

Professionals are constrained in child-focused and humane practice due to ever increasing demands of proceduralism and managerialist practices; a retreat from intimate and face-to-face work with children due to accountability processes and high workload demands; focus on risk thinking eroding professional judgement and reflective practice; and workers feeling powerless in the face of complexity and uncertainty. It is on this basis that there are a growing number of publications arguing for reform in statutory child protection. A common theme among these authors is that humane, ethical and morally just practice is dependent on being attentive and responsive to the lived experiences and adversity of the children and their parents.

This chapter and Chapter 3 have situated this study in a broad context. Constant tension has been evident between the needs of children and the needs of parents and government from child protection’s philanthropic roots to contemporary statutory child protection practice. There is evidence to support Young-Bruehl’s (2012) assertions of a failure to prioritise or make paramount the needs of children over those of adults.

# CHAPTER 5

## METHODOLOGY, RESEARCH DESIGN AND CRITICAL FRAMES

Effective learning needs to take place within the context and to recognize the reality of these children's lives...We owe it to the children and their families to ensure this does not happen and to do all we can to learn from these tragic events. (Sidebotham et al. 2010, p. 55)

### Introduction

This chapter provides the critical frames (Lather, 1992; Smyth & Shacklock, 1998) for this study, building a conceptual structure to define and delineate the project's purpose, beliefs and history, thereby forming the bridge between theory and methodology. The critical frames enable the transition from grounding the examination of the philosophical construct of moral status within a socio-historical context of child protection to influencing the questions that propel the critique. The critical frames of *meaning, context, history, power and possibilities* (Finn & Jacobson 2003a, 2003b) provoke critical questioning that shatters some taken-for-granted realities about child protection, which as a social practice is accorded the moral and legal responsibility of ensuring the protection and safety of children who experience adversity. The shattering process enables the construction of new foundations and emergence of new possibilities, thus contributing to contemporary discourses that advocate for ethical and humane practice in child protection where children are positioned centrally.

The shattering function and analysis of children's narratives are conducted through the employment of critical social research operationalised by a critical-dialectical process and an interpretive conceptual framework. The framework is informed by the unifying concept of childism and the *Emergent Model of Morally Just Practice* (EMMJP) – a synthesis of the *Just Practice Framework* (JPF) (Finn & Jacobson 2003a, 2003b) the *Ecological-Transactional Perspective* (ETP) (Cicchetti & Lynch, 1995) and the *Capabilities Approach* (CA) (Nussbaum, 2011). Morally just practice, philosophically speaking, asserts that statutory child protection workers have an obligation to attend to the realities of children's lives without forsaking the quest for social justice, human rights and relationships. The employment of the EMMJP as a lens through which the children's narratives are analysed enables the exposure of childist practices within the context of child protection. It facilitates making a determination as to why children are denied their rights; why they are refused protection and opportunities to participate within their families and as recipients of statutory child protection services. These findings will then inform a transformative agenda.

The focus of this chapter is to outline critical social research (CSR), the reasoning processes and the interpretive conceptual framework employed in investigating the narratives of Dean, Jack, Ebony and Baby Kate who received statutory child protection services. This study is an in-depth case study of childism within the context of front end statutory child protection. The focus of this study does not ignore, lessen nor refute the trauma, oppression and dehumanisation that may be experienced by

children in out-home-care. One could argue that their experiences of childism are more serious. It is beyond the scope of this study to consider all children who are recipients of child protection services however the methodology is applicable to the narratives of children in out-of-home care which may be the focus of studies beyond this dissertation.

## **Critical social research: exposing childism**

Critical social research (CSR) is an empirically grounded process that provides a framework for engaging with and interpreting data. The approach is not constrained by a particular data collection system but is fundamentally concerned with the way in which “the data are approached and the framework within which data are analysed ...” (Harvey, 1990 p. 196). The process does not facilitate finding the source of a particular social phenomenon but provides a means of getting beneath the surface to expose the reality of oppressive social mechanisms (Harvey, 1990). The research is critical in the sense that it “stands apart from the prevailing order of the world and asks how that order came about” (Cox, 1981 p. 129). It speaks to an audience on behalf of maltreated children with a call to action (Thomas, 1990). It is consistent with social work’s “special regime of truth” (Parton, 2008, p. 255) and pervasive belief in humanity and compassion (Parton, 2008; Philp, 1979):

Social work knowledge is concerned with ‘common human needs’, with ‘people not cases’, and with a ‘truly human response to suffering. Where social work differs from simple moralising is in the stress laid upon the social nature of that humanity, for it is a humanity which is only truly realised socially when it is ‘actualised’ in social life. (Philp, 1979, p. 92)

This study examines and seeks recognition for, and understanding of, the lived experiences of abused and neglected children and their world, asking in particular how the institution of child protection, as a social practice, creates and/or constrains their moral status. It is an ethically responsible methodology because it reveals unfair or unjust processes within a particular context. Being ethically responsible means that there is “a compelling sense of duty and commitment based on moral principles of human freedom and wellbeings and hence a compassion for the suffering of living beings” (Madison, 2005, p. 5). Foucault described this approach as “work that unsettles” and stated that “transformative knowledge is disturbing by nature” (Chambon, 1999, p. 53).

Within CSR, knowledge is understood as being shaped by social relations, rendering knowledge and critique intimately intertwined. Therefore, knowledge is accepted as subjective and dynamic, rather than objective and static; the lynch pin of non-critical methods. As Harvey (1990) puts it, methodology is the “point at which method, theory and epistemology coalesce in an overt way in the process of directly investigating instances within the social world” (p. 1). The examination of oppression and domination from a critical theory perspective traditionally focuses on manifestations related to class, gender and race (Agger, 2013; Briskman, Pease, & Allan, 2009; Fook, 2002; Harvey, 1990). These categories are also relevant for the oppression experienced by children. Young-Bruehl (2012), Wall (2010), and Pierce and Allen (1975) assert that “‘Childism’ is the unifying concept needed to organise and guide the movement” (Young-Bruehl, 2012, p. 269) and to “recognize the many social and

political arrangements that are detrimental to children or that fail to meet their needs” (p. 7). Pierce and Allen (1975) developed the childism concept, while Wall (2010, 2013) and Young-Bruehl (2012) developed it further.

At its most basic, childism is about discrimination and oppression towards children simply because they are children. It is a “form of oppression in our society and underlies all alienation and violence (Pierce & Allen, 1975, p. 18). There is consensus among the authors that children are subjects of oppression and rendered as second-class citizens in the most profound of ways (Wall, 2013). Elisabeth Young-Bruehl, as a psychoanalyst, defines childism as prejudice against children and focuses her discussion on the field of child abuse and neglect. Wall writes from a moral philosophy and theological perspective, and defines childism as “the effort to respond to the experiences of children by transforming understanding and practices for all” (Wall, 2010, p. 3). Both authors make the all-important observation that history chronicles attempts to humanise children but “has inevitably in one way or another dehumanised them as well” (Wall, Dillen, & Pollefeyt, 2010, p. 237):

Children’s worlds become ‘privatized’ in two related senses. On the one hand, responsibility for child rearing devolves increasingly upon the home, and then increasingly upon mothers. Children are the poorest segment of American society, with the fewest health resources and least economic and political clout, in significant measure because they simply lie beyond the *public* sphere’s concern...On the other hand, childhood’s privatization means that the public square itself is free to manipulate and market children as they were its own ‘privatized’ exchange commodities. (p. 249)

Young-Bruehl (2012) identifies three basic forms of childism that have been in existence since the child saving movement began in the nineteenth century – “eliminative (obsessional), role-manipulation (hysterical), and erasing (narcissistic)” (p. 281). These underscore motivations for the maltreatment of children both within families and the public sphere, which will be further explored in this study. Wall (2013), in his theorising, proclaims that it is imperative to identify not only what victimises children but also what empowers them. Both authors acknowledge the criticality of the UNCRC in the recognition of children’s moral worth; “The larger purpose of the Convention is to recognise children as not only members of private families but also full social participants directly involved in public society” (Wall et al. 2010, p. 262). Human rights for children “guarantee simultaneously non-interference with human otherness and life’s necessary basic social supports” (Wall et al. 2010, p. 263). Young-Bruehl (2012) asserts that the UNCRC documents “are only the opening statements in a conversation that must be ongoing” (p. 11) and will help to expose what prevents “parents and governments from fulfilling their acknowledged obligations to their children” (p. 11). It is imperative to uncover the dynamics and contributing factors as to why many adults:

... deny that children have rights; why they refuse to provision, protect, or encourage the participation of their children in family and community affairs; and why they discriminate against their young – the future of their societies – in order to favour not just themselves but adults generally. (Young-Bruehl, 2012, p. 11)

This is the core focus of this study.

## The process of exposing childism

CSR is dialectical in nature, and facilitates the central processes of “deconstruction” and “reconstruction”. The theory building process is:

... a constant shuttling backwards and forwards between abstract concept and concrete data; between social totalities and particular phenomena; between current structures and historical development; between surface appearance and essence; between reflection and practice. (Harvey, 1990, p. 29)

CSR provides a way of approaching the world and exposing oppression. Harvey (1990) declares that “it is not the manner of data collection but the approach to evidence that is important” (p. 31). This sentiment is reinforced by Alvesson and Sköldbberg (2009) who assert that the focus in critical research is more the “interpretation and reasoned appraisal of the empirical material, which is further complimented by observations and interpretation of the surrounding societal context” (p. 165). This research does not adopt Harvey’s (1990) traditional ethnographic approach but employs the CSR approach to the analysis of secondary document sources through the EMMJP, as described later in this chapter.

The process of assimilating and reflecting on the data and the research process is the most challenging aspect of the critical inquiry process. No prescription is offered except that “it is the shuttling between detailed material and wider social milieu which is at the heart of the dialectically generated critique” (Harvey, 1990 p. 13). The researcher must become familiar with the data and see it from a number of different perspectives. The critical research process necessitates the location of thought-provoking social microcosms (the child’s reality) in the broader structural contexts (child protection). Further to this, there is a requirement to understand that the broader structural contexts are mediated by the “closely observed detail of social practices and the meaning they encompass” (Harvey, 1990, p. 13). Context or situational factors are crucial for developing an understanding of processes or emergent endings (Kessler & Bach, 2014).

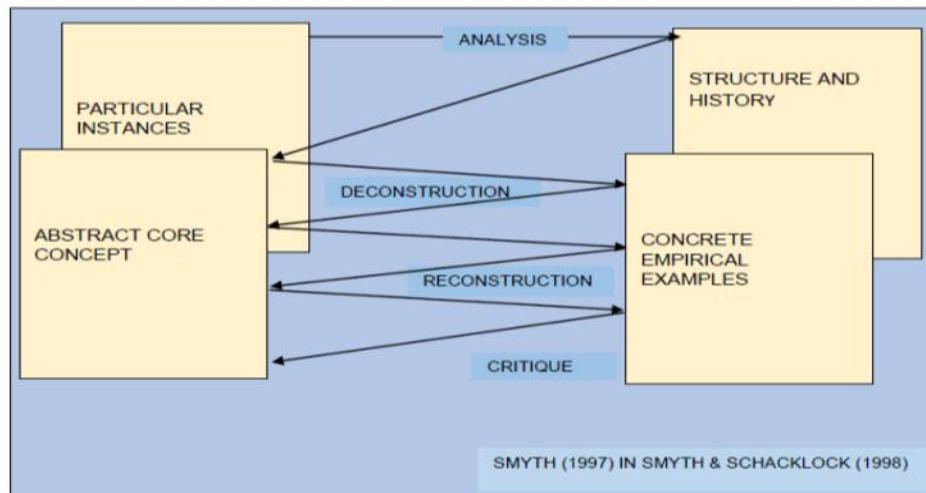
CSR is extremely varied but is based on a number of building blocks made up of reasoning processes and an interpretive conceptual framework. The reasoning processes of deconstruction-reconstruction, abstraction, holism, praxis and reflexivity form a holistic approach that ensures consideration of all the elements in complex social practice in their totality rather than as discrete entities. CSR “is concerned with the broad social and historical context in which phenomena are interrelated” (Harvey, 1990, p. 20). These will now be examined.

### Reasoning processes

#### ***Deconstruction and reconstruction***

The deconstruction-reconstruction process commences with the identification of a key abstract concept that has been critically analysed (Harvey, 1990). The concept is grounded and connected to empirical inquiry and is essential to the process of abstract analysis. It is an analytical process

that is profoundly linked to practice. It does not occur in a series of discrete segments but develops the different elements alongside each other; “each aspect informs each of the other aspects” (Harvey, 1990). The process begins with the researcher being concerned with a particular realm of inquiry, usually instigated by a particular question that demands investigation and frames the area to be examined. The question that forms the foundation for this research study is: *How might we understand the moral status of children within the context of child protection?*



**Figure 5: Critical-dialectical process**

The deconstructive process is dynamic. Deconstructive methods for analysing data have emerged from postmodern and post structural thought, and have been used extensively by social researchers (Fook, 2002; Kellehear, 1993). Deconstruction is beheld as a “meticulous, scholarly, serious, responsible, both in the sense of being able to give an account of itself in scholarly terms and the sense of responding to something in the text that tends to drop out of view” (Glass & Davis, 2004, p. 84). It is a method of interrogating the data that involves constant movement between the identified abstract concept and concrete data; between what is explicit and what is concealed or veiled; between the written word and imagery; and between the overtly described and the obscured ideologies (Glass & Davis, 2004; Harvey, 1990; Smyth & Shacklock, 1998).

### **Abstraction**

The starting point of the critical research process is abstraction. This involves a conceptual debate arising from the real world and grounded in practice. Movement between the abstract and the concrete ensure that the abstract concept is deconstructed and its meaning thoroughly understood (Harvey, 1990). Debates within philosophy about moral status provide the abstract concept through which children’s narratives and child protection practice are interrogated. Moral practice is strongly indicated, although seldom effectively articulated within an array of sources gathered into a knowledge review that is linked to practice wisdom and drives critical reflection of child protection practices.



### ***Holistic approach***

Social phenomena do not occur independently of a wider context. Therefore, they should not be examined and analysed in isolation. Crucial to CSR is an appreciation that social relations are specific to a particular historical context; an understanding of the particular structural relations that are in existence within a particular historical moment, and an understanding that there is interrelatedness between historical structures and particular social phenomena (Harvey, 1990).

Consequently, social phenomena are not viewed as discretely defined entities and must be examined within a holistic perspective: “the components are interrelated into a coherent structure, ... they only have meaning in terms of structure, and in turn structure relies on the component parts” (Harvey, 1990, p. 21). A totalising perspective alerts the critical social researcher to find ways to connect empirical detail to the documented structural and historical context.

### ***Praxis***

Praxis means “practical reflective activity” (Harvey, 1990, p. 22). It is perceived as a daily human action. Praxis is the notion that theory and practice, or the generation of knowledge, cannot be separated from practice. Ife (2008) asserts that “it is through theory/reflection that we develop practice/action, and *at the same time* it is through practice/action that we develop theory/reflection” (p. 159). Praxis is a dialectical process that is transformative in nature. In CSR, it is not only about accumulating knowledge of the social world but is also about using that knowledge to advocate for transformation. Intellectual activity associated with praxis grounds the concept of *phronesis*. Phronesis is relevant in the reflexivity and practice of social work because it promotes “interaction between the general and the concrete; it requires consideration, judgement and choice. More than anything else, *phronesis* requires *experience*” (Flyvbjerg, 2001, p. 57). The narratives of individual children as cases facilitates the generation of knowledge that stems from a toing and froing between the concrete and the general, and back again.

Praxis enables the researcher to question the nature of knowledge and critique existing knowledge. It is dynamic and political where knowledge changes as a result of praxis and, correspondingly, praxis is informed by existing knowledge. This energetic method of reflection forces the critical researcher to intently deliberate about the research; “we attempt to become self-aware of the process and consequences of knowledge production by bringing the original act of knowledge back into consciousness” (Thomas, 1993, p. 45).

### ***Reflexivity***

Reflexivity is a crucial element of critical inquiry (Harvey, 1990) and qualitative research (Etherington, 2004). Postmodern methodologies concede that reflexivity in research “is built on an acknowledgement of the ideological and historical power dominant forms of inquiry exert over the researcher” (Smyth & Shacklock, 1998, p. 6). The ability to reflect and recognise the constraining aspects of the research is an empowering process and enables fulfilment of the research agenda.

The process of reflexivity involves the ability to identify, acknowledge and remedy the limitations associated with the research:

Reflexivity in 'critical' research work is important in honestly and openly addressing issues concerning the validation of research findings, as well as those ethical and political questions which arise from relations between the researcher and the researched that are implicit to the research agenda and the research methods. (Smyth & Shacklock, 1998, p. 7)

The reflexive researcher is also required to critically reflect on the themes and theories that have emerged from the research process, and to acknowledge that these may not be the only possibilities; others may apply. Thinking laterally enables the researcher to be open to other meanings. The process of reflexivity, theory development and interpretation is facilitated by a constant and in-depth review of the narratives. Etherington (2004) asserts that reflexivity in research enhances rigour and trustworthiness of the findings. The reasoning processes highlight the actions and processes necessary for CSR. The next section defines and delineates the interpretive conceptual framework.

### **Interpretive conceptual framework: Emergent Model of Morally Just Practice**

Engaging in critical research necessitates the identification of critical frames that define the purpose, beliefs and history of the project (Lather, 1992; Smyth & Shacklock, 1998), forming the bridge between theory and methodology. The key themes elaborated by Finn and Jacobson (2003) provide the critical frames for analysis. The critical frames of meaning, context, power, history and possibility are interconnected and ensure that the conceptual framework is grounded in social justice and social work. We are incited to question taken-for-granted reality and to:

... use our cultural capacities to give *meaning* to social experience. It guides us to look at the *context* of social problems and question the relations of *power*, domination, and inequality that shape the way knowledge of the world is produced and whose view counts. It forces us to recognize the importance of *history* and a historical perspective to provide a window into how definitions of social problems and the structuring and shaping of institutions...opens up the *possibility* for new ways of looking at and thinking about . practices, and envision the people with whom we work...toward a more just world. (Finn & Jacobson, 2008b, p. 32)

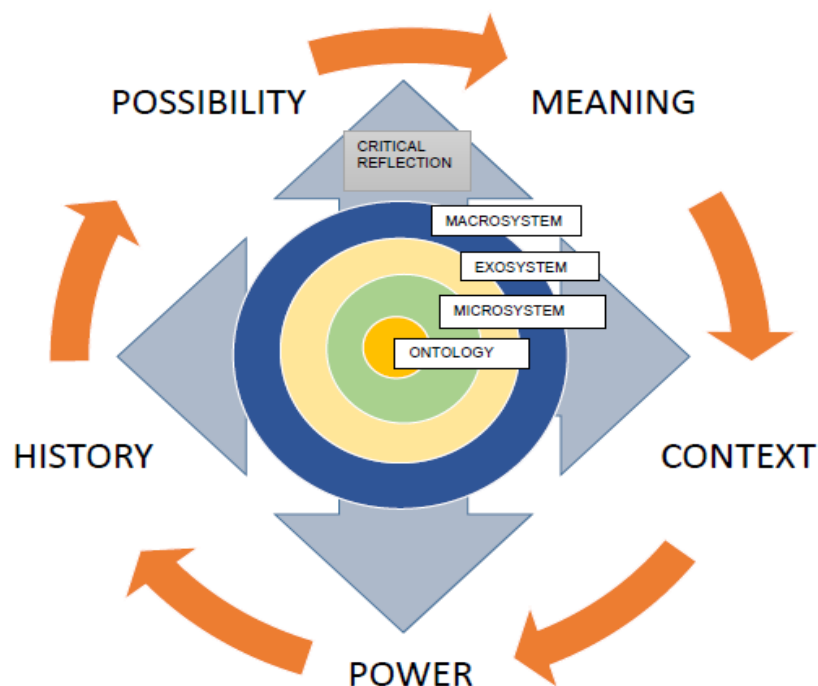
This section will outline the critical frames for this research study and introduce the *Emergent Model of Morally Just Practice* (EMMJP) that is employed to analyse the narratives of Dean, Jack, Ebony and Baby Kate. The emergent model will be critiqued in the final chapter of this study. A determination will be made as to whether it is a model that is applicable to social work assessment and casework within the context of statutory child protection practice.

Viewing the narratives through the EMMJP lens enables the exposure of childist practices that prevent or contribute to the oppression, trauma and dehumanisation of children. The critical frames of *meaning, context, power, history* and *possibilities* serve two important functions. First, and as previously stated, they provide the critical frames that inform this study. Second, the critical frames are constant considerations that inform critical thinking, enhancing in-depth understanding of the children's lived experiences.

## Emergent Model of Morally Just Practice

The *Emergent Model of Morally Just Practice* (EMMJP) serves two functions in this study. First, it has been developed as an interpretive framework to analyse the children’s narratives and statutory child protection practice. Second, in its application, particularly in relation to analysing the narratives, it will be critiqued for its suitability for a morally just social work practice framework in statutory child protection. It may have application in both research and practice.

The EMMJP delivers a synthesis between the JPF (Finn & Jacobson 2003a, 2003b), the ETP (Cicchetti & Valentino, 2006) and the CA (Nussbaum, 2011). These perspectives are well recognised and utilised by professional social workers. The embryonic model preserves modern attention to concrete realities (things that happen to children) while applying a postmodern sensitivity that produces “a reconceptualization of practice that is informed by critical social...theory” (Finn & Jacobson, 2003a, p. 67). The conceptual framework enables an interpretation of childism and practices that erode and degrade the moral status of children.



**Figure 6: Emergent Model of Morally Just Practice**

The JPF provides a framework for critical analysis informed by themes of meaning, context, power, history and possibility. It is premised on social justice work that demands we take questions of “difference, inequality, and oppression seriously...we are challenged to probe the ways in which differences are produced” (Finn & Jacobson, 2003b, p. 33). The premise of social justice work is consistent with the philosophical mandate of social work and that social justice needs to be taken more seriously on a local and global level. The JPF mandate is consistent with principles of human

rights and social justice that are fundamental to the professional practice of social work and achieved by:

Challenging societal barriers, inequalities and injustices; facilitating the inclusion of marginalized and at-risk groups; promoting human rights; advocating changes in policies and structural conditions that allow people to remain in vulnerable positions; and encouraging a respect for diversity. (Chu, Tsui, & Yan, 2009)

In pursuing social justice, the social work profession is involved in activities that are political and emancipatory. Social justice is a core value of social work. Its achievement is severely compromised without simultaneous obligation to the improvement of people's wellbeing, capacities and provision of opportunities to flourish as basic human rights. The pursuit of social justice and human rights are inextricably linked fundamental moral responsibilities of the social work profession (Chu et al. 2009).

Morally just practice is achieved through "an inherent concern for a client's wellbeing, coupled with commitment to social justice, which elevates social work to the position of a humanistic service profession" (Chu et al. 2009). Child protection workers need an active and in-depth appreciation of the child's unique circumstances. The ETP facilitates understanding of the child's development within their environmental context. It is a complex framework that facilitates a comprehensive appreciation of children and their families, and of the importance of human development across the lifespan (Brandon et al. 2009). The model was developed by Cicchetti and Lynch (1995), and further modified by Cicchetti and Valentino (2006). The ecological-transactional model of child maltreatment integrates the etiological models of Belsky (1980), and Cicchetti and Rizley (1981). The key aspect of the model is that:

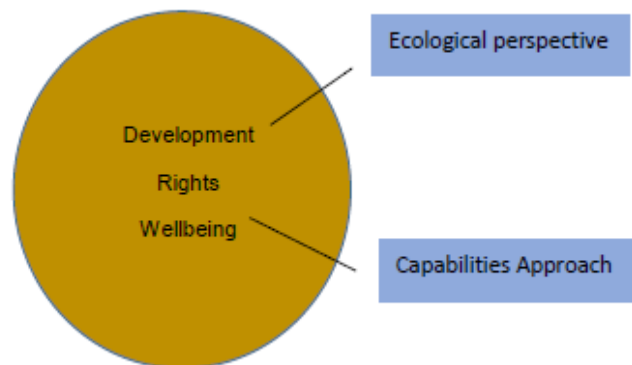
... environmental forces, caregiver characteristics, and child characteristics all influence each other and make reciprocal contributions to the events and outcomes of child development. (Cicchetti, 1995, p. 36)

Gilbert et al. (2009) propose that:

The ecological model conceptualises maltreatment as multiply determined by forces at work in the individual, in the family, and in the community and culture, and suggests that these determinants modify each other. Thus, parental risk factors can be modified by the environment and the community. (p. 72)

Childhood development and child wellbeing are intricately intertwined and associated with the context within which they are situated, particularly the moral context of relationships. Child wellbeing is a concept that is much broader in scope. It incorporates child development but also considers the quality of children's lives "economically and emotionally; to their psychological states; to their material, social, and cultural environments; as well as to their development and to realizing their potentials" (Ben-Arieh et al. 2014, p. 1). Incorporating the capabilities that ground CA into the ontology system of ETP enables a more holistic understanding of children's lived experiences (see Figure 7). It fuses a developmental perspective with a children's right and wellbeing agenda, and as such is consistent with the philosophy of JPF. CA is grounded in the belief that every person has

core capabilities by virtue of their humanity, and it is the duty of the State and society to ensure that these are respected. This fusion has been elaborated in Chapter 2.



**Figure 7: Ontology: development, rights and wellbeing**

The synthesis of JPF, ETP and CA informed by critically reflexive practices results in morally just practice. The insightful and compassionate interpretation of a child's situation and understanding of adverse experiences that contribute to their oppression and marginalisation requires more than technical and theoretical expertise. Professional judgements, an inevitable process in child protection work, cannot depend solely on formal or technical expertise (Taylor & White, 2001). Judgements must be informed by multiple sources of information and intuition, and importantly are dependent on "moral attitudes about what is good and bad, what is socially acceptable and unacceptable, and who is responsible for a particular situation" (Chu et al. 2009). An appreciation about what enhances the moral status of children must occur within the broader context, and this insight cannot occur without deliberation and critical reflection. It is imperative that the rights of children and their individual wellbeing are positioned centrally without compromising the goal of social justice within a collective context. Essentially:

A humanistic moral practice demands more than detached cognitive engagement...It requires social workers to be empathetic sharers in human suffering, to be capable of putting themselves in another's position, and to communicate with compassion. (Chu et al. 2009)

### **Meaning**

All human beings are engaged in meaning making. As people, we reproduce culture and interpret our social world and our experiences, influenced by our position and status in the world (Finn & Jacobson, 2003a). Social workers are accorded the task of understanding and interpreting the world of people with whom we work. The process of engaging with the children's narratives requires a process of deconstruction and reconstruction. A search for meaning, understanding and interpretation requires that we develop, recreate, challenge, renegotiate and affirm the intelligence. The search for meaning requires reflexivity; questioning of taken-for-granted assumptions about reality and "for the consideration of multiple and contested interpretations" (Finn & Jacobson, 2003a, p. 70). It is through deliberation that we identify difference and alternative perspectives.

Children's moral worth, rights and humanity are realised within the moral context of nurturing and respectful relationships. Moral status is a philosophical construct stipulating that adults are duty bound to ensure that children's interests, needs and wellbeing are not disregarded and compromised. Children are not autonomous, nor are they political actors. They are dependent on adults who are obligated to attend to their interests, needs and wellbeing. Rights and relationships sit at the core of moral status (Wall et al. 2010). Children who are abused and neglected are denied their rights, socially excluded and dehumanised. Regardless of the implementation of the UNCRC and the theoretical importance of children's humanity, children continue to experience maltreatment. This study provides an analysis of Dean, Jack, Ebony and Baby Kate's narratives as case studies.

The central task in applying the EMMJP is to seek answers to the following questions:

How do we understand the moral status of children? How does this inform our obligations?

### **Context**

Understanding context and how it impacts on individuals, families and communities is fundamental to the uniqueness of social work and, more specifically, the ecological-transactional perspective (Cicchetti & Valentino, 2006). Working with individuals, families, organisations and communities is considered within the milieu of social, political and economic relations and transactions. Context provides a framework to facilitate the interpretation of a set of social, political, and economic forces and/or conditions that encircle and have an impact upon people, events and circumstances. This is unique to social work. Ignoring context renders interpretations "myopic and we miss intricate connections, patterns, and relationships" (Finn & Jacobson, 2003a, p. 70). Furthermore, context forces us to look beyond structure "to the specific examination of the micro practices, schema, relations, resources and discourses through which structures translate to practice" (Finn & Jacobson, 2003a, p. 70). Structure is "viewed holistically as a complex set of interrelated elements which are interdependent and which can only be adequately conceived of in terms of the complete structure" (Harvey, 1990, p. 25).

The focus of this study is on understanding the family and child protection contexts within which the four children were situated. The analysis will facilitate an understanding of the childist dynamics/strategies that obscure or promote the humanity and moral worth of the children. It will answer the following questions.

How do we understand the moral status of the children in the context of their family relationships?  
How do we understand the dynamics/strategies that determine the moral status of the children?  
How do the child protection responses impact on the moral status of the children? How do we understand the dynamics/strategies that enhance or diminish the moral status of the children?

### ***Power and ideology***

Sheedy (2013) asserts that power “is a social concept which we evidence through its impact on people and their attempts to acquire and apply it in everyday activity” (p. 38). It is a part of human interaction where some people exert power over others, or it can be perceived as a personal possession where one is empowered or disempowered. The expression of power in its subtle form is operationalised through everyday communications; mechanisms that are expressions of ideology, particularly through socially established institutions and practices (Morrow & Brown, 1994). The organised nature of ideologies is not the focus; it is important to be cognisant of mechanisms that are operationalised in the “creation and potential distortions of consciousness and communication in everyday life” (Morrow & Brown, 1994, p. 52). Interested people or groups tend to justify these mechanisms, leading to a distorted sense of reality prevalent within institutions and social practices, and important to be ascertained through the research process (Harvey, 1990; Morrow & Brown, 1994).

Power must be at the core of the analysis and must be perceived as “productive and positive and not only as restrictive and negative” (Flyvbjerg, 2001, p. 131). The construct of power is pervasive in the context of child protection. Children who are subjects of child protection notifications are powerless; their vulnerability and adverse experiences are mediated by the power of caregivers. Parents, although powerful in children’s lives, are powerless in the face of childhood adversity, poverty, disadvantage and personal characteristics. Child protection is a powerful bureaucracy with the authority and capacity to dismantle or preserve families (Lonne et al. 2016; Reich, 2012). Child protection, as a social practice, operates in a context of “individualistic neoliberal discourses that underpin policies and practices” (Lonne et al. 2016, p. 44). Interaction with child protection power is conferred through many possibilities, including organisational contexts, professional status and qualifications, and legal authority that can result in a further power imbalance (Sheedy, 2013). Power is complex but if we accept that it is relational in nature, there is potential to modify or change these relations (Finn & Jacobson 2003a; Sheedy, 2013).

The examination of power and ideology is critical in childism for developing an understanding of what prevents parents and child protection agencies from fulfilling their obligations towards children. The domination and dehumanisation of children is a denial of their fundamental rights and humanity. Recognising and understanding these dynamics establishes a foundation to counteract the oppression of children towards emancipatory practice (Young-Bruehl, 2012). Wall et al. (2010) highlight a critical reality:

A peculiarity of the ethical situation of children, and the more so the younger child, is that the children can neither socialize nor liberate themselves... A child-centred ethical methodology must recognize that however much children do have their own voices and agency, they are always to a high degree...dependent on others for interpreting these into a transformed world. (p. 251)

How do we understand the factors that foster or hinder parents and statutory child protection from meeting their protective obligations?

### **History**

History is an interpretative process informed by conceptualisations rooted in the present. It is a reconstructive process where the genesis of social systems is examined and the emergence of oppressive structures exposed. Historical events are located within their social and political contexts, economic constraints are identified and there is an engagement with the taken-for-granted ideological characteristics (Harvey, 1990). Importantly:

... like all aspects of critical social research, history is not just there waiting to be picked up and fitted into the critical historical account... Within critical social research the reconstruction of history takes place alongside the structural analysis; it both informs and is informed by it (Harvey, 1990, p. 29).

History is crucial to understanding the present. Policies and practices that have emerged in the past have a significant impact on current child protection practices. “But for the future, we have to look farther into the past, like analysts going into the parental histories that their present clients know but may not have raised to consciousness” (Young-Bruehl, 2012, p. 280).

In the context of this research, there are two spheres of historical interpretation – the children’s narratives and child protection practices. The reconstructions of these histories are placed alongside each other during the critical-dialectical analysis. The ability to “grasp history and biography and the relations between the two within society” (Mills, 2000, p. 6) is known as the sociological imagination, which allows us to ponder and fathom how the larger historical context impacts individuals’ life and meaning; in this study, the narratives of Dean, Jack, Ebony and Baby Kate (Mills, 2000). It is essential to examine how the origin and evolution of child protection structures, practices and assumptions have impacted contemporary child protection practices and ultimately determined the moral status of children who have been harmed and traumatised.

How do we understand historical child protection practices influencing contemporary practices?  
What are the factors that have hindered or fostered childism from a historical perspective?  
  
How do we understand parental/family history? How does it impact on parents fulfilling their obligations in meeting the children’s needs, interests and well-being?

### **Possibility**

Deliberating on possibility enables us to see what has happened in the past, what can be done and what can exist. Possibility is about imagining an alternative reality for people with whom practitioners’ work and for the children who experience adversity, disadvantage and oppression. Deliberating on

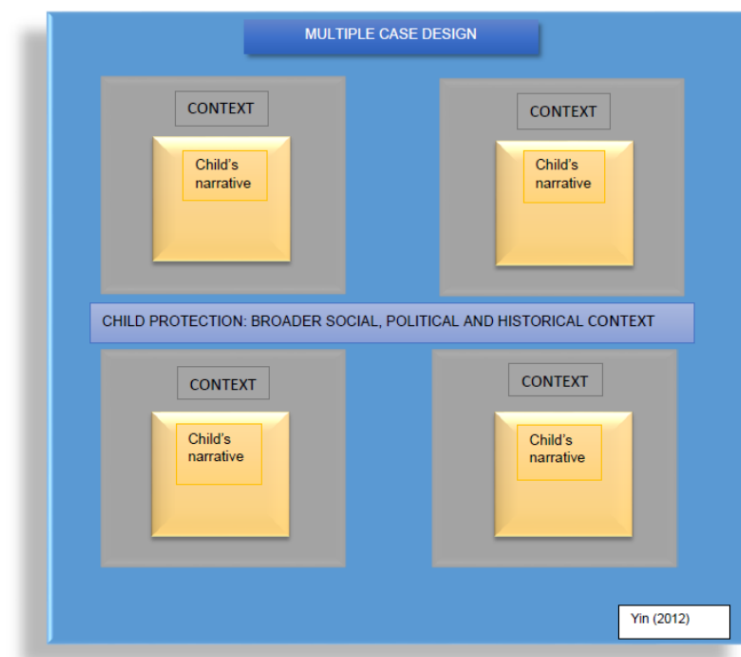


hope and possibility changes thinking from the present to the future towards an emancipatory perspective. The ideology of anti-childist practice offers hope. Wall (2010) argues that it is imperative “to respond to the experiences of children by transforming understanding and practices for all” (p. 3). Anti-childist practice can assist in the transformation of structures, cultures and possibilities. Anti-oppressive paradigms, such as feminism, have been instrumental in effectively challenging society in reimagining life in terms of care, importance of relationships, embodiment and power. Anti-childist practice advocates for the same profound restructuring (Wall, 2010; Young-Bruehl, 2012). The consideration and examination of children’s experiences and challenges should cause people and society to engage with, and deliberate on, previously unimagined moral possibilities (Wall, 2010). This will be the focus of Chapter 9.

What are the possibilities for transforming encounters between the children and child protection to enhance their moral status? What spaces for hope can be opened?

## Multiple case design

Conducting research in the context of child protection is extremely challenging. Child death review reports present as compelling case studies without access to the players around child deaths, including those who took the child’s life and those who were part of responses before and after the death. A multi-case study (Titscher, Meyer, Wodak, & Vetter, 2000; Yin, 2012) refers to a form of research where several case studies are conducted (see Figure 8).



**Figure 8: Multiple case study approach**

Every case, or in this study, every child’s narrative is a study in its own right. The use of a multiple case study design is not about reaching representativity but enhancing theoretical generalizations.

Four children's narratives are central to this study, which enables the elaboration of childist dynamics within statutory child protection. Every document, or case study, is unusually rich and complex. "Case studies of this type require a very well developed theoretical framework" (Titscher et al. 2000, p. 45). Knowledge emerges (Titscher et al. 2000) about a social practice where the child and his/her lived experiences are firmly at the centre (Chambon, 1999). As a data source, these narratives "bring detailed accounts of the experiences of some of the most stigmatised and socially excluded groups to the forefront of public awareness" (Stanley & Manthorpe, 2004, p. 1). There are, of course, limitations associated with the use of secondary data which will be discussed in more detail later.

Studying individual cases enables an in-depth understanding of the unique messages that are representative of the wider themes under scrutiny (Keddell, 2013). The advantage of case study methodology is that it "produces precisely the type of context-dependent knowledge which makes it possible to move from the lower to the higher levels of the learning process" (p. 71). When studying human affairs, context-dependent knowledge is essential (Flyvbjerg, 2001). Munro (1999) asserts that use of inquiries produces a biased sample of practice, "however, there are good grounds for considering them to be representative. Professionals who have read them have generally accepted them as typical and capable of offering lessons for others" (p. 753). Aristotle promoted the use of individual circumstances in the generation of knowledge, for example:

The particular and the situationally dependent are emphasized over the universal and over rules. It is what Martha Nussbaum calls the "priority of the particular" in Aristotle's thinking...He understands the "power of example". (Flyvbjerg, 2001, p. 58)

The aim of research is to illuminate particular processes or dynamics that contribute to particular outcomes. Case studies provide a valuable vehicle through which these dynamics can be investigated and identified. They provide valuable opportunities to isolate and examine particular dynamics or processes in more detail. When processes are identified in individual case studies, there are grounds to believe that similar processes or dynamics are in operation in similar situations, "working [themselves] out in similar ways and indeed everywhere that similar outcomes are noted" (Ackroyd & Karlsson, 2014, p. 24). It is for this reason that case study research design is invaluable in the study of organisations or social practices such as child protection. Engaging with children's narratives has enabled me to tease out the deepening layers of reality and expose childist practices within the context of child protection (Kessler & Bach, 2014).

### **The quest for case-based data**

This section highlights the trials and tribulations I experienced in sourcing data for my research. I have chosen to include this information because I believe it provides perspective about the challenges faced when operationalising a research methodology, not only within the context of child protection but to make visible the adversity and oppression experienced by children.

My previous work experience as a frontline practitioner, policy officer and manager within the child protection field made me acutely aware of the challenges ahead for a novice academic. Challenges associated with research in child protection are well documented in the *National Audit of Australian Child Protection Research 1995-2004* (Higgins, Adams, Bromfield, Richardson, & Aldana, 2005). As a researcher, my intention was to be unobtrusive and analyse child death review documents as sources of valuable case study material to develop an understanding of the children, their adverse experiences and their interactions with the child protection system. Sidebotham et al. (2010) eloquently proclaim that:

At the heart of all this lie the horrendous experiences of children who are subject to serious and fatal maltreatment. Effective learning needs to take place within that context and recognize the reality of these children's lives.... We owe it to the children and their families to ensure this does not happen and to do all we can to learn from these tragic events. (p. 55)

The generation of instructive knowledge from child death reviews is a well-founded tradition in the United Kingdom. The Australian child death review landscape is markedly diverse (Newton et al. 2010), with reports about child deaths aggregated in nature and published in the format of annual reviews produced by child death review committees in each Australian jurisdiction. My preference was to access and analyse individual child death reviews. Recognising that accessing data was going to be a challenge, I commenced the search for data early in the research journey.

As a practitioner in South Australia, I firstly engaged with representatives from Child Death Review Teams (CDRT) in other state jurisdictions. The representative in Victoria informed me that the *Child Wellbeing and Safety Act 2005* (Victoria) governs the role, function and process of the CDRTs. Legislation prohibits access of information relating to individual children to persons external to the review process unless they are authorised to carry out a specific function. Attempting to explore further, I engaged in deliberations with some members of the Child Death Review and Serious Injury Committee (CDRSIC) in South Australia, but legislative provisions in South Australia also prevented outsider access to individual child death review reports. The members of the team with whom I met in South Australia explained that the reports predominantly include demographic and chronological information about the children and their families, and do not include an in-depth analysis. Individual case reviews focus on service system issues rather than the experiences of the child and their family. The review reports are not inclusive of the voice and visibility of the child, which reinforces Brandon et al.'s (2009) finding that children are metaphorically absent, both in practice and reviews of their death.

The quest for data started to resemble the same hopelessness that Hamilton (2010) experienced in *In Search of J. D. Salinger*. Salinger, who wrote *Catcher in the Rye*, is a well-known but reclusive author who loathed journalists delving into his life. Like Hamilton, the inaccessibility of information only enhanced the challenge to proceed because it was a worthwhile endeavour. Hamilton

concluded his work with the publication of a critically acclaimed description of an obscure story. That inspired me!

My next step was to explore the possibility of accessing reports of the Adverse Events Committee conducted by Families SA, the South Australian child protection agency. In 2004, Families SA established the Adverse Events Committee (AEC) to review the deaths and serious injuries of children and young people who had received or were receiving Families SA services at the time of the adverse event. The AEC processes are comparable to the “Internal Management Reviews” conducted in the United Kingdom. Once the decision has been made to conduct a serious case review (SCR), each agency involved with the child and family must undertake an internal management review (IMR). The aim of the IMR process is “...to look openly and critically at individual and organizational practice to see whether the case indicates that changes could and should be made and if so, to identify how those changes will be brought about...” (Owens, 2009, p. 266). The Adverse Events reviews are primarily conducted using relevant organisational documents such as case files and electronic records. Theoretically, the findings and subsequent recommendations inform the development of legislation, policy and practice to ensure the future safety and protection of children (South Australian Government, 2009). The findings are, on occasion, forwarded to the Child Death and Serious Injury Committee of South Australia.

Discussions with senior Families SA officials to negotiate access to the AEC documents took months. Numerous reiterations of my research proposal were required in an attempt to justify the need for the study and to gain approval from senior executive staff. The response from Families SA was generally positive, however the request to access the documentary sources was eventually vetoed. Several reasons were provided, including: lack of organisational resources to de-identify the review reports; a perception that the research would not add value to the agency’s work; and a strong belief that the outcome of the study would increase organisational risk through potential liability issues. The organisation’s needs surpassed the opportunity to enhance knowledge generation about the worlds of traumatised and oppressed children. Brown (2010) argues that “risk is a central component of innovation and innovation is seen as essential to the improvement of public services” (p. 1211); a risk that was not embraced.

Whilst I was negotiating with Families SA senior management staff, I also opened discussions with the Departmental ethics committee. My initial enquiry was met with an uncompromising response; I would be required to seek permission from the family members of the children and young people who had died or suffered serious injuries. Ethically, professionally and intellectually I understood this requirement. Nevertheless, this uncompromising response was morally distressing for several reasons. First, seeking consent from family members who may have been complicit, either overtly or covertly, in the demise of their children needed considerable deliberation. Second, the process of seeking consent may in fact cause significant distress and be potentially harmful to the parents and

other family members. Third, in my conversations with Families SA staff, I discovered that many of the family members were not aware of the Adverse Events review process and report; by making contact, I might have raised some unwelcome liability issues for Families SA – a politically challenging process that was not enticing.

The hurdles to accessing the data became increasingly complex and insurmountable. I believe this warrants a research study in itself. It was a sad realisation that children who had been harmed and had met their demise were silent and invisible during their short lives, and their silence and invisibility continued into the context of their deaths and child death review processes. The quest for data continued.

### **What is a “case”?**

Marking the life of a child who has died, recording their suffering and giving meaning to their life and death...each person can become an individual again, as someone who existed, had an identity and feeling, and was connected to others in the world. (Reder & Duncan, 2004, p. 109)

A case is the written document that provides the chronological and analytical information leading up to the death of the child who had received statutory child protection services. CSR dictates that the children’s narratives and the statutory child protection responses provided to the child and his/her family must be situated within a social and political context. Each child’s narrative is situated within a macro-context; in a particular time and a particular place. Alvesson and Sköldböck (2009) declare that “[t]he literature of critical theory and qualitative method is sparse and seldom has anything very concrete to say about methodology in the sense of interacting with empirical material” (p. 171). In light of this limitation, documentation about the macro-context was appropriated without drowning in a complex web of information (Harvey, 1990).

I am going to challenge the traditional convention of using the terminology of case because I believe that such terminology objectifies and minimises the trauma and adversity the child has experienced. Instead, I will use the term “narrative” or “life story” as alternative terms, recognising that they are not consistent with the social scientific definitions (Denzin & Lincoln, 2005). Alternative terminology, for me, is a mark of respect and recognition of the children’s humanity, which, as the accounts reveal, was denied so profoundly during their short lives.

### **Cases and contexts: documents in scope**

The collation of a set of data was purposive in nature. As stated previously, due to the difficulties in accessing primary data, secondary data sources in the form of child reviews and other relevant documentation emerged as the clearest accounts available. Australia, unlike the United Kingdom, does not have a tradition of publishing reviews of individual children who have been fatally abused (Newton et al. 2010), thus limiting the field of access. Information about the child’s narrative and adverse experiences and factors (familial and structural) that contributed to his/her demise were found in official documents published by statutory organisations that were obligated to investigate

matters of public concern, including child deaths. Each document in scope provides a detailed account of chronological events and the child protection practices provided to the child and their family, which served to either sustain or constrain the child's needs, interests and wellbeing.

Documents are written texts (Scott, 1990). They are situated products that have a specific function and are produced by people in socially arranged conditions that provide a window into particular social practices (Prior, 2003). Documents must be considered in terms of "fields, frames and networks of action" (Prior, 2003, p. 2). The importance and relevance of the written text is dependent on the way the products are assimilated into a particular field of practice or context. The genesis of a document is dependent on the interaction between the mode of production, the readers and the context. Documents operate within a specific context and are about precise types of information (Prior, 2003) for their creators and users.

Documents produced by government agencies comprise the single largest genre of documents accessible to social researchers (Scott, 1990). Researchers and social scientists generally utilise documents as a method of entering a field of study as others perceive it. This is a dynamic process because the information contained can influence and structure human agents' decision-making. Prior (2003) asserts that when documents enter a field of action, they are not simply static products but expressions of a mode of thought and action. First, they must be perceived as receptacles that are inclusive of specific information such as instructions, commands or investigations. Second, they enter the field of action in their own right; "as an ally, as a resource for further action, as an enemy to be destroyed, or suppressed" (p. 3).

The next section will provide details of the genre of documents within the scope of this study (see Figure 9). Full details of the in-scope documents for each child are provided in Appendices three to six.

### ***Children's narratives***

Due to the limited field of access, I commenced sourcing documents by accessing online websites that had jurisdictional responsibilities for child death reviews, namely the Child Death Review Committees' websites in each jurisdiction. In addition, I accessed the online websites of the Ombudsman in each jurisdiction who was responsible for investigating complaints against community services. As a practitioner who has worked predominantly in child protection, I had an excellent knowledge base in relation to identifying and accessing relevant reports. Nine documents were identified, accessed and examined as potential data sources. Selection criteria used to determine which children's narratives would be in scope (Titscher et al. 2000) included: the document examining the child's narrative and ensuing statutory child protection practices must have been published within an Australian jurisdiction; the documents required an adequate level of information to facilitate an examination and understanding of the child's lived experiences and adversity, and detailed provision of child protection practices; and the documents must be publicly

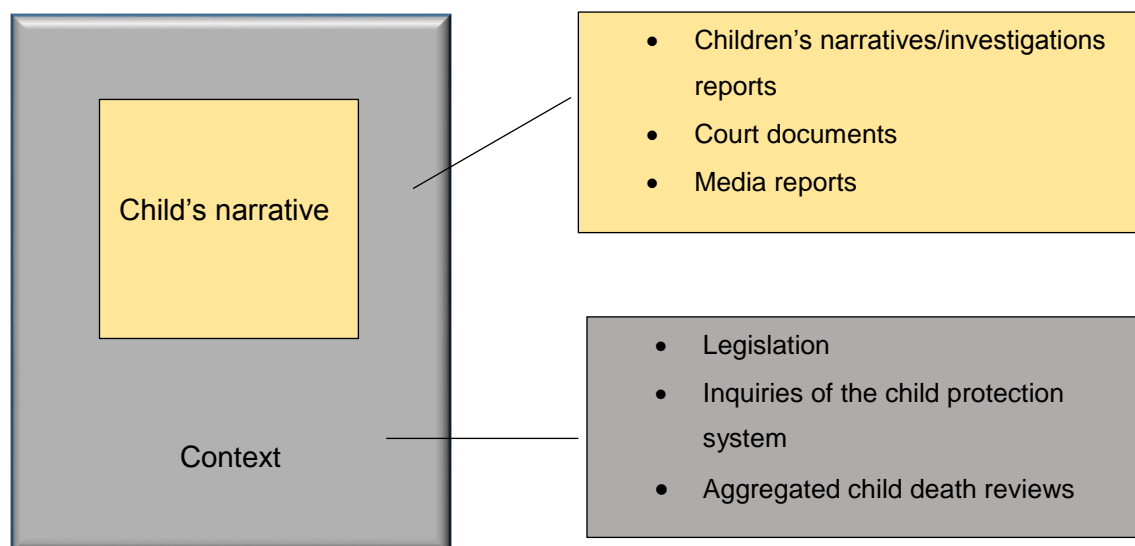
accessible. Four children's narratives were selected from nine potential documents (see Table 1). Additional publicly available and sourced documents were sought to enhance understanding of the adverse experiences of the four children whose narratives were in scope (see Figure 9).

**Table 1: Documents sourced and documents in scope (shaded cells)**

TITLE DOCUMENTS SOURCED	JURISDICTION/ORGANISATION	INCLUDED OR EXCLUDED AND WHY
The death of Ebony: the need for an effective interagency response to children at risk: A special report to Parliament under section 31 of the Ombudsman (2009)	New South Wales Ombudsman	The document was included as it met all inclusion criteria
Subject Child 1 Report: A report on the Department of the Child Safety's service delivery to Child 1 between [the relevant dates], April 2007	Commissioner for Children and Young People and child guardian, Queensland	Narrative not included. The published document was a summary of a more in-depth report. The in-depth report was not publicly accessible. The published summary report excluded information the child's experiences, adversity and family context.
Child Death Case Review Committee Report 010/2010	The Department of Communities, Child Safety Services	This report was made publicly available following a young person's suicide. This report was excluded as it was heavily censored and thus, eliminating crucial information into the lived experiences of the young person.
Child Death Case Review Committee Report 76/2009	The Department of Communities, Child Safety Services	As per previous record, the report was also excluded as it was also heavily censored.
Improving outcomes for children at risk of harm – a case study: A report arising from an investigation into the Department of Community Services and NSW Police following the death of a child (2004)  A special report to Parliament under s 31 of the Ombudsman Act 1974	New South Wales Ombudsman	The narrative was included in the study as it fulfils all inclusion criteria.
The death of Dean Shillingsworth: Critical challenges in context of reforms to the child protection system (2009)  A special report to Parliament under section 31 of the Ombudsman Act 1974	New South Wales Ombudsman	The narrative was included in the study as it fulfils all inclusion criteria



<p>An investigation into the adequacy of the actions of certain government agencies in relation the safety and wellbeing and care of the late baby Kate, who died aged 10 weeks (2003)</p>	<p>Report of the Queensland Ombudsman</p>	<p>The narrative was included. The report is comprehensive and consistent with all inclusion criteria</p>
<p>An investigation into the adequacy of the actions of certain government agencies in relation to service provision to a subject child (2011)</p>	<p>Commission for children and young people and child guardian</p>	<p>This narrative was not included. The summary report did not include any information about the child, their experiences or details about family context. The author states:           “I have not made the full report concerning this matter publically available. In this summary report I have also edited details regarding the subject child’s period in the child safety system. This is to protect the confidentiality of the subject child pursuant to section 189 of the <i>Child Protection Act 1999</i> as well as to protect the privacy of the subject child’s family and officers from the Department of Communities (Child Safety Services) and Queensland Health who had contact with the subject child and family” (p. 2)</p>
<p>An investigation into the adequacy of the actions of certain government agencies in relation to the safety of the late Brooke Brennan, aged three (2002)</p>	<p>Report of the Queensland Ombudsman</p>	<p>Narrative not included.           Although the report was comprehensive in nature the investigation centred on one event of a physical assault and Brooke Brennan died shortly after.           The report was not included in the study because it did not provide any historical information about the child or his family which prohibited an examination and understanding of the child’s experiences.</p>



**Figure 9: Documents in scope**

### **Investigation reports/children's narratives**

The children's narratives central to this study are investigations/child death reviews of the events and service provision leading up to the children's death. Three of the four narratives were conducted by the New South Wales Ombudsman (2004; 2009). The other was conducted by the Queensland Ombudsman (2003). Both Ombudsmen had the statutory authority to conduct investigations to determine service agency responses. The purpose of the investigations was to make recommendations for improvement of service provision (Queensland Ombudsman, 2003). The Queensland Ombudsman (2003) stated that he was "unable to make orders or judgements" but able to make "recommendations to address any maladministration that I identify" (p. 4). The reviews conducted by the New South Wales Ombudsman were instigated by his office because significant concerns were held about the responses provided by statutory child protection and other agencies. The review conducted by the Queensland Ombudsman was in response to a complaint that "a public agency's actions or failures to act have contributed directly or indirectly to a person's death" (2003, p. iv).

The investigations' methodologies differed slightly across the four reports. Dean's and Jack's narratives were based predominantly on the review of records, whereas Ebony's narrative additionally included interviews with some DoCS staff who were involved with the family. The investigations' preliminary findings were forwarded to the relevant agencies for clarification, feedback and responses, which were included in the reports.

The investigation of Baby Kate's circumstances conducted by the Queensland Ombudsman was more in-depth and transparent than the investigations conducted by the New South Wales Ombudsman. In relation to collating information from DOF, the review process included examination of the relevant files from DOF, interviewing the person lodging the complaint, and interviewing DOF

workers, supervisors and managers in all relevant offices. The final investigation report was inclusive of chronological information, documents submitted by DOF (for example, Child Death Review policies and procedures, and responses from workers), and rationales for decision-making processes, opinions, conclusions and recommendations.

### **Supreme Court judgements**

The children's narratives provided a glimpse of their world and adverse experiences. I sourced additional publicly available official documents as supplementary data to facilitate a comprehensive analysis. The parents of Dean and Ebony were charged and convicted for the children's deaths. Dean's mother was convicted of murder. Ebony's mother was convicted of murder and her father convicted of manslaughter (New South Wales Ombudsman, 2009).

In researching the children's cases via media reports and the official investigation, I became aware of the relevant criminal proceedings:

- Dean's mother, Rachel Pfitzner, pled guilty to murder. Media reports published her name. Knowing her details, I accessed the online database AustLII and searched her name. I was able to access and download the New South Wales Supreme Court Judgement of R v Pfitzner (2009) by R A Hulme J. The AustLII online database is a free-access resource for Australian legal information. It is one of the largest sources of legal materials on the internet (<http://www.austlii.edu.au/austlii/>).
- Ebony's parents were charged and convicted; her mother of murder and her father of manslaughter. Their details were not readily available. In my research, I accessed the LIAC Library online website (<http://guides.sl.nsw.gov.au/liac-crime-library>), which is sponsored by the State Library of New South Wales. The LIAC Crime Library is a "collection of well-known criminal cases that happened between the early 1980s and 2014... Each case includes links to the court decision, how to find media reports about the crime, and any books or other resources that discuss the case". I was able to access the New South Wales Supreme Court Judgement R v BW & SW (2009) via this online resource.

The New South Wales Supreme Court judgements summarise key aspects of the criminal proceedings and provide further information and insight about the experiences of Dean and Ebony. The reports are legalistic in nature. They seek to determine culpability of the parents and factors contributing to the murder of their children, including psychological assessments and information from numerous witnesses. The judgements provide an alternative perspective.

### **Other relevant data sources**

As a researcher, I was intent on utilising official documents as secondary data sources as a way of ensuring validity and reliability of information. In researching each child's narratives, I scanned over media reports and deemed that in the case of the narratives of Ebony, Jack and Baby Kate, they did

not offer any additional information to what was already recounted in the investigative reports/child death reviews. Therefore, I did not include any of this material in the dataset.

This was not the case in Dean's situation. The investigative report did not include the fact that Dean was of Aboriginal descent. I referred to other sources to confirm this important intelligence.

### **Contexts**

As stated previously, CSR demands that the children's narratives, inclusive of statutory child protection responses, must be situated within a social and political context. The four children central to this study were in receipt of statutory child protection services in the jurisdictions of Queensland and New South Wales between the years 2000–2008, and three prompted reform of the child protection systems. Relevant documents were sourced and accessed to understand and analyse the context within which the children were provided services:

- Each jurisdiction has an established legislative framework for child safety and protection. Legislation is one element of the infrastructure of an integrated child protection system that demonstrates compliance with the requirements of the United Nations Convention on the Rights of the Child (Svevo-Cianci et al. 2010). Legislative frameworks and documented principles provide the legitimacy for state intrusion into the lives of children and families (Dingwall et al. 2014), and specify when a child is deemed to be in need of protection and the type of intervention required to ensure their safety and wellbeing (Cummins et al. 2012; Wood, 2008).
- Each Australian jurisdiction has established Child Death Review Teams (CDRTs) or committees (Newton et al. 2010) that produce and publish annual aggregated reports of child deaths (Lamont, 2010). There are variations across jurisdictions, however the intent of the aggregated child death reviews is to serve as mechanisms for learning and to enhance the functioning of child protection service systems (Victorian Child Death Review Committee, 2012). The aggregated reports provide additional information about the social and political context of child protection within a particular jurisdiction at a particular time.
- Since 2000, every jurisdiction in Australia has conducted at least one review of child protection systems. These inquiries are in-depth assessments of the child protection system and delineate a reform agenda to ultimately reduce the incidence and negative impact of child neglect and abuse (Cummins et al. 2012). Each report provides a comprehensive overview of the social, political and economic factors that impact the delivery of child protection services and the protection of vulnerable children within a particular jurisdiction.

### **Ethics clearance**

The case-based data used for this study are secondary sources in the form of child death inquiries and other relevant documentation as specified in the previous sections. All the documents in scope are in the public domain and readily available. The use of existing data or records that are in the public domain and contain non-identifiable information about human beings is considered *negligible*

*risk* research. Negligible risk research, as defined by the National Health and Research Medical Council (NH&MRC), is “Research in which there is no foreseeable risk of harm or discomfort, any foreseeable risk is of inconvenience only” (NH&MRC, 2007, p. 89). On this basis, the research study was exempt from ethical review.

As stated by Sidebotham (2010):

Serious Case Reviews provide a valuable tool for learning and for improving practice and policy in relation to safeguarding children. Their value comes, at least in part, from the opportunity they provide to critically examine safeguarding practice within the context of an understanding of the circumstances of a child’s world and his or her suffering. (p. 47)

Even though the research study was exempt from ethical review there was significant reflection about other ethical issues associated with the study. The sensitive public documents focused on service delivery to deceased children however there were other individuals including professionals, parents and siblings, involved in the lives of the deceased children. People involved in the lives of the children were not identifiable but may be troubled by ensuing publications even though the narratives have been in the public domain for considerable time. Haskins (1998) grappled with a similar issue in using public documents in a postdoctoral historical thesis focusing on “relationships between Aboriginal and white women under the NSW Aborigines Protection Board “apprenticeship” policy” (p. 15). The ethical issue was somewhat resolved as Haskins was able to connect with descendants of people involved in the historical narratives. This process was not possible in the context of this study.

Consistent with the assertions of Brandon et al. (2009) and Reder, Duncan and Gray (1993), the focus of the study is fundamentally to give voice to the deceased children and make visible their experiences. This focus aligns with the principles that underpin the *National Statement on Ethical Conduct in Human Research* (NH&MRC, 2007). The research has *merit and integrity* in that there are “gains in knowledge, insight and understanding” (2007, p. 14) about maltreated children and in working with children and families in statutory child protection context. On this basis, there are potential benefits. The study will generate knowledge about children who experience maltreatment, and there are gains for the professional community within statutory child protection and associated professions as the research may inform future social work practice and education. Risks are negligible as there are no additional allegations surrounding the deaths of the children. The research is *just* in that there is no unfair burden or exploitation of participants. But, most importantly the study concedes the *respect and dignity* of the deceased children who are at the heart of the study. Jack, Dean, Kate and Ebony lived and died in tragic circumstances and their suffering and significant adversity unacknowledged. Their humanity was denied by people close to them and by a system designed to protect them.

## **Reliability and validity**

Reliability and validity have been central requirements in positivist research, however these concepts have been significantly challenged in the post positivist paradigm (Keddell, 2013; Lather, 1992). Prior (2003) asserts that the matching concepts of reliability and validity are criteria that determine “good and bad forms of evidence” (p. 149). Reliability infers that the findings are trustworthy and validity refers to whether the research findings are grounded in valid evidence (Prior, 2003).

Issues affirming trustworthiness, rigour and quality in qualitative research with documents require particular considerations (Golafshani, 2003; Prior, 2003). Scott (1990) proposes that issues of authenticity, credibility, representativeness and meaning go to the heart of validity and reliability. As discussed earlier in this chapter, two forms of documents were used to inform the research study: the narratives for each child that were published by recognised statutory authorities (New South Wales Ombudsman, 2004, 2009a, 2009b; Queensland Ombudsman, 2003) and tabled in Parliament, including official letters in relation to authorship, process and grounds for the investigation; and in the cases of Dean and Ebony where the parents, Rachel Pfitzner (New South Wales Supreme Court, 2009b) and SW/BW (New South Wales Supreme Court, 2009a) respectively were charged and convicted of offences relating to the children’s death, additional documents were utilised in the form of judgements published by the New South Wales Supreme Court.

The official reports produced by the Ombudsmen in the jurisdictions of New South Wales and Queensland were consistent with their statutory responsibilities – it was in the public interest to conduct an investigation into the adequacy of actions taken by child protection and other agencies in responding to the concerns about the safety and welfare of Baby Kate, Dean, Ebony and Jack (New South Wales Ombudsman, 2004, 2009a, 2009b; Queensland Ombudsman, 2003). All of the reports focused predominantly on: chronology of events; cause of the children’s deaths; adherence to legislation, policies and procedures; and making recommendations in relation to findings. The reports’ authors had the privilege of accessing primary documents such as case files, child death reviews produced by DOF and DoCS, and the ability to interview social workers and other professionals involved in providing services to the children.

## **Strengths and limitations**

This study has a number of strengths and limitations that are briefly acknowledged here and further analysed in the concluding chapter. Here I focus particularly on methodological strengths and weaknesses.

### ***Strengths***

The use of secondary documents as data sources is an unobtrusive qualitative research method (Kellehear, 1993). Unobtrusive methods are pertinent in the context of child protection, considering that children and their families who receive services have experienced trauma, suffering and

oppression. Child death reviews, as narratives of children who have received child protection services, are valuable sources of information largely untapped in Australia. The case study methodology is underutilised despite its many benefits. In this study's context, it allowed me to become intimate with each child's narrative and facilitated an in-depth analysis of their lived experiences as well as child protection service responses and the context within which they were situated (Flyvbjerg, 2001).

The CSR process proved to be quite challenging but rewarding. The critical-dialectical process – the toing and froing between the concrete realities of the children's experiences and the broader child protection processes and contexts – enhanced an in-depth understanding not only of the child's world, but also of the factors that impact child protection practices. This process grounded the “concrete, practical and context dependent knowledge” (Flyvbjerg, 2001, p. 70), positioning the child at the centre of the analysis consistent with generation of knowledge in professional social work.

### ***Limitations***

There are significant limitations associated with the use of secondary documents as the data source. Documents are products made by people in socially organised situations (Prior, 2003). Others used primary data sources (child records, interviews) to produce the narratives that inform this research and had opportunities to further their understanding by interrogating those sources. The analysis of the child's lived experiences and child protection practice presented in this study is contingent on others' interpretation, which may impact issues of credibility.

A further limitation is associated with the function of the documents, which was to assess the adequacy of service provision to the children prior to their deaths and to contribute towards a review of the New South Wales and Queensland child protection systems (Crime and Misconduct Commission, 2004; Wood, 2008). The narratives identified whether departments, organisations and workers provided child protection services to the children and their families according to legislative, policy and procedural specifications. Thus, the function was purely investigative in nature, omitting certain information that may be valuable from a social work perspective.

### **Conclusion**

This chapter has outlined the critical frames, critical social research processes and interpretive conceptual framework that grounds this study. The methodology employed challenges the dynamics that contribute and sustain childism. Anti-childist practice challenges the forces that contribute to the oppression and marginalisation of children; it is a unifying concept. This study identifies the importance of understanding the lived experiences of children who have been maltreated and the dynamics that contribute to their oppression and dehumanisation. In doing this, it provides a basis for contributing to an agenda for transformation; an agenda that is morally just and infused with a child-inclusive approach cognisant of developmental needs, rights and relationships.

# CHAPTER 6

## ENGAGING WITH THE NARRATIVES OF THE DECEASED CHILDREN

### Introduction

Reading the narratives of Dean, Jack, Ebony, and Baby Kate who are central to this research study was an emotional and challenging task. Although not representative of children who become subjects of child protection notifications (Brandon et al. 2009), these narratives provide a valuable glimpse into the lives of children who have endured extreme adversity, and enhance our insight into the operation of statutory child protection services and how they respond to children's protective needs (Brandon, 2009; Connolly & Doolan, 2007; Reder & Duncan, 2004). As the narratives unfold, it becomes evident that all the children were born into families characterised by violence, chaos, and a lack of security and nurturing. Their families were not strangers to adversity and disadvantage. These children are not strangers to many of us, having attracted national attention within Australia and causing moral panic with the public questioning the child protection system's effectiveness. Sensationalist coverage of the fatal abuse of children results in apportioning blame, masking the recognition of children and their suffering within our society (Fassin, 2012). The intent here is the opposite. This study aims to respectfully recognise and understand the suffering experienced by the children and the ensuing child protection responses.

In the interests of easier reading, I will now provide a brief reminder of the data collection process then present summaries of the four narratives before discussing their analysis in Chapters 7 and 8.

The narrative or case study was the central document for each child in the form of publicly available child death reviews or investigations conducted by the Ombudsmen in New South Wales and Queensland. Additional published documents were sourced, particularly for Ebony and Dean, to provide further insight into the children's worlds and experiences of adversity. Supplementary sources were restricted to court documents and media articles. The deaths of Ebony and Dean resulted in the parents being charged and convicted of criminal offences. Court documents in the form of summary judgements were sourced and collected. The documents were in the public domain and contained information that enhanced appreciation of the child's experiences within the context of family relationships. Media articles, as documentary sources, were utilised only to augment understanding or to clarify gaps in information about the child or the child's family. For example, Dean Shillingsworth's father Paul Shillingsworth is an Aboriginal man, yet Dean's cultural heritage was neither discussed nor identified in his narrative produced by the New South Wales Ombudsman (2009). This information was included only in some media articles. Culture is an important consideration and practices with Aboriginal children and their families within the context of child protection have had a profound effect on communities. It is a factor that should not be silenced or



ignored (Lonne et al. 2009), even if politically sensitive. Details of data sources are available in Appendices three to six.

This chapter has two parts. The first gives an overview of the CSR data analysis. The second provides a precis of the children's narratives.

## **CSR data analysis**

Engaging with and interpreting the data required multiple readings. Initially, all the information was read vertically. The data were examined systematically and organised chronologically until there was a sense of intimacy with each child's narrative and the child protection responses. The narratives were read several times, which allowed for extraction of details and nuances within the text. It also facilitated identification of silences within the narratives. Reading each of the accounts multiple times enabled the complex circumstances to emerge gradually in a respectful and systematic manner (Brandon et al. 2009). In the first instance, the child's experiences of harm and adversity were recorded. Next, information outlining the child protection responses as they relate specifically to the child's narrative were organised chronologically. Finally, information exploring the child protection context was extracted.

The information was copied, segmented and arranged according to the *Emergent Model of Morally Just Practice* (EMMJP) analysis domains. A grid, or "Case Study Framework Template" (Appendix two), was used to organise and assimilate the growing pile of information. The following information from the pile was recorded: summary information about the child; documents in scope; chronological information regarding events and statutory child protection responses, or responses by other agencies; information consistent with the analysis domains, including ontology of the child (development; capabilities), microsystem (parental system), exosystem (structural issues and protective factors) and macrosystem (jurisdictional child protection context). The work conducted by Brandon, et al. (2008; 2009; 2012; 2013) informed development of the case study template.

The data were uploaded into NVivo 10 data analysis software. This process facilitated further analysis and identification of recurrent ideas and structural relations that impacted the lives of the four maltreated children. Data were then read horizontally, which allowed for identification of recurrent themes and identification of interrelationships between them. When using this method, as themes emerge the critical researcher must be alert to irregularities and ideological mediations (myths, dominant conceptualisations guiding actions) that arise within the data. The revelations that transpire provide a trigger to re-examine the information "and the dialectical relationships between social structures and detailed observations that are emerging from the analysis" (Harvey, 1990, p. 14). Themes are then reconstructed, and data are reorganised and reread horizontally until the researcher reaches beneath the surface and extracts the relationships or dynamics that inform the

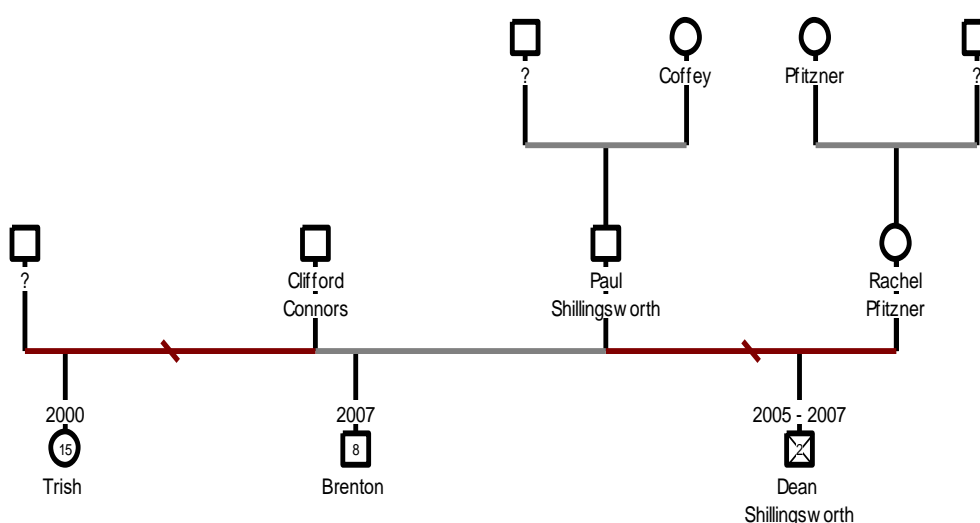
observed phenomena. The empirical data is used to further explicate the connections informing ongoing deconstructive stages:

The nature and manifestations of ideology are continually revealed. A new and radically different conceptualization of the social processes and structural relations emerges. (Harvey, 1990, p. 31)

Thus, the process of analysis and critique contributing to an evolving reconstruction. facilitates the deconstruction and reconstruction of the research, as was the case in this study. I now turn attention to the children who are central to this study.

## The children

### Dean



### **People involved and relationships**

- Dean Shillingsworth (dob: 25/02/2005 and deceased: 17/10/2007)
- Siblings: Trish and Brenton (psedonyms used)
- Rachel Pfitzner – the mother
- Paul Shillingsworth – the father
- Ms Coffey – Paternal grandmother
- Clifford Connors – Rachel's partner and Braydon's father

Dean was two years and seven months of age when he was found deceased in a public reserve in a Sydney suburb. During his life time, Dean was the subject of ten child protection notifications. The investigation conducted by the New South Wales Ombudsman (2009a) ascertained that the Department of Community Services had received thirty-four reports involving Dean and his siblings. Twenty-four of the notifications had been assessed as requiring further assessment. Fifteen of those reports had assessed that Dean and his siblings were at medium or high risk of harm. Despite the

assessments and prior to Dean's death, a comprehensive assessment of Dean's circumstances had never been completed (New South Wales Ombudsman, 2009a).

Dean was born of parents Rachel and Paul, who engaged in criminal activity. Paul was violent towards Rachel, they both consumed excessive amounts of alcohol and lived a transient lifestyle. At the age of fifteen months, following the incarceration of both of his parents, Dean was cared for by his paternal grandmother, Ms Coffey. Dean spent over a year with his grandmother while Rachel was incarcerated. There is not much information about this period of his life but what little there is indicates that Ms Coffey was attentive and appeared attuned to Dean's needs, interests and wellbeing. It may have been a period of Dean's life where he felt safe and his needs adequately attended; he was visible and heard, with his moral status recognised. This arrangement was in place for over a year and during this time Dean was described as happy and contented (New South Wales Ombudsman, 2009a; R v Pfitzner, 2009).

On her release from prison, Rachel made plans for a better future for her and her children. There was a sense of optimism and hope. Rachel wanted to resume care of Dean when she was released from prison despite family court orders granting custody to Ms Coffey. Contact arrangements had been made for Dean and Rachel to reconnect. After a contact visit, Rachel failed to return Dean to his grandmother because she "felt emotionally attached to him" (R v Pfitzner, 2009) and wanted to care for him. He resided with Rachel and the situation quickly deteriorated. Dean became a constant reminder of Paul and the abuse Rachel had suffered. She became increasingly resentful of Dean and physically mistreated him. He was noted to have bruises over his face, and scratches and bruises on his arms. Rachel failed to provide Dean with basic necessities including food, supervision, appropriate discipline and love. Rachel also failed to attend to his hygiene, expecting Dean to attend to this himself. He was often locked outside the house as a form of harsh discipline (New South Wales Ombudsman, 2009a; R v Pfitzner, 2009).

Prior to Rachel and Paul's incarceration, Dean's life was chaotic and frightening as a result of constant changes in accommodation and exposure to domestic violence. Dean would have experienced feelings of fear and insecurity (Howe, 2005). When Dean returned to the care of Rachel following her release, he would have often felt distressed, confused, unsafe and hungry. Dean became a scapegoat and focus of Rachel's intense hatred and resentment that should have been directed more appropriately at Paul. Rachel was not attuned to Dean's wellbeing. It could be argued that when Dean became a representation of Paul and the serious abuse Rachel had experienced from him, she loathed, detested and rejected Dean to the point where he was no longer a child in her eyes. He was denied his childhood and humanity.

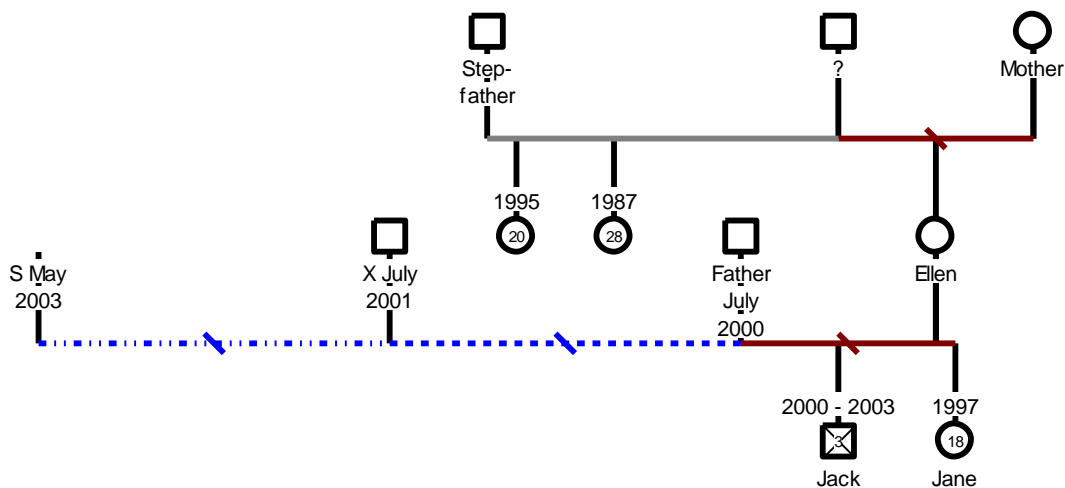
As highlighted earlier, an important element of Dean's narrative that was not made visible by the New South Wales Ombudsman (2009a) was his cultural heritage. Dean's father Paul was described

as a talented Aboriginal dancer (Davies, 2009). Furthermore, in giving evidence to the New South Wales Supreme Court, Mr Connors (Rachel’s partner) stated that:

The offender [Rachel] was not relating well with him and was mistreating him [Dean]. He said that [she treated] T and B well but not Dean who came to be terrified of her. He inquired of her a few times what the problem was. He even asked whether Dean was “too black” for her. (R v Pfitzner, 2009, para. 24)

It is not clear whether Rachel was an Aboriginal woman. This issue was difficult to pursue due to a lack of information but it is important to recognise. Aboriginal people have experienced oppression and victimisation from welfare agencies. Consequently, there is a significant lack of trust, which may have prevented people close to Rachel and Dean from seeking assistance.

## Jack



### **People involved and relationships**

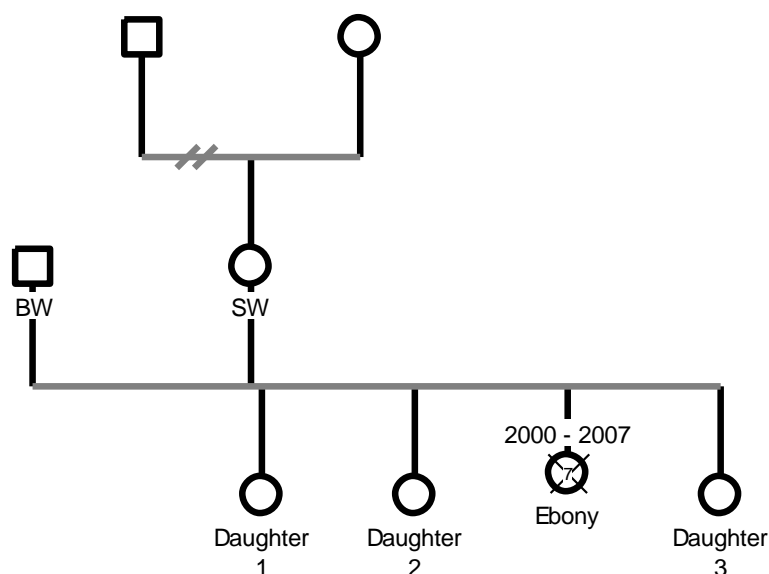
- Jack (pseudonym): the child (dob: 01/01/2000 and deceased: 14/09/2003)
- Jane (pseudonym): sibling (dob: 01/01/1997)
- Ellen (pseudonym): the mother
- Father
- Maternal grandmother
- Maternal step-grandfather
- Flatmates
- Male person unclear of relationship with Ellen known as “S” – was in a relationship with the mother in May 2003
- X mother’s boyfriend in July 2001
- B and C – who cared for Jack and Jane – no existing relationship to the mother or the children

Jack was a three-year-old boy who died whilst in the care of two men who were not well known to either Jack or his mother Ellen. Jack had been sexually abused prior to his death. His sister Jane had also been sexually abused. One of the males was subsequently convicted of sexually abusing Jane and the manslaughter of Jack. Prior to Jack's death, Jack and Jane had been the subjects of a number of child protection notifications alleging physical abuse and neglect, sexual abuse and emotional abuse due to witnessing domestic violence. Notifications also included information that Jack was developmentally delayed (New South Wales Ombudsman, 2004).

Jack was born into an environment that was often chaotic and with little structure or routine, which would have caused Jack to feel insecure. Jack's basic needs were poorly met. Information indicated that he lived in situations that were often found to be unhygienic and unsafe. There were episodes where he was left on his own with his young sister or left in the care of people who abused and neglected him. Allegations in child protection notifications articulated that Jack was not provided with adequate food, his living arrangements were transient, he was described as unkempt and dishevelled, and not provided with the nurturing and warmth essential for optimal development (Howe, 2005). Jack also experienced multiple forms of violence, including domestic violence, physical abuse, chronic neglect and sexual abuse (New South Wales Ombudsman, 2004).

The narrative of Jack's life indicates that he was denied a safe, protective and nurturing environment. His mother Ellen was emotionally detached from him, exposing him to chronic neglect and cumulative harm. His mother's inability to respond to his needs resulted in her handing him and his sister over to virtual strangers without any consideration for his needs, interests and wellbeing (New South Wales Ombudsman, 2004).

## Ebony



### ***People involved and relationships***

- Ebony – the child (dob: 01/03/2000 and deceased: 03/11/2007)
- Siblings – two older than Ebony and one child younger. The younger child was removed from the care of her parents and placed in long-term foster care
- SW – the mother
- BW – the father

Ebony was the third of four children. Ebony was seven years of age when she died of chronic starvation and extreme neglect. Her family context was characterised by significant adversity. Due to parental mental health and substance abuse issues, parents were dependent on sickness benefits, estranged from their families and were socially isolated. Shortly after her birth, Ebony was assessed as not thriving. Health assessments identified that she had special needs due to global developmental delay and was also later diagnosed as having autism (New South Wales Ombudsman, 2009b). She was not seen by any professionals for the last sixteen to eighteen months of her life.

Between 2000 and 2003, Ebony and her siblings were the subjects of notifications that were followed by intensive involvement of the Department of Community Services. During this time, Ebony's younger sibling was placed in alternative care. Between 2005 and until her death in 2007, Ebony continued to be the subject of child protection notifications. Many of the notifications were not assessed despite the chronicity of issues and previous involvement with the child protection agency (New South Wales Ombudsman, 2009b).

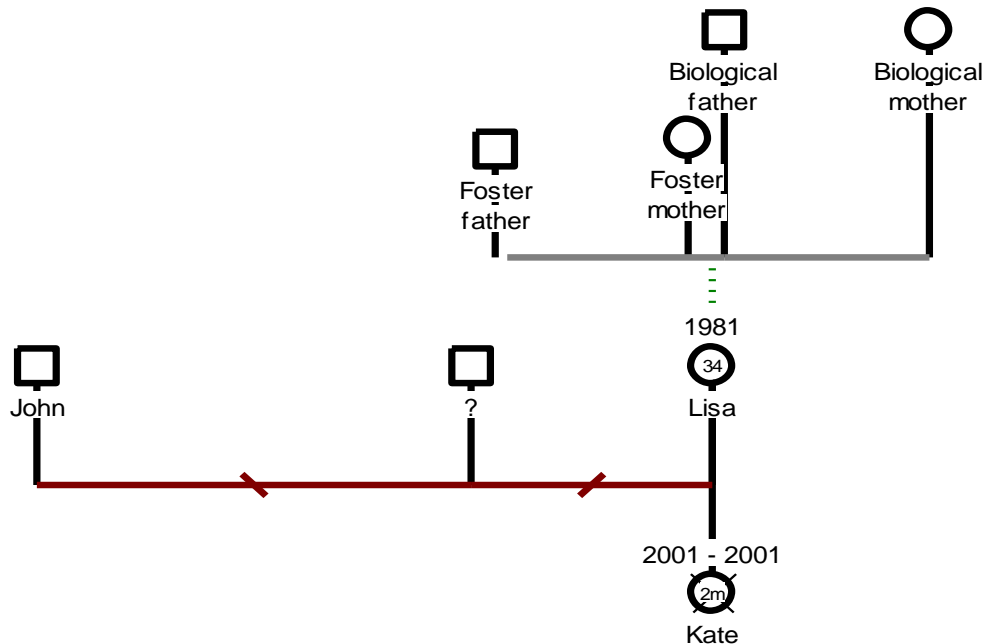
Ebony lived in a world where her physical and emotional needs were unmet by her parents and she spent considerable amounts of time locked away. She was subjected to all types of neglect and was confined in an inhumane manner, depriving her of contact and interaction with others. Ebony would have become accustomed to existing in a world devoid of human contact. She would have experienced feelings of helplessness and hopelessness, and endured immense physical suffering. Ebony lived in extreme physical and emotional isolation as a result of her imprisonment (New South Wales Ombudsman, 2009b).

This narrative clearly indicates that Ebony's parents no longer cared for her, and by removing her from their sight it is likely that over time she had ceased to exist (Reder et al. 1993).

Ebony was found deceased in her home when she was seven years of age and weighed only 9 kg. Her parents were charged with, and convicted of, her death. Ebony was found locked in a room where there were faeces, urine and rubbish strewn. It became known that for the last eighteen months of her life, Ebony was locked in her room and not seen by anyone outside the family home. It was reported to the Supreme Court that:

The state of her clothing and her hair at the time of her death was particularly pertinent. The hair was long, matted and strewn with filth including faecal matter. The clothing was heavily stained, possibly from a combination of vomit and faecal stains and other bodily fluids over a period of time. Whilst this was at the time of her death, there is no reason to think that it was not an enduring state of affairs. (R v W & SW, 2009, S157)

## Baby Kate



### ***People involved and relationships***

- Kate – (dob: 1<sup>st</sup> July 2001) (Deceased: 11<sup>th</sup> September, 2001)
- Lisa – Mother born in 1981
- John – Lisa’s partner (denies paternity)
- Lisa’s former foster carer

Kate was ten weeks of age when she was found deceased in her cot. Kate had been the subject of several child protection notifications prior to and following her birth. Her mother, Lisa, had been raised in alternative care since she was an infant. Lisa had been assessed as experiencing intellectual and physical disabilities. Lisa’s partner, who denied paternity, was initially reluctantly supportive but left the relationship two days after Kate’s hospital discharge, leaving Lisa to parent on her own (Queensland Ombudsman, 2003).

Kate was born into an environment where her mother (mother’s partner denied paternity) experienced domestic violence, was socially isolated, misused alcohol and was intellectually challenged. Kate was perceived by her mother as a source of frustration and annoyance. Kate’s mother, Lisa, was not attuned to Kate’s needs, leaving Kate to experience a sense of insecurity and fear. There were times when Kate experienced hunger, anxiety and inability to regulate her

responses due to experiences of poor parental responsiveness and lack of attention. Kate was ten weeks of age when she was found deceased in her cot (Queensland Ombudsman, 2003).

## **Conclusion**

This chapter has provided an overview of the CSR data analysis process and summaries of the narratives of Dean, Jack, Ebony and Baby Kate who are central to this research study. It shows that the children endured extreme adversity and oppression. Their suffering went unheard and remained invisible. In-depth analysis of the children's lived experiences within the context of their families and statutory child protection will emerge in Chapters 7 and 8.



# CHAPTER 7

## CHILDISM NUMBER 1: DIMINISHED MORAL WORTH IN THE CONTEXT OF RELATIONSHIPS

Every child should be raised on a banquet of love, but far too many children are incubated in terror.  
(Gordon, 2003, p. 237)

### Introduction

This is the first of two chapters presenting the analysis of the children's narratives. The focus of this chapter is to uncover the lived experiences and moral status of Dean, Jack, Ebony and Baby Kate within the context of their family relationships. The analysis integrates findings, relevant literature and theories, employing the reasoning processes that drive the CSR. The premise of morally just practice is that child protection workers are obliged to have an active and in-depth appreciation of children's unique circumstances, which grounds intervention so that children are safe and protected. The narratives that unfold will decentre and disrupt our moral sensitivities. The children were not born into responsive and responsible families. They were members of families who failed to care, cherish or educate them, and provide them with the most basic of needs (Young-Bruehl, 2012), leading them to experience oppression and dehumanisation. It is within this context that Dean, Jack, Ebony and Baby Kate were situated.

The oppression experienced by the children central to this study and many other abused and neglected children is the culmination of complex transactions. As the analysis unfolds, it becomes evident that the harm and neglect were committed by parents who had not received care themselves (Noddings, 2002). "Acts of depravity dance a strange and everlasting duet with inherited deprivations" (Wall, 2010, p. 48). The dehumanisation and prejudice towards children is inextricably linked to the habitat, history and trauma experienced by parents:

Children "catch" projections that parents have used to rid themselves of their own inner pain and conflict, and children suffer within the systems of discrimination that adults create to keep their projections lodged within their victims out of sight, out of mind. (Young-Bruehl, 2012, p. 104)

Wall (2010) concurs and further asserts that the real tragedy is that the cycle of depravity and deprivations is activated before anyone realises. Consequently, "no one ever plumbs the full depths of the damage" (p. 48).

This chapter is divided into two parts. Part A provides an in-depth analysis of the children's lived experiences, emphasising the children's development, rights and wellbeing. Part B focuses on specific themes emerging from analysis of the transactions between parental histories, caregiving environments, and the meaning of the child (what the child means to the parents). The themes emanate as a result of the vertical and horizontal readings of the narratives viewed through the lens

of the *Ecological-Transaction Perspective* (ETP) (Finn & Jacobson 2003a, 2003b) and the *Capabilities Approach* (CA) (Nussbaum, 2011). I have purposely deviated from a clinical approach and not aligned the discussion to a typology of abuse but extrapolated the experiences of the adverse, dehumanising and tragic circumstances of the children's lives from the horizontal readings of the narratives, thus illuminating the childist dynamics in the families. The themes that emerge are consistent with some strategies of childism identified by Young-Bruehl (2012) in which there is a failure to respond to the children's otherness and humanity (Wall, 2010).

## **Part A: Understanding the children's lived experiences**

This part examines the children's lived experiences utilising a union of the ETP and the CA at the ontological level as discussed in Chapters 2 and 5. It is an analysis inclusive of development, rights and wellbeing, utilising the capability domains identified by Biggeri and Karkara (2014), and Biggeri et al. (2006).

Before progressing with my analysis, I would like to illuminate a particular observation. I spent countless hours analysing the narratives of Dean, Jack, Ebony and Baby Kate, yet never felt I knew them. In reading the files, I concur with Buckley (2003) and Parton, et al. (1997) that it is difficult to attain a clear picture of the children who were central to the narratives. There was a significant lack of information in the narratives about their appearance, how they interacted with their family members or workers, and whether they showed any emotion or other responses in the presence of others. In engaging with their narratives, I came to know them as children who were the source of reports which triggered child protection responses. An explanation for this intuitive response may be related to the role and function of the reports that include the children's narratives. These reports were produced specifically to make a determination as to whether agencies had complied with their statutory obligations and procedural guidelines. The children's invisibility and silence is conspicuous and consistent with Brandon et al.'s (2009) findings, particularly in relation to SCRs and overview reports:

Reports included almost nothing about the child, only about the systems which failed to protect the child, rendering the young people as invisible in the review as they had been to the agencies at the time. (p. 41)

This point will be explored further in the next chapter.

### **Development, rights and wellbeing**

Child wellbeing is inextricably linked with the realisation of children's rights and flourishing developmentally. Child protection agencies and workers must have the ability to make professional judgements about, and be capable of enhancing child wellbeing (Jones et al. 2015). Dean, Jack, Ebony and Baby Kate experienced significant violation of their rights. Consequently, their wellbeing and development were compromised:

Children just as much as adults contribute to humanity's remarkable moral diversity. Children are not just underdeveloped adults or adults-in-the-making but full participants in the broad sea of human moral experience. (Wall, 2010, p. 29)

Understanding child development affords clarity about the elements that constitute safety and wellbeing, and what enhances and maintains wellbeing (Brandon et al. 2012). In a biennial study of SCRs, Brandon et al. (2012) identified that a sample of case studies provided powerful illustrations that workers had extremely limited knowledge in relation to child development. Brandon et al. (2012) advocate for social workers to have a professional responsibility to maintain a "good working knowledge of the key developmental processes for the child from infancy through adolescence and maturity" (p. 106), or to consult with other professionals to enhance their understanding. A good working knowledge of child development is a vital component in the assessment and planning of interventions. It is a child's right to be healthy and be provided with opportunities for development (Brandon et al. 2012).

Developmentally speaking, childhood is a distinctive stage within the human lifespan, highlighting its uniqueness. A developmental perspective enables a perception of humanity that unfolds and flourishes (Daniel et al. 2011; Wall, 2010). The specific approach of the developmental perspective is that it delineates concrete processes over time (Wall, 2010) and is a basic and applied science (Aldgate, 2006). Nonetheless, Wall (2010) offers caution in that the developmental perspective can be dehumanising for children because their humanity, and more particularly their childhood, "is stripped of genuine diversity" (p. 29). He argues that while the developmental perspective is valuable, it should be used as a guide without obscuring each child's uniqueness and otherness.

Jack, Dean, Ebony and Baby Kate were developmentally vulnerable due to their age and special needs. According to Young-Bruehl (2012), children are vulnerable as a target group of prejudice because they are all "born dependent and relatively helpless" (p. 19). Wall (2010) explores the concept of vulnerability in relation to children. Literally translated, it means susceptibility to wound or harm, although other traditional interpretations include: being overcome by one's uncontrolled instinctive behaviour; one's traits and characteristics squashed by a corrupted society; enduring captivity by undeveloped or uneducated ignorance; and the exclusion from social power where they have no voice, not consulted and sometimes undeserving victims of oppression. These views are consistent with a deficit approach (Potter & Brotherton, 2013). A deeper meaning proposed by Wall (2010) is that children are vulnerable because of their "openness and relationality to the world" (p. 39). When children are born into families, they are all in (Brown, 2013), open to being shaped by them and therefore susceptible to childist practices and behaviours.

The development, rights and wellbeing of the children central to this study are examined according to the capability domains identified by Biggeri and Karkara (2014). In particular, there is a focus on the capabilities that align with rights of the best interests of the child and their right to be safe and

protected from violence. The capabilities published by Biggeri and colleagues were developed in consultation with children during the first children's world congress in 2004 (Biggeri et al. 2006).

As highlighted in Chapter 2, children's capabilities evolve over time. Some are more relevant for older children than younger children. Biggeri et al. (2006) propose that different age groups are likely to attach differing importance to some capabilities. For the purposes of this analysis, I utilise the capabilities aligned with protective rights, as discussed in Chapter 2. These include: life and physical health; love and care; mental wellbeing; bodily integrity and safety; participation; and respect. In applying these capabilities as an interpretive lens, I have also aligned them with some of Nussbaum's capabilities to determine whether some are universal and applicable in a child protection setting.

### **Life**

Life is the capability of "being able to be born, being able to be physically healthy and enjoy a life of normal length" (Biggeri & Karkara, 2014, p. 32). This is consistent with Nussbaum's (2011) capability of life that asserts "being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living (p. 33).

All the children central to this study were denied the right to life. Prior to their deaths, Dean, Jack, Ebony and Baby Kate were denied a human life that was meaningful and flourishing (Wolff & de-Shalit, 2013). Baby Kate, Dean and Jack were all under three years of age. Infancy and toddlerhood are periods of remarkable developmental growth cognitively, physically, socially and behaviourally. There is a belief that the first three years of life ground a child's developmental trajectory into adulthood (Scannapieco & Connell-Carrick, 2005). Ebony was in middle childhood stage, which extends from seven to eleven years (Connell-Carrick & Scannapieco, 2006) and is a time of tremendous developmental change (Daniel et al. 2011). This period is also known as the school years. Children not only engage in formal education but it is a time where children transition from home to school and form relationships outside the family circle. Children learn foundations of literacy and numeracy but also develop more sophisticated physical and social skills (Connell-Carrick & Scannapieco, 2006; Daniel et al. 2011).

Ebony and Jack had some specific needs related to developmental delay. Children with disabilities or special needs are at higher risk of experiencing maltreatment. The increased dependency needs of children with disabilities make them more susceptible to neglect and may increase parents' stress in meeting those special needs (Brandon et al.2012).

The narratives illustrate that Dean, Jack and Ebony experienced chronic adversity or cumulative harm (Bromfield et al. 2007; Victorian Government Department of Human Services, 2007), which compromised their safety, security and wellbeing. Cumulative harm and chronic neglect is a pertinent issue for children who are subjects of multiple child protection notifications. The reports often failed to meet the threshold for intervention (Bromfield et al. 2007) or there were inadequate resources to

respond to the notifications (Wood, 2008). Child protection responses will be examined in the next chapter.

The reports recorded for the children exemplify the chronicity of adversity and consistent violation of rights, particularly for Jack, Ebony and Dean. For Jack:

The chronology of events...indicates that between June 2000 and May 2003, DoCS received seven reports directly concerning the children. These reports, particularly from 2001, provided evidence of persistent risks of harm to the children due to the mother's neglect, including concerns about the state of the children's residence, the mother leaving the care of the children to others and her poor decision making in relation to whom she left the children with. (New South Wales Ombudsman, 2004, p. 20)

Ebony and her family received mandated child protection casework services from the Department of Community Services (DoCS) between 2001 and 2003 that resulted in surveillance and removal of the youngest sibling (New South Wales Ombudsman, 2009b). Nonetheless:

During 2005, DoCS received six risk of harm reports concerning the children...None of these reports were allocated by DoCS for risk assessment...From the beginning of 2006 until her death in November 2007, there is no record of Ebony receiving any services from any agency. (New South Wales Ombudsman, 2009b, p. 4)

Dean's experiences of cumulative harm are also well documented:

The department received 34 reports about three children. Twenty-four of these reports were sent to a local DoCS office (Community Service Centre) for further action...15 of the reports as indicating a high or medium risk. Despite this, prior to Dean's death, none of these reports resulted in the completion of a comprehensive risk assessment. (New South Wales Ombudsman, 2009a, p. 9)

Baby Kate's situation deviated slightly from the other children in that her vulnerability was recognised, resulting in the allocation of a worker in the Department of Families (DOF) immediately following her birth:

An infant stands before the world full of untold possibility, ceaselessly exploring, playing, taking in new sounds and smells, opening up previously unknown potentials...an infant is more profoundly vulnerable to others' and society's shaping and marginalization of them, to the point where without others they would simply die. (Wall, 2010, p. 41)

Newborn babies are totally dependent on caregivers and a major developmental task is the formation of a secure relationship between the infant and the caregiver. It is well documented that the quality of early attachment between caregiver and child has significant implications for the child's development (Scannapieco & Connell-Carrick, 2005). Infancy is a period of heightened vulnerability to both physical abuse and neglect because the neural pathways are developing, and the child is rapidly developing skills, learning the importance of self-regulation and forming attachment relationships (Brandon et al. 2012; Egeland et al. 2000; Howe, 2005).

Baby Kate's narrative demonstrates decision-making that prioritised the mother's needs over the child's needs. Adequate weight and consideration were not given to "the legal requirement that the

welfare and best interests of the child are paramount” (Queensland Ombudsman, 2003, p. xiv). For Baby Kate, it was conceptualised that her best interests lay in family preservation (Keddell, 2016). Consequently, Lisa (mother) and Baby Kate “were placed in an inappropriate environment where they did not receive adequate support” (Queensland Ombudsman, 2003, p. xiv).

### ***Physical and bodily health***

Physical and bodily health entails “being able to have good health...to be adequately nourished; to have adequate shelter” (Nussbaum, 2011, p. 33). A parent is obligated to provide their child with a minimum standard of care (Archard, 2003). This was not the case for the children in this study, most of whom who experienced chronic physical neglect. The broad characteristics of physical neglect are familiar to most child protection workers. Living in poverty, where there is a sense of hopelessness, “dirt, mess, and the ever-present smell of old food, greasy floors and poor hygiene instantly conjure run down homes and aimless family lives” (Howe, 2005, p. 111). Poor nutrition, dirty clothes and nappies not changed was a persistent experience for Ebony, who:

... was subject to chronic starvation over many, many months...Ebony's hygiene was seriously neglected. The state of her clothing and her hair at the time of her death is particularly pertinent. The hair was long, matted and strewn with filth including faecal matter. The clothing was heavily stained, possibly from a combination of vomit and faecal stains and other bodily fluids over a period of time. Whilst this was at the time of her death, there is no reason to think that it was not an enduring state of affairs. (New South Wales Supreme Court, 2009a, Paras. 156-157)

Jack also lived in a dirty and unkempt environment, with indications of poor nourishment:

Police entered the unit to find it in a total state of filth and disarray. There was garbage all over the food including bread crusts and dirty nappies. There was no fridge in the kitchen and the only food evident was a few tins of spaghetti in a cupboard. There were clothes all over the unit and there was a strong smell of urine. The victims were found in one of the bedrooms. ... [the girl] was found asleep on a mattress fully clothed...[the boy] was found on the floor fully clothed also however he had not blankets to cover him and his clothing was saturated (Police report). (New South Wales Ombudsman, 2004, p. 12)

Dean “was often hungry and would forage for food but she punished him for doing so” (New South Wales Supreme Court, 2009b, para. 9). Similarly, Baby Kate’s needs were not always at the forefront of her mother’s mind:

Lisa would seldom bath Kate...Lisa would spend hours away from Kate without checking on her. Daily Kate would be crying for long periods of time. When we complain to Lisa about this Lisa would turn the music up louder...Lisa would only feed Kate when she felt like it. (Queensland Ombudsman, 2003, p. 78)

The narratives of Dean, Jack and Baby Kate also document a lack of stable and secure living arrangements. Dean’s mother sought alternative accommodation because she was fleeing domestic violence, particularly in Dean’s infant years (New South Wales Ombudsman, 2009a). Similarly, Jack and his family were required to relocate in his first year because they were unable to reside with extended family due to unhygienic living conditions. They were placed in refuge accommodation “until alternative accommodation through private rental or DOH [Department of Housing] could be

found” (New South Wales Ombudsman, 2004, p. 7). From that time, Jack experienced frequent changes in accommodation and carers.

### ***Bodily integrity and safety***

According to Biggeri and Karkara (2014), bodily integrity and safety means “being able to be protected from violence of any sort”, which is consistent with Nussbaum’s category of Bodily Integrity – “Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence” (Nussbaum, 2011, p. 33).

Bodily integrity is a category deemed to be of enormous importance (Wolff & de-Shalit, 2013). The children in this study were denied the right to be free from all forms of violence. Healthy development and child wellbeing is contingent on children living in a context that is peaceful, loving and free from violence (Hart et al. 2011). Living within violent contexts induces feelings of fear and helplessness, which are intensified when there is an inability to find sanctuary from tension and danger. If violence erupts suddenly, “unpredictable fear only adds to the cocktail of developmental difficulty” (Howe, 2005, p. 195). This was the case for Dean, Ebony, Baby Kate and Jack, who for most or part of their lives were situated within a milieu of violence. Dean, Jack and Baby Kate were physically assaulted, all the children beheld domestic violence and Jack endured sexual abuse.

Dean and Jack’s experiences were consistent with Howe’s (2005) description of random violence and emotionally unresponsive caregivers, which constrained their ability to survive and flourish. For example, Jack was physically assaulted whilst staying at his grandmother’s house, and his mother was emotionally and physically unresponsive to his suffering and violation. His injuries were suspected to be non-accidental (New South Wales Ombudsman, 2004):

There were bruises on the left side of the boy’s face around the jaw and upper neck and the right hand side around the jaw line which looked like ‘someone grabbed...[the boy’s] face’. The DoCS Helpline worker also spoke to the hospital’s treating doctor who stated that there was an additional ‘big dark black bruise’ on the boy’s right ear. (New South Wales Ombudsman, 2004, p. 8)

All the children witnessed domestic violence. Baby Kate and Dean were subjected to domestic violence whilst in utero (New South Wales Ombudsman, 2009a; Queensland Ombudsman, 2003) and as newborns, born into environments of physical and verbal aggression. For Baby Kate:

On the day following her admission...she had observed Lisa shaking baby Kate and being verbally aggressive and swearing at her. (Queensland Ombudsman, 2003, p. 31)

And following Dean’s birth:

Subsequent report to DoCS concerned the abusive behaviour of the mother’s partner while visiting her in hospital after Dean’s birth...Three more reports were made to DoCS...The mother was reported to be moody, edgy and withdrawn having escaped domestic violence. (New South Wales Ombudsman, 2009a, p. 4)

Jack's bodily integrity was grossly denied. He witnessed domestic violence in his extended family, and he was physically assaulted and sexually violated by two males, one of whom was a known and convicted sexual offender (New South Wales Ombudsman, 2004).

### ***Love and care, and emotional wellbeing***

Biggeri and Karkara's (2014) capabilities of Love and Care and Mental well-being align with the Nussbaum's capability of Emotions; "Being able to have attachments to things and people outside ourselves...to love those who love and care for us...not having one's emotional development blighted by fear and anxiety" (Nussbaum, 2011, p. 33). Nussbaum's capability of emotion provides more depth and illustrates that early attachment relationships are fundamental for all children's development and wellbeing, but particularly for young children.

Emotional development is "facilitated by the quality of emotional care they received from their parents or caregivers" (Iwaniec, 2006, p. 211). Parents who are responsive and available to their children's attachment behaviours instil a sense of trust, security and safety (Iwaniec, 2006). This promotes the establishment of nurturing (Cicchetti & Lynch, 1995) and interdependent (Held, 2006) relationships. The interdependence is a "pattern of emotional and behavioural interaction that develops over time as the infant and caregiver interact, particularly in the context of the infant's needs and bids for attention and comfort" (Egeland et al. 2000, p. 30). Biologically, the symbiotic relationship between the child and carer is a survival mechanism, providing a medium for the child to regulate anxiety and other emotions, and physiological and behavioural response patterns (Cicchetti & Valentino, 2006; Howe, 2005).

Conversely, children who are subjected to a parenting style that is rejecting, inconsistent, unresponsive and neglectful feel great fear and anguish (Howe, 2005; Iwaniec, 2006). These children are unable to manage their emotional distress, are socially incompetent and suffer psychological harm (Howe, 2005). Howe (2005) argues that emotional abuse, rejection and emotional neglect are all captured within the complex phenomenon of "psychological maltreatment" (p. 90). The prominent features of emotional abuse and neglect demonstrate the nature and quality of the relationship between the child and the abusive parent or carer (Iwaniec, 2006). Children experience emotional harm if the parent or carer is persistently "hostile, dismissive, critical, or indifferent" (Iwaniec, 2006, p. 26), resulting in a relationship between the child and parent that lacks warmth; there is no sense of belonging or security, but instead indifference to their uniqueness inducing fear, anxiety, degradation, confusion, insecurity and lack of safety (Howe, 2005; Iwaniec, 2006).

Emotional abuse and neglect was not an uncommon experience for Ebony, Dean, Jack and Baby Kate, bringing to the fore that responses to their otherness were not expansive but narrowing, destroying any possibility for a growing relation between the parent and the child (Wall, 2010). Ebony



was deliberately isolated, abandoned and rejected. This coupled with physical and emotional neglect would have made her feel extreme fear, terror and hopelessness:

In Ebony's circumstances, her distress induced by hunger, grossly amplified by any containment in the room of the house, would have been manifested by crying, tantrums, extreme behaviour disturbance and clear distress. Anxiety and distress also accompany the biochemical changes in the body due to falling levels of available energy...It would have been obvious to any adult who saw her that she was in extreme distress. As the degree of malnutrition worsened, lethargy, sleepiness and disinterest in her surroundings would have set in. She would have been very withdrawn and largely unresponsive to her environment – a very abnormal situation for any child. (New South Wales Supreme Court, 2009a, para. 53)

Dean also endured hostility, was terrorised and deprived of any recognition and affection:

Mr Connors described Dean as being terrified of his mother. He said that the offender [Rachel] would hit Dean about three times each day for doing things like wetting himself and eating leftover food. Mr Connors perceived the mistreatment of Dean as being so bad that he considered contacting the Department of Community Services. Ms Daley described Dean as "*so scared of her when she was around that it was not usual*". The offender [Rachel] complained to Ms Daley that Dean was "*getting worse; he won't listen to me. He gets up at night looking for food and he won't go in the toilet*". She also said that she no look at Dean like he was her son. Neighbours described Dean being locked out of the house and hitting the door whilst crying and trying to get back inside. He was repeatedly heard to cry out, "*Mummy, mummy, I am sorry*". (New South Wales Supreme Court, 2009b, para. 12)

The caregiving environment of Baby Kate and Jack was more consistent with emotional neglect. Emotional neglect occurs as a consequence of parenting practices where the children are starved of stimulation and reciprocity. It is closely associated with "parental unawareness and ignorance, depressive moods, chaotic life-styles, poverty, lack of support, and lack of appropriate child rearing models" (Iwaniec, 1995, p. 5), inadvertently blighting child development and wellbeing.

On many occasions, Baby Kate's cries were unheard:

Lisa is struggling. This is day 7 post-natally and I have concerns about her ability to maintain the care of the child. She seems to bond minimally with Kate, only doing the minimum for her. Kate's crying irritates her...She seems willing to learn but is easily frustrated and has very little spontaneous interest. I have global concerns for both mum and baby. (Queensland Ombudsman, 2003, p. 30)

Jack's mother was profoundly emotionally and morally disconnected (Bandura, 2002) from her son when she handed him and his sister over to strangers as a method of child care:

The mother states that approximately three weeks prior to the boy's death she bumped into B and C near the railway station. B told her she looked she needed a break. The mother explained that she was having difficulty in arranging an affordable babysitter and B offered to care for the children for payment. He commenced looking after them that evening. (New South Wales Ombudsman, 2004, p. 4)

The importance of relationships with parents has a clear impact on a child's development. The broader world of the child also includes the connection with siblings (Aldgate, 2006; Sroufe, 2005). The relationship between siblings has the potential to provide support and induce resiliency during times of stress, but also contributes to an increased sense of isolation, rejection and trauma in situations where the child perceives themselves as an outsider and scapegoat (Daniel et al. 2011).

Dean, Jack and Ebony all had siblings. Jack's sister Jane withstood the same parenting style as her brother, and, as a consequence, her basic needs were neglected and she was sexually assaulted by two known perpetrators. Jane cared for Jack during their mother's absence. "[The girl] also stated that she is often alone with her younger brother and they put themselves to sleep" (New South Wales Ombudsman, 2004, p. 12); "the reporter expressed a view that [the girl] appears old for her age and does a lot of the caring of [the boy] (New South Wales Ombudsman, 2004, p. 15).

In contrast, the relationship between Dean and his siblings and Ebony and her siblings only exacerbated their unique and abusive treatment within the family. This difference was noted in relation Dean's treatment:

The fact that the offender had adequate and appropriate parenting skills in relation to her two other children demonstrates her behaviour towards Dean was not an inherent inadequacy of skills but something that was targeted at him alone. (New South Wales Supreme Court, 2009b, para. 77)

Ebony's isolation and being scapegoated was summarised as follows:

Ebony was denied simple childhood pleasures and stimulation, the more so in the latter part of her life – for example, outdoor activities, toys, games, and playing and socialising with other children. Similarly, she was excluded from family celebrations such as birthdays and Christmas at least in the last 16 months of her life. (New South Wales Supreme Court, 2009a, para. 153)

### ***Control over one's environment and being able to participate***

"Political. Being able to participate effectively in political choices" (Nussbaum, 2011, p. 33) is essential. Biggeri and Karkara (2014) also place importance on the ability to participate and to influence one's environment. Even young children play an active role in the lives of their family and community. They exercise agency and are able to persuade and influence their parents (Ballet et al. 2011).

The nature of children's vulnerabilities and dependency precludes them from having full citizenship rights and control over their environment, although parents, in their stewardship role, are expected to make decisions that are in the children's best interests and protection of their rights (Archard, 2003; Brennan & Noggle, 1997; Dwyer, 2011b). Persons, in this case children, have rights "even if they are incapable of effectuating the rights themselves but rather someone must act on their behalf" (Dwyer, 2011b, p. 12). All children have interest-protecting rights where certain duties are imposed on others to ensure that children are protected, decisions are made in their best interests and they are able to participate in decision-making (Archard, 2003; Dwyer, 2011b). The narratives of Dean, Jack, Ebony and Baby Kate highlight their experiences of powerlessness and marginalisation within their family context. The oppressive and destructive strategies employed by their parents resulted in fear, helplessness, submission and obedience, both physically and emotionally, resulting in a significant violation of their rights.

### ***Respect and affiliation***

Respect involves “[b]eing able to live with and towards others, to recognize and show concern for other human beings...Having the social bases of self-respect and non-humiliation. Not being discriminated against” (Nussbaum, 2011, p. 34). Biggeri et al. (2006) nominated respect and being treated with dignity as a fundamental capability. The capability of affiliation is of major significance, as acknowledged in the work of Wolff and de-Shalit (2013).

Nussbaum (2011) proclaims that affiliation is *architectonic* in that it “organizes and pervades” (p. 39) all the other capabilities. People cannot function unless they are respected as social beings and relationships provide the structure (Nussbaum, 2011) that goes to the heart of moral status. Respect and non-humiliation are fundamental and engenders a sense of belonging and being loved and essential for the wellbeing of children. From Wall’s (2010) perspective, families are generative and are ethically responsible for cultivating and nurturing children’s emotional, intellectual and moral formations, which occurs in a relational context that is expansive and responsive to children’s unique qualities and needs. This was not the experience of the children who are central to this study.

The examination of respect and affiliation permits a drawing together of threads in the analysis of the development, rights and wellbeing of Dean, Jack, Ebony and Baby Kate. The analysis demonstrates that their protective rights and humanity were ignored; they were neither respected nor acknowledged as social beings. In summary, they were denied a flourishing life, their bodily health and bodily integrity were severely compromised, they experienced fear and anxiety in the context of their family relationships, important childhood experiences were denied, and they were silent and invisible. This account reveals in some depth the lived experiences and suffering that Dean, Jack, Baby Kate and Ebony endured. They suffered severe trauma, oppression and dehumanisation by virtue of their childhood and natural dependency (Young-Bruehl, 2012).

## **Part B: Childism in the family**

To live a life unresponsive to the others with whom one interacts is to narrow not only other but also oneself. It is to constrict the scope of one’s own possible humanity. (Wall, 2010, p. 101)

The family is presumed to provide children with security, stability and protection (Coppock, 2004; Wall, 2010). Childhood is conceptualised as fused within the family, meaning that children are sometimes rendered invisible, perceived only as minors or dependents (Mason, 2005). Ideally, the rights of children and the recognition of their moral worth are realised within the moral context of relationships. However, the lived experiences of Dean, Jack, Ebony and Baby Kate verify that not all families are able to fulfil their ethical responsibilities. Living in the context of relationships was destructive, not nurturing, for them. The transactions that take place between children and parents are fundamental to understanding the phenomenon of suffering and adversity (Howe, 2005). The family system, or microsystem, is the immediate environment in which children are harmed (Belsky, 1980). The microsystem encompasses many important factors such as family dynamics, parenting

styles, developmental histories and caregivers' psychological resources. Any type of violence experienced directly by developing children occurs within the microsystem, which is the most proximal system to children's ontogenic development and wellbeing (Cicchetti & Lynch, 1995).

The quality of care provided by parents or caregivers is the culmination of transactions between parental histories, caregiving environments and the meaning of the child. Understanding parental histories and experiences is crucial in the recognition of children's maltreatment and childism in families (Young-Bruehl, 2009). Parents' developmental histories contribute to the genesis of a maltreating family environment (Cicchetti & Valentino, 2006). The ETP does not honour a particular factor but recognises that "developmental outcomes achieved early on in the transactional process, by virtue of being early, will interact with and influence later stages" (Brandon et al. 2008, p. 58). Early experiences, by virtue of their importance in developmental trajectories, are significant in a person's development and their future experiences (Sroufe, 2005). Wall (2010) asserts that *lifeworlds* are transmitted through the institution of families and historical lifeworlds include distorted arrangements:

Acts of depravity dance a strange and everlasting duet with inherited deprivations. The inhumanity of actively doing harm is compounded by the inhumanity of passively received history. There would be little or no social marginalization were it not so easily able to take root in humanity's most formative years. (Wall, 2010, p. 48)

In her critique of Kempe's discovery of child abuse, Young-Bruehl (2012) rejects the disease model and asserts that identifying a parent as abusive is complicated and frightening. People who maltreat children have reasons in *themselves*, not just from their environments, although the living circumstances may contribute to a culture of violence. The victimisation of children is the result of parents or caregivers projecting their inner trauma and conflict onto their children; "and children suffer within the systems of discrimination that adults create to keep their projections lodged within their victims, out of sight, out of mind" (p. 104).

Although these dynamics are well recognised in child protection literature (Brandon et al. 2008; Cicchetti & Valentino, 2006; Howe, 2005; Jones et al., 2015; Scannapieco & Connell-Carrick, 2005) there was scant information about parental histories in the narratives of Ebony, Dean and Jack, whereas there was substantial information presented in Baby Kate's narrative. Information about Ebony's parents and Dean's mother was sourced from legal documents (New South Wales Supreme Court, 2009a, 2009b) and media articles (Davies, 2009).

The psychological resources and behavioural responses that parents bring with them to the demands of caring is related to their own relationships and developmental trajectory. Childhood experiences of being parented and quality of relationships with parents and other significant persons influence the internal working model that facilitates the cognitive construction and understanding of self and others (Aldgate, 2006; Brandon et al. 2008; Howe, 2005). The mental representations "refer to the kind of memories, experiences, outcomes, feelings and knowledge about what tends to

happen in relationships, particularly with attachment figures at times of need” (Howe, 2005, p. 28). From an ETP, the representational models affect the way in which individuals choose, interact and comprehend all future experiences, and determines the way in which ensuing developmental tasks across the lifespan are resolved (Cicchetti & Valentino, 2006). Sroufe (2005) asserts that:

examining development in context immediately puts the issue of parental blame to rest...assessments of parents' own developmental histories...have notable predictive power...the stresses and other surrounding circumstances (e.g., violent neighborhoods, substandard housing, and frequent moves) that impact on parents also impact on the child. (pp. 17-18)

Parents who are unable to recognise and appreciate their children as complex and psychological beings are not sensitive or available when they are needed. Children feel abandoned, leading to increased feelings of arousal and distress, compounding parental stress. Parents who have experienced childhood adversity, neglect, trauma and rejection, and live in an environment constrained by poverty, social isolation, violence, instability and substance abuse are at risk of behaving in “dysregulated, disorganised ways under stress” (Brandon et al. 2008, p. 62).

Traditionally speaking, a child is a sign of hope:

The child comes into the world both giving something previously unknown to that world – her [sic] presence, if you will – and at the same time is given by that world as a gift from parents, society, natural evolution, and possibly the gods. (Wall, 2010, p. 42)

The vagaries of family life alter the meaning that parents hold for all their children or one child in particular. Some children hold a particular psychological meaning which places them at greater risk of harm. It is as though the children procure an undeclared script for their life and thus dominate the parent-child relationship (Reder & Duncan, 1999; Reder et al. 1993; Reder & Fitzpatrick, 2003). Reder et al. (1993) reject the notion that a child is singled out for abuse within a family, citing the death of Maria Colwell as an example. All the children in Maria’s family were neglected but the abuse of Maria was more severe, leading to her demise. Determining the meaning of the child is important in child protection work. Parental perception of the child is an important consideration in the overall analysis of the child’s suffering and adversity (Sidebotham & Heron, 2003). The meaning of the child is associated with the parents’ dependency or the child/ren’s association with special themes or events within the family. Considerations include parental motivation for having a child, and determining their conscious and unconscious “attitudes to, [and] feelings about the relationship with the particular child” (Reder & Fitzpatrick, 2003).

In my analysis, three dominant transactional patterns of *ceasing to exist*, *emotional and physical abandonment*, and *targeted hostility* emerged from my analysis. These are examined more closely here. Although such a small-scale study has significant limitations, it also has important advantages. My findings cannot be generalised because each child’s situation is unique. Flyvbjerg (2001) proclaims that “the case study produces precisely the type of context-dependent knowledge which

makes it possible to move from the lower to the higher levels in the learning process”. On that basis, examination of context-dependent knowledge is at the very heart of generating expert activity.

The transactional patterns I have identified are closely aligned with some of the basic forms of childism identified by Young-Bruehl (2012). Understanding the manifestations of childism propels us further towards an anti-childist transformative agenda.

### **Ceasing to exist: targeted for exclusion**

Reder et al. (1993) identified the concept of a child not existing in *Beyond Blame*. The concept was further recognised by Brandon et al. (2013) in their scrutinising of neglect in serious case reviews (SCRs), particularly those associated with severe malnutrition. Ceasing to exist is a dynamic applicable to Ebony’s narrative where she was completely shut away for the last eighteen months of her life “as though her existence was totally unacceptable” (Reder et al. 1993, p. 47). Ebony was targeted for exclusion from her family and from life generally, where she was eliminated or erased (Young-Bruehl, 2009, 2012).

Both of Ebony’s parents had struggled with substance abuse issues and mental distress since their adolescent years. Ebony’s father, BW, acknowledged an addiction to Valium since the age of 18, which was linked to a diagnosis of severe anxiety neurosis triggering panic attacks and somatic distress (New South Wales Supreme Court, 2009a). His struggle with addiction continued into later life. Ebony’s mother, SW, “had had multiple hospital admissions for overdoses...the mother was assessed as having suicidal tendencies and relationship problems” (p. 3):

In terms of her emotional health SW recounted a history of self harming behaviour from 1991 involving overdosing on prescribed medications and “slashing up” which she related to events concerning her treatment by BW. She also gave a history of suffering anxiety attacks for most of her life. (New South Wales Supreme Court, 2009a, para. 96)

Furthermore:

Health records indicate that prior to her marriage the mother had had multiple hospital admissions for overdoses. At the time her pregnancy with her first child was confirmed, the mother was assessed as having suicidal tendencies and relationship problems. Health records show that through the following years the mother continued to experience anxiety, depression and pain as a result of a fall during her third pregnancy. She developed a dependency on Valium and painkillers. (New South Wales Ombudsman, 2009b, p. 3)

Substance abuse continued and impacted on their role as parents. Ebony’s parents spent their lives hidden away behind a veil of drug induced fog. The father gave evidence that he was in his “own little world with Valium” (New South Wales Supreme Court, 2009a, para. 71) and that he had no knowledge of Ebony’s suffering. Substantial abuse of prescription drugs ingested on a regular basis by Ebony’s father caused undesirable side-effects, including “fatigue, drowsiness, confusion and depression” (New South Wales Supreme Court, 2009a, para. 137) which caused him to become disconnected from those around him psychologically and morally (Bandura, 2002; Haslam, 2006). Ebony’s mother:

... said in her evidence at trial that whilst at Hawks Nest she was consuming 8 to 10 Panamax, 6 to 15 Valium, 6 Voltaren Rapid and 8 to 12 Panadeine Forte per day. She said it made her feel like she was in a dream like state, like she wasn't really there...In contrast to her evidence at trial given to Ms Duffy included that she took more than 20 Panadeine a day if she was in pain. (New South Wales Supreme Court, 2009a, para. 98)

The caregiving environment was characterised by severe substance abuse, extreme social isolation and domestic violence. Ebony's mother experienced domestic violence, which was a pervasive issue for all four children's (Dean, Jack, Baby Kate and Ebony) caregiving contexts:

I accept there may have been some level of domestic violence in the relationship. If there was, it was more likely that it was relatively minor and occurred in years past rather than in more recent times. I cannot accept, however, that the level of violence, control and domination by BW was anywhere near that which SW has claimed. (New South Wales Supreme Court, 2009a, para. 119)

Social isolation was a particular feature for Ebony and her family. Socially isolated families was a consistent finding in Brandon et al.'s (2013) analysis of SCRs. Ebony's father withdrew the children from their schools and failed to engage with professionals. Even though multiple agencies and professionals were involved, the family's increasing social isolation rendered Ebony and her siblings invisible to the outside world. From early 2006 until her death in November 2007, not only was Ebony excluded from the human community, she was also ostracised within the context of her family community. A sense of belonging is central to our sense of humanity, therefore being locked away and excluded socially and morally denied Ebony her dignity and humanity.

Ebony was a child with special needs who was singled out in her family. There were early indications of disrupted attachment between Ebony and her parents when she failed to thrive as an infant. Health professionals investigated her failure to thrive but no organic causes were established (New South Wales Ombudsman, 2009b). Non-organic failure-to-thrive is often attributed to inadequate parenting and environmental factors (Iwaniec, 2006). Children starved of love and attention fail to thrive and grow (Perry & Szalavitz, 2007).

Ebony's parents attended some medical appointments for her special needs until early 2006. In February 2006, she was seen by her general practitioner:

He noted that she exhibited features of autism with poor eye contact and repetitive and disruptive behaviours. He had not seen her since September 2003 and he noted that she had made a physical transformation to have become 'quite a chubby six year old'. (New South Wales Supreme Court, 2009a, para. 23)

A month later she was again seen by a medical professional for vaccinations. This was the last occasion Ebony was seen by any medical professional (New South Wales Supreme Court, 2009a). Ebony's emotional, physical and psychological neglect and incarceration did not occur throughout her life, but was most likely associated with a transitional family event (Reder & Duncan, 1999). The complete withdrawal of parental responsibilities coincided with Ebony's provisional diagnosis of autism in February 2006, reports that her mother was unwell with multiple health problems (New South Wales Supreme Court, 2009a), family isolation and the father's disconnection from the family.

The stresses left the parents with little emotional capacity to attend to Ebony's needs, interests and wellbeing (Reder & Duncan, 1999). Diagnosed with autism, Ebony signalled ever increasing special needs and demands, escalating her dependency on the parents who were emotionally deprived and whose mother was abandoned by her father. Ebony's existence could no longer be accommodated, thus she ceased to exist physically and psychologically until her death. For Ebony, the moral problem was that the response to her otherness resulted in a severe narrowing of her importance and her eventual elimination (Wall, 2010).

### **Emotional and physical abandonment: unwanted children**

The needs of Jack and Baby Kate were regularly dismissed and ignored. There was not a complete withdrawal of caretaking as per Ebony's tragic circumstances (Reder et al. 1993) but nevertheless, Jack and Baby Kate experienced chronic emotional and physical abandonment by parents who were wading in a sense of hopelessness and passivity (Howe, 2005). Major experiences of being emotionally and physically neglected result from a lack of supervision and mind mindedness about potential sources of danger. This is what ultimately resulted in the demise of both Baby Kate and Jack. For example, Baby Kate, who was only ten weeks of age, was covered with a woollen blanket and two jumpers to muffle her crying and whingeing (Queensland Ombudsman, 2003). Jack was placed in the 'care' of two strangers without scrutiny of their abilities or intentions (New South Wales Ombudsman, 2004).

The childhood histories of carers who emotionally and physically neglect their children are often histories of severe neglect where their own parents may have suffered depression, poverty and trauma (Howe, 2005; Iwaniec, 2006). Parents have limited knowledge of childrearing and child development, and consequently are uninformed about a child's need for cognitive stimulation, and emotional attunement and availability (Iwaniec, 2006). Some parents, as in Lisa's case, have learning difficulties. Howe's (2005) typology of depressed, passive and physical neglect exemplifies the experiences of Kate and Jack. The narratives indicate that the mothers struggled with being mindful and responsive, and appeared to live in a world of their own, devoid of empathy. A parent, or in this case a mother, who does not have a child "in mind" has an agenda and mental state that overrides that of the child. "There is no mind-mindedness and, therefore no attunement, and so the child becomes frustrated and irritated" (Howe, 2005, p. 21), and lives in a constant state of fear and arousal.

There is a prominent absence of historical information in relation to Jack's mother (Ellen), although some extracts provide some insight about her childhood. The New South Wales Ombudsman (2004) noted that there was a history of confirmed notifications of neglect and domestic violence in relation to Ellen's younger step siblings. I am making an informed judgement that Ellen may also have experienced similar adversity and violence during her childhood. Furthermore, following Jack's death and the sexual assault of her daughter (New South Wales Ombudsman, 2004), Ellen was receiving



counselling “for a sexual assault she suffered as a child” (New South Wales Ombudsman, 2004, p. 17). This provides further evidence of trauma.

On the other hand, Baby Kate’s mother Lisa experienced substantial childhood trauma. She was removed from her biological family and placed in alternative care when she was an infant:

Lisa was subject to a Care and Protection application in 1981 as a result of her mother’s lack of parenting skills, low levels of intellect and an inability to provide a basic level of care for her baby. Lisa was diagnosed as having [certain medical conditions] and some developmental delay – a family history of delayed intellect and cerebral palsy was identified. (Queensland Ombudsman, 2003, p. 171)

Lisa resided in out of home care until after the expiration of her child protection order:

Lisa turned 18 in July 1998 but casework with Lisa continued after the expiration of the Care and Protection order due to Lisa’s intellectual disability. Lisa remained with departmental foster carers for a period of time after her release from care. (Queensland Ombudsman, 2003, p. 171)

Lisa exhibited challenging behaviours during her adolescent years that required intervention from numerous agencies. She was assessed as having an intellectual disability and behavioural disturbances that were not responsive to medication (Queensland Ombudsman, 2003).

The caregiving environments of Baby Kate and Jack shared some similarities and some differences. Both mothers had experienced domestic violence, and were socially isolated sole parents. Lisa suffered domestic violence prior to and immediately following Baby Kate’s birth. Her partner, John, left the relationship, leaving her to care for Baby Kate on her own. She had some support from her foster parents and social worker but more intensive support was necessary (Queensland Ombudsman, 2003). A particular feature of Baby Kate’s environment was her mother’s intellectual disability. Intellectual disability, per se, does not equate to parental inadequacy (McConnell & Llewellyn, 2002). The ability to safely care and protect children can be enhanced through the provision of appropriate support, education and services (Lamont & Bromfield, 2009), but Lisa was not provided these.

Jack’s father also left the family when he was less than a year old, leaving his mother to sole parent within a broad family context of domestic violence, neglectful parenting and a transient and unstable lifestyle (New South Wales Ombudsman, 2004). A pervasive impression of Jack’s mother was one of being strikingly disconnected emotionally and physically. When Jack had experienced a physical assault and Ellen was questioned, the social worker noted:

The Social Worker believes that [the mother] is not capable of looking after the [c]hildren...The social worker has immense concerns regarding the [mother’s] duty of care. She appears emotionally flat according to the social worker. (New South Wales Ombudsman, 2004, p. 9)

Furthermore:

The DoCS record of this visit notes that the social worker repeated her concerns about the care of the children and the mother’s ‘very flat, non-emotional disposition’...it was as though the mother

was 'simply shutting down in reaction to the allegations' and that 'it is highly likely that the mother is a victim of abuse herself, and it is highly unlikely that she has ever sought treatment/therapy for this abuse'. (New South Wales Ombudsman, 2004, p. 9)

Passively neglectful carers, such as Jack's mother, have resigned from any thinking or feeling, meaning that they "are unable to connect with others, including their children at any meaningful psychological level" (Howe, 2005, p. 137). Parents who are unable to keep their children's minds in mind experience feelings of stress and anxiety in the face of their children's bottomless demands and challenging behaviours. There is a retreat from parenting obligations; children do not reach their full potential (Howe, 2010).

Jack and Baby Kate made heavy emotional demands on their mothers, who found life complicated, stressful and challenging. Disengagement enabled parental survival. Jack's mother had unresolved care conflicts arising from "actual experiences of abandonment, neglect or rejection as a child, or feeling unloved by parents" (Reder & Duncan, 1999, p. 65). As an adult she demonstrated an overreliance on others and was intolerant, disengaged and unresponsive to the needs of Jack and his sister whom she perceived as burdens, draining her of scarce emotional resources. Instead of providing affection, Jack's mother may have perceived his attachment behaviour as too onerous, resulting in indiscriminate and dangerous child care arrangements. Similarly, Baby Kate's mother perceived her as a source of frustration and intrusion. Baby Kate's conception was unplanned and her mother, Lisa, did not seek prenatal care. There were significant worries about her commitment to bond and respond to her infant's needs (Queensland Ombudsman, 2003). As a newborn, Baby Kate's attachment behaviour did not always register, resulting in minimal caregiving responses. Lisa, was adamant she wished to care for her daughter but there was some ambivalence, evidenced by Lisa prioritising her own needs above those of Baby Kate (Reder & Duncan, 1999).

### **Targeted hostility: unwanted and scapegoated**

Living with his mother, Dean was subjected to random violent episodes, emotional unresponsiveness and physical neglect, which is "a peculiarly difficult environment in which to survive and prosper" (Howe, 2005, p. 157). The transactions between childhood experiences of adversity and adulthood trauma engendered an unpredictable, scary and unresponsive caregiving environment characteristic of relational trauma (Howe, 2005). Dean's mother Rachel had an unhappy childhood and adolescence:

The offender was born in Blacktown and she was the eldest of seven children...Her father worked while her mother operated a small day care centre as well as being the homemaker. She has claimed that her father abused both alcohol and drugs. Her parents' relationship was marked by frequent arguments and she claims that her father was violent towards herself. She claims that her siblings were given more attention than she was and that she was not really supported. (New South Wales Supreme Court, 2009b, para. 47)

She left home during her adolescent years:

Her parents separated when she was 17 and she claims that she was blamed for the break-up. She left school and home at that age and lived in various youth refuges. She fell pregnant the following year and gave birth to T in August 2000... Their brief relationship ended when he became aware of the pregnancy. (New South Wales Supreme Court, 2009b, para. 20)

The court reports also provide a rare insight into Dean's father:

Paul Shillingsworth was one of seven children, a violent alcoholic who left school aged nine. (Davies, 2009, para 10)

And

He played football and got into boxing before drugs and alcohol took over. A talented dancer, he worked in Aboriginal dancing at Darling Harbour. But for Shillingsworth, jail was a revolving door. (Davies, 2009, para 15)

Dean's parents had a longstanding history of substance abuse and violence:

She has used cannabis off and on since the age of 17. She sniffed solvents for about a year when she was a teenager. She has occasionally used heroin and amphetamine but not to the point of addiction. She has also abused alcohol at times, particularly during her late teens and in the time of her relationship with Mr Shillingsworth. (New South Wales Supreme Court, 2009b, para. 52)

Mental distress was also a prominent issue. Rachel had longstanding depression dating back to her childhood and had engaged in self-harming behaviour since her adolescent years (New South Wales Supreme Court, 2009b). Dean's father Paul Shillingsworth abused drugs and alcohol, and suffered from schizophrenia; he had auditory hallucinations (Davies, 2009). However, this information is not verified in any official documents.

Prior to Dean's death, Rachel engaged in "heavy use of marijuana... followed by a period of several days' abstinence with agitation and irritability" (New South Wales Supreme Court, 2009b, para. 63). She experienced significant mental distress stemming from her fear of Dean's father and his impending release from gaol. An exceptional feature of Dean's caregiving environment was that he and his family were surrounded by caring people who were willing to attend to Dean's safety and protection:

Despite these feelings about Dean, she did not want to voluntarily surrender his care to others. She had ample opportunity to do so. Her caseworker was supportive of her and offered assistance which was not taken up. Her mother also offered to assist. (New South Wales Supreme Court, 2009b, para. 79)

The judge in the New South Wales Supreme Court (2009b) summarised Rachel's treatment of Dean:

In the weeks leading up to the murder the offender displayed considerable inappropriate and unjustified anger towards Dean. She had an irrational perception that he was deliberately misbehaving and defying her. Making him clean up after himself when he had a toileting accident and locking him out of the house are just two examples of her attitude of mistreatment of him. The fact that the offender had adequate and appropriate parenting skills in relation to her two other children demonstrates that her behaviour towards Dean was not an inherent inadequacy of skills but something that was targeted at him alone. (para. 77)

Dean, like Ebony, was “singled” out or “scapegoated” (Young-Bruehl, 2012, p. 40). Dean had been in the care of his grandmother, Ms Coffey, for approximately one year whilst his mother was in detention. His grandmother was granted legal guardianship by the Family Court. On the mother’s release, Rachel decided that she wanted to resume caring for Dean and refused to return him following an access visit because she “felt emotionally attached to him” (New South Wales Supreme Court, 2009b, para. 8). This pattern is consistent with Reder et al.’s (1993) assertion that “some children’s significance appeared to be as ‘property’, wanted back by parents who refused to be deprived of them when other prospective caretakers wished to ‘have’ them” (p. 54). It is also possible that Dean’s mother was genuinely delighted to be reunited with her son. Dean, suddenly uprooted, demonstrated confusion, anxiety and insecurity, making substantial demands on Rachel’s care; a dramatic contrast to the ideal fantasy of a child and family life (Reder et al. 1993):

She became resentful of his presence and was critical of his behaviour. She began to think that Dean had been spoiled by his grandparents and was acting out. She told the caseworker that she would “get that out of him”. She told various people that Dean’s behaviour was unreasonable wilful and disobedient. (New South Wales Supreme Court, 2009b, para. 9)

The increased care demands triggered feelings of anger and hate as a result of “frightening memories associated with their own childhood experiences of abuse and trauma erupting uncontrollably into consciousness” (Howe, 2005, p. 157). Dean also became a source of danger to Rachel, representing his father who had inflicted harm and victimised his mother. Dean’s presence activated a re-emergence of her trauma and suffering. Shortly after resuming care of Dean, Rachel received a “threat by Mr Shillingsworth to kill her when he got out of gaol” (New South Wales Supreme Court, 2009b, p. para. 68). This was recognised in the court report:

I am satisfied that she came to loathe Dean because he reminded her of his father towards whom she held ambivalent feelings. I am satisfied that in the weeks prior to the murder she was in fear of Mr Shillingsworth and in that period she more hated than loved him...Nevertheless, despite these feelings about Dean, she did not want to voluntarily surrender his care to others. (New South Wales Supreme Court, 2009b, paras. 77-79)

Young-Bruehl (2012), who writes from a psychoanalytic perspective, asserts that children are often scapegoats where they “represent symbolically the unhealthy or sinful past that should not be allowed to carry on into the future” (p. 39).

## **Reflections: childism in families**

A childist analysis suggests that any person or group of people can be deprived of humanity, not only...by being robbed of social agency, but also, and just as profoundly, by not being acknowledged in one’s social vulnerability. (Wall, 2010, p. 47)

A consistent experience for all the children was neglect of their physical and emotional needs. Neglect can have the most detrimental consequences of all forms of maltreatment for the development of the brain, physical development, behaviour, educational accomplishment and emotional wellbeing (Daniel, 2015). Daniel (2015) pronounces that neglect is simultaneously simple

and complex. Viewing neglect from the child's perspective, it is simply that their needs are not being met. Death may be the outcome of neglecting a child's needs (Brandon et al. 2013). Neglect may also be consequential for parents who abuse drugs and alcohol, experience mental distress and are involved in domestic violence. Not only is there a struggle to attend to their own needs but also to engender stressful environments for their children where obligations are not met.

Prominent within the children's narratives is that they and their parents were *ordealing*. All were suffering, traumatised, vulnerable and afflicted; their lives were characterised by a sense of hopelessness and joylessness (Caputo, 2002). In the midst of the ordealing, parents were unable to attend to their obligations in meeting their children's needs, interests and wellbeing. Obligations were not met because the children were not in mind of their parents. Obligations can only be realised in a context of awareness or sensibility of others' lived experience. Caregiving behaviour and responsiveness is a complex interaction between parental histories, their understanding of childrearing and child development, parental support and stresses (Sroufe, 2005), and the meaning of the child (Reder & Duncan, 1999; Reder & Lucey, 1995). Therefore, recognition and understanding of the lived experiences and adversity of the child are intimately intertwined with the lived experiences, suffering and adversity of the parents. It is through this intertwining process that lifeworlds are transmitted (Wall, 2010). Parents who are unable to attend to the needs, interests and wellbeing of their children do not have their children in mind and are unable to attend to their parental responsibilities. Children's rights are denied. Children are not cherished (Young-Bruehl, 2012). They are rendered invisible, silent (Brandon et al. 2009) and some cease to exist (Reder et al. 1993) – their moral status diminished, they are traumatised, oppressed and dehumanised:

Parenting is such a profound generative responsibility because it decenters the parent around others who are only just beginning to learn to decenter themselves around others for themselves. It is, in a sense, the "beginning" of the moral circle, its first steps in expansion and growth...the ethical purpose of parenting is to love others by enabling others to love. (Wall, 2010, p. 147)

The decentering and profound parental responsibility can only occur through attentiveness (Tronto, 1993), "mind-mindedness" (Howe, 2005) and "mentalisation" (Sroufe, 2005). Empathic parenting processes enable a carer to be attuned to the needs of the child, thus facilitating emotional understanding, enhancing parental responsiveness, and providing security of attachment and an environment that encourages developmental flourishing. Tronto (1993), in discussing the ethical elements of care, asserts that nonexistence of attentiveness is a moral failing, and that attentiveness and being attuned is crucial for genuine human interaction and caring.

## Conclusion

The children's narratives were analysed through the processes of vertical and horizontal readings that facilitated a recognition and understanding of the lived experiences and moral status of Dean, Jack, Ebony and Baby Kate. The trauma that characterised their lives was the culmination of complex transactions of adverse parental developmental histories, parental characteristics, meaning

of the child and structural factors. The starkest finding was that the parents were morally and psychologically disengaged from their children and from their role as parents. Parental caregiving was characterised by a lack of attentiveness, mind-mindedness and empathy. Consequently, the rights of the children were severely violated, thus negating opportunities for their flourishing and wellbeing.

The moral context of relationships should ideally be one in which the humanity of children and their childhood is celebrated and nurtured, providing them with every opportunity to flourish; a moral context where children's wellbeing is enhanced. This was not the case for Dean, Jack, Ebony and Baby Kate. The childist strategies of children being eliminated and erased because they were unwanted and/or burdensome were evident in the children's narratives (Young-Bruehl, 2012). The private and moral worlds of Dean, Jack, Baby Kate and Ebony excluded them from the human community – they were oppressed and dehumanised. Wall et al. (2010) caution us that “Modernity's sentimentalization and privatization of childhood ultimately renders children themselves less than fully human members of their larger public world” (pp. 249-250).

# CHAPTER 8

## CHILDISM NUMBER 2: DIMINISHED MORAL WORTH IN THE CONTEXT OF CHILD PROTECTION

### Introduction

To be protected against violence fundamentally means to be protected against one's otherness marginalized or destroyed. To be provided social resources is to be given the means for making one's creative social contribution. And to be able to participate in society is to have the opportunity to bring one's own distinctive contribution into the creativity of the whole. (Wall, 2010, p. 131)

This second of the two chapters presenting the analysis of the narratives of Dean, Jack, Ebony and Baby Kate illustrates emerging dynamics or processes that either constrained or facilitated childism in the four cases.

The previous chapter exposed the adversity, suffering and lived experiences of Dean, Jack, Baby Kate and Ebony. The analysis illustrated that their lived experiences resulted in social and moral exclusion and dehumanisation. Their rights were violated in a context of relationships that were harmful and detrimental to their development and wellbeing. The parents, on whom they were dependent for nurturing and survival, rendered them powerless and silent. Their environment was characterised by fear, terror, confusion and abandonment that negated any opportunities for flourishing and wellbeing.

Children ideally should grow up in a family "in an atmosphere of happiness, love and understanding" (United Nations, 1989), yet Dean, Jack, Baby Kate and Ebony were deprived of their humanity. Childism was manifested within the family system – Ebony ceased to exist and was targeted for exclusion; Baby Kate and Jack were unwanted and emotionally abandoned; Dean was scapegoated and unwanted. The parents were not able to fulfil their duties and responsibilities because they were morally and psychologically disengaged from their children. The parents were suffering and unable to reconcile their experiences of trauma and emotional deprivation. This is consistent with Biggeri et al.'s (2006) assertion that parents' capabilities and functioning may directly impact their children's capabilities. The children were *not* in the forefront of the parental minds. Lack of parental empathy, and emotional and psychological disconnection results in children being objectified and morally excluded (Haslam, 2006).

The State is *parens patriae* and therefore responsible for the protection of children when they experience maltreatment committed by their caregivers (Archard, 2003). State parties are obligated to ensure that children are safe and protected; obligations are enshrined in the UNCRC (United Nations, 1989). This moral and legal imperative is reflected in jurisdictional legislative frameworks in recognition of children's humanity:

State Parties undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. (United Nations, 1989, Article 3.2)

Governments are duty bound to actively support people's capabilities, "not just fail to set up obstacles. In the absence of action, rights are mere words on a page" (Nussbaum, 2011, p. 65). A just society ensures that people, in this case children, are given the "preconditions of a life worthy of human dignity" (Nussbaum, 2011, p. 73).

As outlined in Chapter 1, the domestic legislations in operation when Dean, Baby Kate, Ebony and Jack were in receipt of statutory child protection services were reflective of contemporary child protection ideology. An overview of the principles is as follows: the safety and wellbeing of the child is of paramount consideration; children should be provided with a stable, safe and nurturing environment; support for parents and preservation of family relationships; the child, where able, is to be given the opportunity to participate in decision-making processes and freely express their views and opinions about their circumstances. The principles espouse the ethical imperative that families are considered the best place to raise a child (Keddell, 2016; Lonne et al. 2016).

The core of statutory child protection work is the recognition that a child has been harmed or is at risk of harm, and that responses are designed to ensure the child is safe and protected. The UNCRC and domestic legislation ground children's moral worth and humanity. The documents are crucial in that they stipulate obligations to which children are entitled. However, children continue to experience maltreatment as exemplified in this study. Parents and governments are constrained in fulfilling their obligations to children (Young-Bruehl, 2012). The best interests and voice of the child must find its way from legislation to frontline practice, as exemplified in the best practice principles of child protection (Ferguson, 2011). Statutory child protection that is inclusive of children and responsive to their suffering and adversity will "expand rather than contract the sphere of social inclusiveness in light of those most easily left out" (Banks, 2013, p. 104).

This study in childism in statutory child protection draws on the narratives of Dean, Jack, Ebony and Baby Kate. This chapter exposes some of the forces at work as to why the children were denied their rights; why they were refused protection and/or were excluded from decision-making processes (Young-Bruehl, 2012). I ask, "Why does an agency that is mandated to protect inadvertently compound oppression and dehumanisation? Here, the findings and discussion are integrated with extracts from the children's narratives, literature, philosophical considerations and theories.

The children were identified and assessed as being in need of care and protection. The statutory child protection agencies mandated to attend to their needs, interests and wellbeing failed to do so. This illustrates the crevasse between the rhetoric and practice reality of statutory child protection. The failure to keep the children 'in mind' within the context of child protection "draws parallels with



the way many families are unable to keep the needs, feelings and safety of their children ‘in mind’” (Brandon et al. 2009, p. 41).

The analysis presented in this chapter is not concerned with, or constrained by, procedural and bureaucratic expectations. Themes were derived from the vertical and horizontal reading of the narratives that grounds the dialectical critique. I invite you to join with me and avert our gaze for a moment from the shackles of neoliberalism and managerialism, and interrogate statutory child protection responses from a morally just perspective. Statutory child protection is powerful and expressions of that power are mediated through every interaction with children and families. Child protection has the power and capacity to dismantle or preserve families. Therefore, its philosophical and operational responsibilities must be taken seriously and must ensure that “children must come first” (Young-Bruehl, 2012, p. 280).

### **Childism in families exposed: in need of protection**

The identification and recognition that children may have been harmed or at risk of harm triggers a statutory child protection response. A system of identification, investigation and treatment was established in the 1960s following the rediscovery of child abuse. According to Young-Bruehl (2012), “[t]he discovery of child abuse, then, was also the discovery of blindness to child abuse” (p. 102). The medicalisation of maltreatment of children influenced social policy and legislation, infusing childism into child protection responses. According to Young-Bruehl (2012), the objective from Kempe’s perspective was to diagnose and treat instead of understanding the factors contributing to the oppression and traumatising of children. This ethos continues to pervade contemporary statutory child protection responses even though reform processes have strived to counteract it.

Dean, Jack and Ebony, as discussed in Chapters 6 and 7, were subjects of multiple reports alleging that they were being abused and/or neglected. Caseworkers receiving, recording and identifying reports of children who have been harmed or are at risk of harm are the child protection agency’s official gatekeepers. Buckley (2003) asserts that they have the “primary task of deciding what behaviour or consequences would constitute ‘abuse’ and what would not” (p. 29). The recording of child abuse reports or notifications triggers a process that potentially initiates the official treadmill of investigation. The recording of child protection notifications is not a purely scientific process irrespective of the implementation of risk assessment tools or frameworks.

Wardhaugh and Wilding (1993), in their discussion of corruption of care, illustrate that “ritualised admission procedures” (p. 6) that can be applied to the process of recording child abuse reports strip individuals of their identity. Zygmunt Bauman (cited by Wardhaugh & Wilding, 1993) argues that a sense of responsibility towards others is dependent on proximity. The implementation of technical rational procedures and processes enhances a sense of order and accountability, however:

After all, we have noted that the idea of an organization is the attempt to adjust human action to the ideal requirements of rationality...such an attempt must involve more than anything else, the silencing of moral consideration via every task...so that the wider consequences are not necessarily visible to the actor. (Bauman & May, 2014, p. 72)

The ritualistic process of recording notifications may serve to nullify moral concern for, and attentiveness to, the children (Wardhaugh & Wilding, 1993). Lack of attentiveness and recognition preclude the ability to identify needs, and ignoring those needs is a form of *moral evil*. Attentiveness is essential for genuine human interaction and the formation of relationships. An extreme example of the lack of attentiveness and recognition of others is provided in Hannah Arendt's theory of the *banality of evil* (Benhabib, 2000), where she asserts that "evil can arise out of ignorance, either wilful or established habits of ignorance" (Tronto, 1993, p. 128). Critical theory stemming from the Frankfurt School proposed that inattentiveness is a manifestation of capitalism, although Tronto (1993) argues that it is much more profound. The lack of attentiveness, in the extreme, is consequential to an unwillingness and inability to divert attention to others' needs and suffering. Recognising the others needs and suffering is a complicated process and when successful is a moral achievement.

In many of the notifications, the maltreatment and harm experienced by the children was recognised. In legalistic terms, circumstances warranted State intrusion into the children's lives to determine whether they had been harmed and were in need of protection. The next section highlights that this did not always occur.

## **Missed opportunities**

The evidence presented so far exposes that the adversity and disadvantage experienced by Baby Kate, Jack, Dean and Ebony were recorded in multiple notifications, but the formal recordings of information did not guarantee protective action. There were examples of missed opportunities where DOF (Queensland) and DoCS (New South Wales) were notified about allegations of abuse and/or neglect but the allegations were not progressed. According to Wood (2008), reports that are not progressed are captured as either "information, advice, referral or no further assessment required...no risk of harm had been identified...as they do not meet the threshold test" (p. 174).

Identifying the vulnerability of a child and constructing notifications of child abuse and neglect is a challenging task. The availability of assessment tools and official guidance does not always translate into expected responses (Buckley, 2003). Making sense of the information about what constitutes child abuse and neglect is the result of complex transactions between personal, professional and organisational factors (Horwath, 2007). Gillingham and Humphreys (2010) discovered inconsistencies in the construction of child abuse notifications that are influenced by workers' experiences and knowledge, values, interpretations of risk assessment terminology and contextual factors. For example, the participants in Gillingham and Humphreys' research explained that if there

was a perception that the organisation was not busy, more notifications were *screened in* for further assessment.

In her study, Buckley (2003) found that the process of recording notifications generated diverse social worker opinions. Some social workers felt it was an accountability mechanism and “insurance against inaction” (p. 59). Others felt it was a serious process, signifying possible intrusion into families’ lives. Unacknowledged filtering processes occur in determining whether to formally record allegations of child abuse and neglect; “it appears that child protection priorities were more organisational than child centred, with the balance tilted more towards discounting than endorsing the validity of allegations” (Buckley, 2003, p. 44). The recording of a child abuse report should not be perceived as simply bureaucratic but a process that affords a fleeting snapshot of the lived experiences of vulnerable children at a particular point in time (Ferguson, 2004).

### **Information only**

There are circumstances where information provided to statutory child protection agencies is already known and the child has an active case, or there is no active intervention but there are no assessed risk issues (New South Wales Ombudsman, 2007). Such reports are recorded as *information only*. They are recorded and a determination is made that further action or assessment is not warranted. It is essentially a process that *screens out* reports that do not warrant statutory intervention or further assessment. The New South Wales Ombudsman (2007) found that in some reports categorised as information only, some of the intelligence was new information about the child’s circumstances not previously known by the agency, resulting in organisational minimisation of the child’s experience of adversity. For example, an information only report was recorded for Dean:

In May, the department received a report that the mother had resumed a relationship with an ex-partner who was a known heroin user. This report was closed because the reporter did not know the mother’s address or current whereabouts... Shortly after, Dean’s relatives forcefully took him from his mother, reportedly in response to information about the mother’s re-formed relationship and the allegation that both were using heroin. (New South Wales Ombudsman, 2009a, p. 4)

If notifiers do not provide adequate information to workers, then action cannot be initiated. Notifications or reports are screened out or disposal of the notification occurs, highlighting a bureaucratic rather than child-focused process, where there was a tendency to discount rather than endorse the validity of information (Buckley, 2003). A child-focused response would entail the workers to follow up with the notifier to clarify the child’s circumstances. In Dean’s situation, previous notifications had been recorded alleging that Dean had experienced adversity and trauma due to issues of domestic violence, exposure to parental drug and alcohol abuse, and homelessness and itinerant lifestyle. The previous issues had not been considered in conjunction with the more recent intelligence about his circumstances.

Prior to her death, more than ten notifications had been recorded for Ebony and she had not been sighted by any professionals for approximately eighteen months. Even though Ebony had an

allocated caseworker, information about her increasing adversity continued to be conveyed to DoCS, particularly in the last months of her life:

On 12 September, DoCS received a report from DET advising that...the family had moved out of their premises, to an unknown address. DET told DoCS that they had been contacted by a concerned community member...that there was faeces all over the floor in Ebony's room and the house smelt appalling and was filthy. DET said that they had serious concerns about Ebony's safety...The Helpline assessed the report as 'information only'...and forwarded it to the DoCS office. (New South Wales Ombudsman, 2009b, p. 17)

Furthermore, and on the same day:

On 12 September, the DoCS Helpline also received a report from an anonymous person regarding the state of the family's premises. The caller noted that Ebony's room was boarded up and that the house smelt of urine and faeces. The house was reported to be full of rubbish, up to the knee in every room. The Helpline assessed this report 'information only'...and transferred the report to the DoCS office handling the report on 15 September. (New South Wales Ombudsman, 2009b, p. 17)

The intelligence was categorised as information only on the basis that there was an open case plan and a perception that the allegations were already known and casework intervention was in progress. This approach is consistent with a narrow focus and highlights a failure to consider Ebony's circumstances holistically. Although there had been previous reports six months earlier about the unhygienic state of the house, this had been the first time information had come to light about Ebony's particular situation, experiences and maltreatment, and that the family had relocated. "Flight was a variant of closure in which families closed their boundaries and retreated from contact with the external world by moving elsewhere" (Reder et al. 1993, p. 102). This dynamic, viewed in totality, signalled increased danger for the child. Flight is an extreme method of controlling the relationship (Reder et al. 1993). The family's relocation exposed the violation of Ebony's most fundamental rights and humanity to people outside the family. The failure to record the notification meant that not only was the information not subject to analysis and scrutiny but it significantly minimised the seriousness of Ebony's situation and exacerbated her dehumanisation:

On 14 September the caseworker emailed her manager and advised the family had moved. She sought direction about whether an alert should be placed on the DoCS information system. On 17 September 2007, her manager told her to contact DOH. On 19 September she did so. On the same day, NSW Housing provided DoCS with the family's new address. (New South Wales Ombudsman, 2009b, p. 17)

The caseworker, in recognising the seriousness of Ebony's circumstances, took some action. Nevertheless, a series of workplace events compounded the missed opportunity. First, the caseworker went on sick leave. Second, the relevant Community Services Centre (CSC) was contacted about Ebony's change of address and circumstances, although they would not accept a case transfer until "the secondary risk of harm assessment and other relevant documentation were completed" (New South Wales Ombudsman, 2009b, p. 17). Third, the caseworker returned, worked on risk assessment and relocated to another position within DoCS. Finally, Ebony's case was transferred on 30<sup>th</sup> October with an assessment: "Harm consequences for Ebony were assessed as

'*extreme*', protective factors not in place and the harm probability was '*highly likely*' (New South Wales Ombudsman, 2009b, p. 18). Ebony died on the 3<sup>rd</sup> November.

In his report, the New South Wales Ombudsman (2009b) critiqued the recording of Ebony's circumstances, which resulted in organisational minimisation of her adversity and lack of action by the caseworker and more senior staff. He discovered that the response to information only reports was in accordance with DoCS' business rules. However, there was a lack of thoroughness in gathering further information and verifying the additional information. This missed opportunity amplifies Munro's (2011) statement that:

Instead of 'doing things right' (i.e. following procedures) the system needed to be focused on doing the right thing (i.e. checking whether children and young people are being helped). (p. 6)

### **Competing priorities**

Most of the notifications recorded for Dean, Ebony, Baby Kate and Jack recognised that the children were experiencing adversity and that their circumstances required further assessment. Nevertheless, many notifications were closed due to *competing priorities* that negated opportunities to assess the children's circumstances and understand their experience of adversity. The closure of cases due to competing priorities is a legitimate and organisationally endorsed workload management tool (Wood, 2008) that is consistent with legislative caveats outlined in Chapter 1:

In principle, all plans transferred from the Helpline to a CSC for further assessments should receive a secondary assessment. However, the level of demand for further assessments has often exceeded the available CSC resources. Community expectations are that most reports to DoCS will result in allocation of the report to a caseworker for a comprehensive assessment and intervention. The reality of the current system is that while all reports receive a level of preliminary assessment by the DoCS Helpline, DoCS prioritises its casework services to those children who are most at risk, with particular focus on children with specific vulnerabilities. (Wood, 2008, p. 277)

This means that the children were denied intervention or services, leaving them exposed to further adversity and harm (Wood, 2008). The New South Wales Ombudsman (2009c) critiqued this workload management strategy:

In many of the cases we raised with DoCS, one of our main concerns was the closure of reports without further assessment. In almost all cases, the reason DoCS closed a case early was competing priorities – that is, a lack of capacity in a CSC to fully assess reported risk to children due to a combination of lack of resources and the relative urgency of other cases at hand. We have previously noted the closure of cases due to resource constraints and competing priorities being one of the greatest challenges in achieving a strong child protection system. (p. 25)

The closure of reports due to competing priorities was particularly prevalent in the narratives of Dean and Ebony. Between 2005 and 2006, DoCS received nine risk of harm reports in relation to Ebony and her siblings:

None of the nine risk of harm reports were allocated to a child protection worker for the purpose of visiting the family and undertaking a risk assessment. This was despite three of the reports being given a risk rating of 'high' by the Helpline...Most of the reports were closed due to 'competing priorities'. (New South Wales Ombudsman, 2009b, p. 12)

In Ebony's situation, reports forwarded to the CSC that were closed due to competing priorities failed to include a comprehensive analysis of historical information, including previous departmental intervention. The chronic nature of adversity was not acknowledged, further compromising her safety and wellbeing:

When undertaking an initial assessment of a new report to the Helpline, caseworkers are expected to review the child protection history and give consideration to any relevant history when making decisions about the level of risk and the urgency of the required response. We found the Helpline's review of child protection histories for the children inadequate between 2005-2006. Of the nine reports about the children during this period, only three identified that the youngest child was in out-of-home care. None identified that the three older children had been the subject of care applications, or that DoCS had applied for a breach of orders. Five of the checks failed to make any reference to the siblings' child protection history. (New South Wales Ombudsman, 2009b, p. 12)

And similarly for Dean:

Between 2001 and Dean's death in 2007, DoCS received 34 risk of harm reports in relation to the family, 10 of which concerned Dean. Most of these reports were closed by departmental officers because of competing priorities. None resulted in a comprehensive secondary risk of harm assessment. (New South Wales Ombudsman, 2009a, p. 13)

The assessment of a child's adversity devoid of past history and family circumstances contravenes best practice in social work and child protection. It is also suggestive of workers operating without a sound knowledge or theoretical base, and failure to adhere to procedural guidelines in their judgement and decision-making processes (Buckley, 2003; Helm, 2010). Failing to take into account historical information about the child and the family is consistent with social workers adopting a forensic incident-focused paradigm. A narrow approach eclipses the children and the level of cumulative harm and trauma that is characteristic of their lives (Buckley, 2003; NSW Parliament Legislative Council, 2002; Parton, 2014; Wood, 2008). Notifications that are narrow in focus and lack rigour fail to accurately hear the reality of children's lives. A narrow focus on protecting children excludes the importance of their rights, development and wellbeing (Young-Bruehl, 2012).

The narratives of Dean and Ebony illustrate their experiences of chronic emotional and physical neglect and deprivation. Most of the reports that documented their cumulative harm failed to trigger a statutory response. Studies have identified that reports where children allegedly experience neglect are more likely to be filtered out of the system (Buckley, 2003; Gibbons & Bell, 1994; Parton et al. 1997) or not seen as a priority (Bromfield et al. 2007; Daniel, 2015). Buckley (2003) proposes that social workers experience a sense of helplessness in effecting change for those children who are situated in complex circumstances that are characterised by addiction, mental distress, poverty, violence and marginalisation. If the evidence of neglect is highly visible, an investigative response is activated. Conversely, in circumstances where the evidence is not considered convincing, there is skepticism as to whether parents have the capacity to change (Buckley, 2003).

Children experiencing neglect is a significant feature in SCRs (Brandon et al. 2013) and child death reviews (Daniel, 2015; Frederico et al. 2006). Neglect of neglect (Dubowitz, 2007; McSherry, 2007)

is a pervasive discourse within child protection and highlights an illogical paradox. On one hand, the prevalence of chronic neglect is increasing consistently (O'Donnell et al. 2008) and contributes to profound deficits for the child's development. On the other hand, it is the least researched and therefore least understood of all maltreatment (McSherry, 2007), and the least likely to receive a protective response (Daniel, 2015). The complexity of child neglect is underestimated. Daniel (2015) asserts that further research is not warranted; what is needed is child protection systems that are responsive and guided by empathy for the child's predicament. Children experience neglect due to an array of factors that constrain good enough parenting; the impacts on child development and wellbeing are countless:

Recognising and responding to neglected children is not a mechanistic activity; it requires empathy with a child's plight. The process of assessment and planning, if done properly, constitutes really intense work...And the provision of long-term support that meets the child's and parents' needs is not straightforward. Effecting change is hard and requires emotional engagement to form relationships; it takes time and entails prolonged proximity with mess, dirt, sadness, chaos and distress. (Daniel, 2015, p. 92)

Responding to child neglect in a context of diminished resources and a narrow forensic paradigm is seemingly impossible. Daniel (2015) conducted a review that proposed frontline workers are aware of children's needs and require support and assistance. Workers experience anxiety because they are unable to legitimately and effectively intervene due to lack of resources and inability to access other services. There is a dissonance between the empathic response to children experiencing neglect and "an overly bureaucratic and anxiety-ridden system for reaching out to help them" (p. 88).

Young-Bruehl (2012) argues that the neglect of neglect is easy to comprehend and a consequence of the medicalisation of child abuse. Neglected children are found in the privacy of their home "with their neglecters, who neglect them on a daily basis, chronically, without pause, but (usually) without episodes of violence" (p. 153). They do not attend hospital emergency rooms. Instead, they wither and waste away. They only become visible if a social worker attends the family home following an official report.

The recording of information exemplifying the abuse and neglect experienced by Dean, Jack, Ebony and Baby Kate did not automatically trigger a statutory child protection response. In situations when intervention was provided, responses were expedient and focused on minimisation of risk, which is examined in the next section.

## **Responding: risk minimisation, not child safety**

Many of the notifications that engendered a risk assessment or *investigation* from statutory child protection services for Ebony, Jack, Baby Kate and Dean were categorised as *priority one* (Queensland Ombudsman, 2003), *high risk* (New South Wales Ombudsman, 2009b) and *highly visible* (Buckley, 2003). Reports that were highly visible predominantly involved health professionals such as pediatricians and nursing staff (New South Wales Ombudsman, 2004; Queensland

Ombudsman, 2003), police (New South Wales Ombudsman, 2004, 2009a) and teaching professionals (New South Wales Ombudsman, 2009b). There was also clinical and/or social evidence (Dingwall et al. 2014) that supported the veracity of the child's circumstances (New South Wales Ombudsman, 2004; Queensland Ombudsman, 2003).

Intervention was predominantly short-term and incident-focused. The central objective was not the severity or experiences of the child/ren who were harmed, but to determine the future likelihood of abuse and neglect (Keddell, 2013; Parton et al.1997; Turnell & Edwards, 1999). A forensic approach, which continues to dominate child protection work (Parton, 2014), "does little to improve the lot of many children who come into its net, and in fact performs poorly in relation to 'neglect' cases" (Buckley, 2003; Jack, 1997; Thorpe, 1994), as noted in the previous section. Jack and his sister were in receipt of child protection services on several occasions and each time the alleged harm the children experienced was highly visible and difficult to contest because the police or health professionals had been in attendance:

... [t]he front yard and driveway is strewn with rubbish as is the interior...Police did not venture far inside the house due to the overwhelming stench...DVLO [Domestic Violence Liaison Officer] stated that DoCS should visit the family home as it is extremely dirty and not a suitable [e]nvironment for children to live. (New South Wales Ombudsman, 2004, p. 7)

A home visit was conducted and the workers decided that "the children were at risk and would not be able to reside at the house" (New South Wales Ombudsman, 2004, p. 7) although a full assessment had not been conducted. There was no information about the impact on, or experiences of, the children. Jack, his sibling and his mother were removed from the house and taken to a refuge for safety; they were warned not to return to the grandmother's home. The mother was provided a letter of support to assist her in locating alternative accommodation. The outcome was "confirmed, referred, closed" (New South Wales Ombudsman, 2004, p. 7). Jack and his family resided in the refuge for approximately three months. One must conjecture that Jack, his sibling and his mother received some support from refuge staff, however this information was omitted from Jack's narrative. In another situation, Jack and his sister were transported to hospital. Jack had experienced a physical assault and his sister Jane disclosed sexual abuse:

According to the DoCS summary...the nurse who reported the matter stated that there were bruises on the left side of the boy's face around the jaw and upper neck and the right hand side around the jaw line which looked like 'someone has grabbed...[the boy's] face'...the doctor who stated that there was an additional 'big dark black bruise' on the boy's right ear...'the doctor suspects that...[the boy's] injuries are non accidental. (New South Wales Ombudsman, 2004, p. 8)

The mother conveyed that she was unaware how the injuries occurred and could not identify who was caring for her children when Jack was physically assaulted and Jane was sexually abused. DoCS provided an immediate response, collating information from health professionals, the mother and the mother's flatmates. The *investigation* focused predominantly on how and where the injuries occurred, and made a rudimentary assessment of the mother's parenting abilities. The children were



examined by medical staff, although there was no indication that there was any communication between the social workers or Jack. The DoCS workers were asked to sight the children. When children experience “sexual assault, serious physical assault and neglect” a referral is made to JIRT (Joint Investigation Response Team), which involves police and DoCS (Wood, 2008):

JIRT accepted DoCS’ referral of the girl but not the boy, and therefore its enquiries were primarily directed at the alleged sexual abuse of the girl. Again, on the basis of the relevant records, there is some difficulty in determining precisely what action JIRT carried out in relation to this matter. (New South Wales Ombudsman, 2004, p. 11)

Thus, there was a failure to acknowledge the physical assault and trauma that Jack experienced. A rationale for this decision was not included in the narrative, nor was it questioned by the New South Wales Ombudsman.

The workers recognised that “the mother appears unable to react in a positive manner to the needs of the children” (New South Wales Ombudsman, 2004, p. 9) “and that, were it not for her flatmates, a removal of the children would have been recommended” (New South Wales Ombudsman, 2004, p. 18). A process promoting expedient risk minimisation rather than long-term safety was set in train. Jack and his sibling returned home with their mother on the basis that she agreed to “an informal undertaking<sup>3</sup> with DoCS that she would not allow the children to see or have access to X” (New South Wales Ombudsman, 2004, p. 9). The flatmates, who appeared cognisant of the children’s needs, were “prepared to prevent the mother from allowing access to [X] and would appear to have taken on the parenting role for the two children” (New South Wales Ombudsman, 2004, p. 9).

Subsequent inquiries and actions identified ongoing issues of adversity for Jack. Despite this, there was no evidence that previous decisions were reviewed or further assessments conducted to inform and achieve safety and protection for Jack and his sister:

CSC H workers subsequently visited the home...the mother was not home...no evidence of a home-based risk assessment being undertaken...DoCS was informed that the mother had been issued an eviction notice. The mother subsequently advised that she would not be moving into a new residence with the flatmates. (New South Wales Ombudsman, 2004, p. 18)

Thus, the mother negated the previous arrangement that was established to minimise risk of future harm for Jack. Furthermore:

JIRT expressed significant concerns about the mother’s parenting capacity and recommended that CSC H undertake a specialist and ‘comprehensive home-based assessment’ to identify the supports required for the family. However, there is no evidence to suggest that this recommendation was implemented. (New South Wales Ombudsman, 2004, p. 19)

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<sup>3</sup> Undertakings are agreements which appear to be either *informal* or *formal* where parents make a commitment to make changes to actions or circumstances that present risks to their children (New South Wales Ombudsman, 2007).

The intervention provided was reminiscent of what Ferguson (2004) identifies as “conveyor-belt social work” (p. 211):

Pressure to get cases ‘through the system’ creates a situation where attention, time and resources are diverted from doing in-depth, needs-driven work with children and families in ways which can promote child safety, welfare and healing. The soul is squeezed out of the work...pulling workers and the entire system’s attention away from understanding and developing the kinds of deep relationships with the self, children and carers that are required to do meaningful child protection and welfare work. (p. 212)

Expedient and contingent arrangements also minimised risk for Baby Kate without securing her long time safety or best interests. A *priority one* response, the most urgent category, was assigned by the DOF (Queensland Ombudsman, 2003):

... [the] Mother has extensive history with the department as a child in care, neglect and limited parenting skills...Staff concerned that Lisa is unable to cope with the baby and has limited parenting skills. Lisa was observed to shake the baby on at least one occasion...Staff unable to cope and has limited ability to learn appropriate skills...Parents have demonstrated verbal abuse towards each other with father denigrating of mother’s apparent intellectual impairment and lack of skills regarding baby. (Queensland Ombudsman, 2003, p. 31)

Workers had made a decision “that there were minimal risks for the baby to return home” (p. 33). The decision allowing Baby Kate to leave the hospital with her mother, Lisa, and her mother’s partner, John, who denied paternity (Queensland Ombudsman, 2003) was critiqued severely:

Given Lisa’s own disability, concerns remain in terms of her ability to make appropriate decisions for the care of Kate. While Lisa has acknowledged shaking Kate she has been able to identify strategies for dealing with this and is able to articulate the cause of her own stress. The observed difficulty between the parents poses a concern specifically in relation to verbal and emotional harm. John has stated he is willing to support and assist Lisa with the care of Kate, however, this has yet to be demonstrated on a longer-term basis. Without assistance it is unknown if Lisa can care for Kate independently. (Queensland Ombudsman, 2003, p. 33)

The assessment and decision-making process was flawed. The assessment and analytical process is only meaningful when information is gathered together “and allowed to contribute to an overall multidimensional picture” (Reder et al. 1993, p. 84), thus promoting intervention that is in the best interests of the child. The decision to send Baby Kate home with her mother was made in isolation of historical information and other professional assessments. Instead, the decision was founded on an interview with John and a statement from a nurse “who was ‘positive’ about how John handled Baby Kate and told her [the social worker] that he had also interacted positively with another child in the ward” (Queensland Ombudsman, 2003, p. 33). Comprehensive information from health professionals and family members had not been sought. Had such information been sought, it would have provided observations indicating that Lisa experienced significant difficulties in responding to Baby Kate’s attachment behaviour. However, it was recognised that:

Kate needs to be in an environment where her emotional, psychological and physical needs are met. Kate needs to live in an environment where she is safe from aggression, both directed at her and between her parents. (Queensland Ombudsman, 2003, p. 34)

Nonetheless, a short-term decision was made for Baby Kate to be discharged in her mother's care on the basis that a case was to be opened to "monitor parents' ability and willingness to provide for Baby Kate on a long-term basis" (Queensland Ombudsman, 2003, p. 34). Lisa's partner John was reluctant. John had disclosed that he was not the baby's father and "he felt he was making a big sacrifice by taking Lisa and the baby on" (Queensland Ombudsman, 2003, p. 32). He agreed to support Lisa. His presence and agreement minimised risk in the short term for Baby Kate but the decision-making was not consistent with the principle that "the welfare and best interests of the child are paramount" (Queensland Ombudsman, 2003, p. 36).

A context of violence was a constant for Dean and his siblings. Dean and his family were provided with a similarly expedient intervention in early 2006. Dean and his siblings received one face-to-face contact with DoCS:

In February 2006, the little girl was seriously assaulted by a relative. In retaliation the mother and her partner physically assaulted the relative and, as a consequence, were charged, convicted and incarcerated. They requested DoCS place the children with family members. This was the first time DoCS workers had direct person-to-person contact with the mother and her children prior to Dean's death. No comprehensive risk assessment was completed in response to the child's assault. The actions of the mother and her partner were noted by DoCS staff to be 'protective'. (New South Wales Ombudsman, 2009a, p. 4)

Placement of the children was the priority and no follow up intervention was provided for the violence and trauma experienced by all of the children. Workers made a judgement that the violence exhibited by the parents was perceived as justified.

Again, the dominant strategy of risk minimisation is consistent with *conveyor belt social work* (Ferguson, 2004) or *pragmatic' practice* (Chapman & Field, 2007). This mode of practice is expedient and seemingly essential but is not justifiable; it does not achieve safety and protection for the children (Turnell, 2011). The focus on discrete incidences and minimisation of risk is undoubtedly convenient but does not inform an understanding of the complex transactions that contrive the adversity and cumulative harm the children experienced. The idea of conveyor-belt social work (Ferguson, 2004) underscores the neoliberalist ethos where responsibility and blame is shifted away from the child protection agency to the parent/s; more specifically, to the mothers of Jack, Dean and Baby Kate as individuals who were experiencing significant difficulties in attending to their parental role and obligations. This type of response is not uncommon (New South Wales Ombudsman, 2007; Wood, 2008). However, expediency does not achieve long-term change within the family system. Instead, it exposes children to further harm and adversity, further denying their needs and violating their rights to safety and protection.

Chapman and Field (2007) proclaim that there are situations when conveyor belt or pragmatic practice is inevitable. High workload demands generated by a high rate of notifications, unallocated children's cases or depleted staffing resources may require swift casework resolution. In a context of excessive workloads, the busy practitioner may not have the luxury of critically reflecting on child

protection intervention. When pressure subsides, there is a possibility that conveyor-belt and pragmatic practice has become embedded in a culture of less in-depth practice (Chapman & Field, 2007). When speedy case resolution is necessary, it is imperative that workers still have the capacity to pause and engage in reflective practice:

In situations of several intakes over a short period of time, it is important to look at the particular safety needs of the child and the support needs of the family. While previous intakes may have been dealt with appropriately in an efficient way, continued referrals about a child or family may require more reflective and critical analysis. (Chapman & Field, 2007, p. 25)

An ethos of speedy casework resolution and minimisation of adversity experienced by children precludes practice that is authoritative in nature.

## **Authoritarian not authoritative**

The use of authority is essential to child safety and protection although the literature emphasises that practice should be anti-oppressive (Ferguson, 2011). Ferguson (2011) and Sidebotham (2013) affirm that practice should be authoritative in nature and characterised by good authority, empathy and humility. The care and control dilemma is prominent within child protection literature (Munro, 2011) and challenging in practice (Buckley, 2003). The risk management strategies or forms of intervention predominantly employed in the narratives of Dean, Jack, Ebony and Baby Kate centred on monitoring and surveillance, and control of parental behaviour. These strategies compelled parents to take responsibility and reduce the risk of further harm to their children. High expectations were demanded from parents. Workers persuaded them to make changes in the absence of ongoing support services and working alliances with workers (Howe, 2010). These approaches do not result in a sustainable realisation of children's rights and protection (Turnell, 2011).

Reich (2012) adopts Goffman's concept of *deference* and applies it within the context of child protection:

In a larger sense, parents who show deference symbolically communicate that they believe that the state is trustworthy and that they long to comply with the expectations of normative parenting so they become fully members of the "moral community" the social worker represents. (p. 91)

Parents who choose to work co-operatively and demonstrate compliance with child protection workers demonstrate that warnings have been heeded and the seriousness of issues acknowledged. They all engage in a form of negotiation and even in circumstances where children have been harmed, it is unlikely that ongoing child protection work will follow (Buckley, 2003, p. 185). A situation involving Jack and his sibling is reflective of Buckley's (2003) assertion. Two months after the incident where Jack experienced a physical assault, the police notified DoCS that the mother, Ellen, had left Jack and his sister for two days in the care of a fourteen-year-old boy who had a history of violent behaviour. Previous interaction with Jack and his sister had identified the mother's serious limitations in her ability to protect her children but a comprehensive assessment had not been conducted and intervention not provided. The police found Jack and his sister locked in their home:

Police entered the unit to find it in a total state of filth and disarray. There was garbage all over the floor including bread crusts and dirty nappies. There was no fridge in the kitchen and the only food evident was a few tins of spaghetti in the cupboard. There were clothes all over the unit and there was a strong smell of urine. The victims were found in one of the bedrooms. [The girl] was found asleep on a mattress fully clothed...[The boy] was found on the floor fully clothed...and his clothes saturated...[The girl] also stated that she is often left alone with her younger brother and they put themselves to bed. (New South Wales Ombudsman, 2004, p. 12)

The children were placed in temporary out of home care and recommendations were made “to continue with assessing ‘safety/risks/parenting/and child minding arrangements and to consider other services as deemed appropriate” (New South Wales Ombudsman, 2004, p. 19). The decision to return Jack and his sister to the mother’s care was made following a single interview with the mother, Ellen. A summary of that interview was not provided in the New South Wales Ombudsman’s (2004) review document. Furthermore, there is no record of any interactions with Jack and his sister, even though they spent some time in out of home care. Ellen was co-operative, acknowledged the adverse circumstances and agreed to *formal* undertakings that were conveyed in a letter to the local court. The formal undertakings were reflective of a narrow, incident-focused response and speedy casework based on unfounded opinion that Ellen was able to conform to expectations of providing a safe and nurturing environment for her children despite demonstrating on several occasions that attending to her parental obligations and keeping her children in mind and safe was problematic. Details of her undertaking were as follows:

- [The mother] acknowledging the inappropriateness of placing children in the care of a youth;
- [The mother] agreeing to exercise better judgement when arranging care for her children;
- [The mother] locating appropriate bedding and resources for the home;
- [The mother] placing the children into Temporary Care for 7 days, to enable her to locate bedding and resources for the children.
- Further assistance will be afforded the family where necessary (New South Wales Ombudsman, 2004, p. 14).

The undertakings demonstrate decision-making where blame ideology was in operation. The focus was on the mother’s actions rather than concern for the harm experienced by Jack and his sibling (Gillingham & Bromfield, 2008). The children were returned to the mother’s (Ellen’s) care. The case closed two months later without a follow up assessment, provision of services or plan to ensure the ongoing safety and protection of Jack and his sibling (New South Wales Ombudsman, 2004). Intersectional feminists assert that child abuse should be considered in relation to “mothering/motherhood and ageism, in conjunction with other categories and systems of oppression” (Damant et al. 2008, p. 129). Using this perspective allows for a richer analysis and complex understanding of the harm and adversity considering “the power relations between the women/mothers and the children and their connection with women’s identities and multiple systems

of oppression” (Damant et al. 129). Jack’s mother experienced significant difficulties. The blame ideology adopted negated existing power relations and oppressive structures impacting on her as a mother and ability to protect her children. This response contravenes the ethos of authoritative child protection, which is characterised by authority earned and grounded in professional confidence and competence (Sidebotham, 2013):

The authoritative intervention is urgent, thorough, challenging, with a low threshold of concern, keeping the focus on the child, and with high expectations of parents and of what services should expect of themselves. (Haringey LSCB, 2010 cited in Sidebotham, 2013, p. 1)

Conversely, if parents choose not to co-operate or even fail to maintain a superficial compliance, parental incorrigibility is established and the rule of optimism ruptured (Dingwall et al. 2014). The provocative effects of non-compliance and rejection of the legitimacy of agency involvement is more likely to result in compulsory action. The establishment of parental incorrigibility undermines the good moral character of parents and questions their humanity and ability to love their children (Buckley, 2003; Dingwall et al. 2014; Thorpe, 1994).

In 2002, DoCS received several reports raising issues about Ebony’s older siblings’ chronic absenteeism from school and apprehensions about their general welfare. The school made numerous attempts to engage the parents in discussions but the parents failed to co-operate. DoCS intervened and commenced a risk assessment but:

... parents were evasive, did not follow up referrals and the older children continued to miss significant amounts of school. DoCS had also identified concerns about Ebony’s low birth weight and small size. (New South Wales Ombudsman, 2009b, p. 10)

DoCS lodged an application with the Children’s Court. Ebony’s young sibling, who was born during the proceedings, was also included and later placed in out of home care because she was failing to thrive:

While the matter was before the Court, all four children underwent assessment at the Sydney Children’s Hospital. Additionally, a children’s Court Clinician completed an assessment. In her assessment report, the clinician noted that Ebony presented as *‘an extremely worrying child’* because of her significant delayed development...While the clinician concluded that the three older children were not at serious risk of harm, she said that they would need to be closely monitored by services. (New South Wales Ombudsman, 2009b, p. 10)

The Children’s Court issued final orders for Ebony and her siblings that included a supervision order for nine months and undertakings to which the parents agreed:

The objective of the orders was to ensure the older girls’ regular attendance at school and the ongoing provision of appropriate services to meet the assessed needs of all four children. (New South Wales Ombudsman, 2009b, p. 10)

Ebony’s parents, BW and SW, continued to be evasive and non-compliant. On this basis, DoCS intended to escalate proceedings and place all children in out of home care. However, health professionals reported that BW and SW improved their level of compliance, thus averting a child

rescue response. In circumstances where parents offer a superficial façade of cooperation, the full effect of a more controlling stance is forestalled (Dingwall et al. 2014). Reder et al. (1993) refer to this pattern as disguised compliance because its “effect was to neutralize the professional’s authority and return the relationship to closure” (p. 106), which eventually occurred. Final orders were issued by the Court in December 2002:

The court ordered that the current supervision order and undertaking continue until expiration on 16 February 2003; that parental responsibility be shared for medical issues between the parent and the Minister for the remainder of the supervision order; and that, beyond the expiration of the supervision order, the parents undertake to ensure that the two older children continue to attend school on a full time basis for a further period of 12 months. (New South Wales Ombudsman, 2009b, p. 10)

The New South Wales Ombudsman (2009b) describes this period as intensive, where monitoring and surveillance was the primary medium of intervention:

What distinguished the child protection casework between 2001-2003 was its intensity, persistence, thoroughness and child focus. Having one child protection case worker involved with the matter over a two year period also provided a level of consistency and commitment...we found that the children’s child protection files were comprehensively documented, case plans were regularly reviewed and there was a clear rationale for DoCS’ actions. From 2005 onwards, this was not the case. (New South Wales Ombudsman, 2009b, p. 11)

The intervention did not achieve sustained child safety and wellbeing; trust that Ebony’s parents would comply was misplaced (Tuck, 2013). BW and SW persisted with disguised compliance until expiration of the supervision order. It transpired that following the expiration of the supervision order, school attendance “was initially deemed satisfactory but then worsened” (New South Wales Ombudsman, 2009b, p. 25). Furthermore, in February 2003, Ebony required intervention for her moderate global developmental delay but the mother refused services. The use of supervision orders as a form of intervention in DoCS was disparaged:

The Senior Children’s Magistrate submitted that the Care Act should be amended to impose specific duties and responsibilities on the Director-General when a supervision order is made...He states that it is a shortcoming of s. 76 that the form of supervision remains entirely a matter for the Director-General, and can in practice involve little more than a theoretical supervision. (Wood, 2008, p. 39)

What followed for Ebony and her siblings was a gradual but increasing closure of the family. *Closure* is a complex phenomenon and suggestive of increased risk of fatal abuse (Brandon et al. 2013; Reder et al. 1993). All children ceased to attend school and Ebony was not sighted by any professionals after March 2006 (New South Wales Ombudsman, 2009b).

Ebony experienced increasing adversity. In March 2007, DoCS responded after a further series of notifications had been recorded in recognition of ongoing and increased adversity for Ebony and her siblings, the father’s continued non-compliance and evasiveness with other professionals, allegations of domestic violence, the mother’s ill health and previous DoCS intervention. The father,

BW, continued to evade contact with child protection workers and when they entered the home, he strictly controlled their visit:

As planned...the caseworker and a colleague visited the family. The father would not agree to let the girls be seen by the Sydney Children's Hospital because of the family's previous involvement with the hospital in relation to the youngest child's removal. He said the three children had a paediatric appointment at the Prince of Wales Private Hospital...The case worker confirmed appointments...The caseworker sighted the two older children... *'Natural parents did not permit caseworkers to sight youngest child'*. (New South Wales Ombudsman, 2009b, p. 13)

Ebony did not attend the paediatric appointment. Her father, BW, had initiated conversations to relocate his family in an attempt, one must surmise, to increase control and escape professional scrutiny and surveillance. As stated previously in the section Information only in relation to Ebony's narrative, "flight was a variant of closure in which families closed their boundaries and retreated from contact with the external world by moving elsewhere" (Reder et al. 1993, p. 102). This created further emotional and physical distance between themselves and the professionals.

In Ebony's narrative, the New South Wales Ombudsman (2009b) briefly identifies two flashpoints where workers made attempts to escalate statutory intervention and place all children in out of home care, but the workers however were deterred. In situations where children experience chronic neglect and deprivation there is a prevalent sense of hopelessness in pursuing compulsory statutory intervention. This theme of hopelessness was identified by Buckley (2003) in her research. In October 2002, DoCS made plans to place Ebony and her siblings in out of home care:

While it is not for this office to review or comment on the merit or otherwise of decisions made by the Children's Court, departmental staff we spoke to all told us of the difficulties that they believed they experienced when pursuing 'neglect cases' through the Children's Court, particularly when the case plan was for the child to be placed in care. (New South Wales Ombudsman, 2009b, p. 11)

Another attempt was made in August 2007:

The caseworker sought internal advice about what she would need to do to get the matter before the Children's Court. She told us that she did this because in her experience it was extremely difficult to succeed on a neglect case or in a case where the risks are not immediate...She was advised by the legal officer to get the family's address, get evidence from DET regarding that department's concerns for the children, and visit the Matraville address for the purpose of telling the father DoCS wished to sight the children within 24 hours. (New South Wales Ombudsman, 2009b, p. 16)

The worker failed to progress some of the actions, particularly contacting the father, making a home visit and the importance of sighting the children (New South Wales Ombudsman, 2009b). A system that is premised on a forensic incident-driven paradigm which relies on physical evidence negates children's chronic adversity, accumulative trauma and hidden suffering:

The neglected wither away, like children laboring in a factory, a sweatshop, or a refugee or concentration camp. (Young-Bruehl, 2012, p. 153)



Being attentive and responsive to the needs and rights of children who are dehumanised requires a workforce that exudes confidence and competence in relation to their authority and knowledge with an unwavering focus on the moral status of the child.

## **Distant not intimate practice**

It should go without saying that the child needs to be at the centre of child protection. It has to be said because children are so often lost sight of and not properly related to, and this can have tragic consequences. (Ferguson, 2011, p. 80)

Monitoring, surveillance and attempts to compel normative parenting practices dominated the scope of statutory child protection work or risk management strategies for Dean, Jack, Ebony and Baby Kate. Morally just practice is premised on an intimate recognition and understanding of the lived experiences of children who experience adversity and the factors that culminate in that adversity. The development of in-depth knowledge and understanding, or reflective practice, is characterised by “critical reflection, strong professional decision-making, and an emphasis on engagement with and responsiveness to children, young people and their families” (Chapman & Field, 2007, p. 24). The ability to form professional relationships and develop in-depth understanding is the cornerstone of statutory child protection practice that facilitates implementation of strategies that promote sustainable child safety and enhanced moral worth (Howe, 2010; Turnell, 2004). Home visits, direct contact, and communication with children and relational practice lie at the heart of intimate child protection work (Ferguson, 2009, 2011; Ruch, 2014):

The most important reason to focus on the home...is that it is by far the most common place where children and families are seen and actual child protection work goes on. How the space where the child lives is viewed, and whether or not social workers move around it are central to investigating and preventing child maltreatment. In cases of suspected neglect, the state of the ‘home conditions’ is fundamental to the assessments of child wellbeing and parenting capacity. (Ferguson, 2009, p. 471)

The conveyor-belt social work (Ferguson, 2004) and pragmatic practice (Chapman & Field, 2007) preclude opportunities to develop relationships with parents and more particularly with children. The home is the space occupied by the child and their family, and occupying that space, even for a short time, provides fundamental information about child wellbeing and parenting capacity. Dingwall et al. (2014) asserts that visiting households enables the collation of valuable social information in relation to the material and interpersonal environment:

The extent to which social workers are able to explore the deeper reaches and inner lives of their client’s lives and homes – the degree to which they feel able to get up and walk across the room to directly engage with and where necessary examine the child – is directly related to how secure and contained they feel in separating from the office/car. (Ferguson, 2009, p. 479)

The narratives convey that social work was primarily conducted from a physical and emotional distance. Irrespective of the number of reports recorded about Dean, Jack and Ebony, there was little face-to-face contact or communication with them. When home visits or face-to-face contact occurred, the focus was predominantly on the allegations that triggered the statutory child protection

response. This is consistent with a narrow, organisationally-focused rather than child-focused incident approach. "The culture of child protection needs to become more organized around children's worlds, experiences of time and playfulness, and prepare workers to truly get down to children's level" (Ferguson, 2014, p. 10).

Conspicuous by its absence was the level of direct contact, visibility and communication with any of the children who were central to this study. A home visit was conducted following Baby Kate's discharge with her mother, Lisa, and her mother's partner John. The documented information about the home visit, which was recorded the day after Baby Kate's death, was as follows:

On arrival I observed that the house was very clean and Kate was in her cot. Baby's sleeping area was seen to be extremely clean and appropriate. Lisa seemed eager to show me all of Kate's clothes. Lisa was very organized in terms of formula, sterilisers, bottles, etc....John arrived about 20 minutes after I arrived...By this time, Lisa was bathing Kate and John did not hesitate to assist in this. I observed both parents to be comfortable in handling Kate and Lisa was extremely gentle and careful when bathing and dressing her. I discussed with John and Lisa having a Child Health and Family Community visit the home on a weekly basis. Both were very receptive...At one point, Lisa asked John to get Kate's formula out of the fridge and I observed plenty of vegetables, meat and fruit...Lisa also showed me an unopened can of formula for Kate and an almost full one that she was currently using. (Queensland Ombudsman, 2003, p. 63)

This was the only home visit conducted with Baby Kate. The documented assessment is consistent with Dingwall et al.'s (2014) study findings that the cleanliness of the home, the food in the fridge, the appropriate baby's sleeping area and the interaction between Lisa, John and Baby Kate were indicative of their good moral character and commitment to caring for Baby Kate. The worker was able to observe the child's environment and the narrative portrays a happy family, which is inconsistent with previous intelligence. There was no physical interaction or close contact with Baby Kate. Ferguson (2014) asserts that hands-on relating to children, particularly young children, is crucial to ensuring child-centred practice. A favorable assessment of parents' moral character is less likely to provoke compulsory legal intervention. Following this home visit, John departed the family system and Lisa and Baby Kate were relocated to supportive accommodation several times. From then on, communication between Lisa and the caseworker occurred via the telephone, rendering Baby Kate unseen and unheard; no longer central.

For Jack, home visits were conducted on three occasions, and the mother, Ellen, was also interviewed on three occasions. The aim of the home visits was to sight the children, inspect the premises and observe the children with their parents (New South Wales Ombudsman, 2004). The home visits and interviews were designed to gather information about the alleged incidents and to determine the veracity of the allegations:

On the 23 June 2000 a DoCS caseworker observed the children during a home visit to their grandmother's house. The house was considered to be 'a little cluttered', but otherwise in a satisfactory state and the children were observed to interact positively with the parents. (New South Wales Ombudsman, 2004, p. 6)

In another situation:

The house was in a filthy state cluttered inside and out. Dishes were piled up in the sink, there were puddles of liquid on the floor. Half eaten food lay all around the house. The children's bedroom was cluttered with plastic mattresses [sic] and other belongings. The bathroom basin was cluttered with stuff. The house had unusual amount of flies. The[re] was a foul smell through the house. The eldest child...was sleeping in a part of the lounge room. The floor coverings were filthy covered with dirt and half eaten food. The outside of the house was cluttered with rubbish, looked like clothes, furniture, garbage, dog food. (New South Wales Ombudsman, 2004, p. 7)

The state of the material environment goes to the heart of the parent/s' moral character; in this case the grandmother (Dingwall et al. 2014).

Emotional and physical distance exuded from the narratives as the workers collated social data or evidence progressing towards speedy casework resolution. There was no engagement or communication with the children except that they were *sighted* and *observed*. Jack and Baby Kate were silent and objects of observation in the context of their parents' material environment. This dynamic supports Parton et al.'s (1997) assertion that representations of children are linked inextricably to the parents' categorisations, which deny them their individuality and agency. The children were not recognised as individuals who contribute to, and shape their environment (Wall, 2010). For example, Jack was between the ages of one and three when home visits were conducted. It is difficult to believe that Jack, as a toddler, did not make eye contact, eat, move, cry, reach for objects or try to interact with the worker during any of the home visits. Young infants have the capacity to make an impact on their environment through their attachment behaviour. It is important for workers not only to observe but also to interact with the children and feel comfortable doing so.

The imperative for practice to be intimate and relational with both children and parents underscores its complexity. Workers feel that they have not been provided with adequate training, knowledge and skills to attend to the complex nuances of face-to-face work (Wood, 2008). A study conducted by Ferguson (2009) exemplified that the social workers did not have the necessary skills to relate to children. They expressed feeling "deflected from establishing relationships with children and parents" (Ruch, 2014, p. 2147) due to procedural and bureaucratic demands. The ability to develop relationships and communicate effectively with children is contingent on workers having knowledge about child development. A sound knowledge base facilitates communication in an age appropriate manner and ensures that judgements are informed by "what constitutes children's safety and wellbeing and promoting and preserving wellbeing" (Brandon et al. 2012, p. 91).

Young-Bruehl (2012) argues that the field of child abuse and neglect did not "from its inception, have in it the voice of abused and neglected children" (p. 105). This reductionist and narrow perspective pervades childism in statutory child protection, colluding in the ongoing silence and ignorance of the oppression and dehumanisation of children.

## **Pervasive beliefs trump paramount considerations**

Overriding beliefs about a child, the parent and their circumstances, whether socio-political, personal or professional can dominate professional thinking and ultimately impact on assessment and intervention (Reder et al. 1993). Howitt (1992) names this phenomenon *ratcheting*, in which a child protection process moves in a single direction irrespective of new information or a change in circumstances:

Unwinding, undoing or going back on a decision seems very infrequent...even in circumstances where these may seem appropriate. This is characteristic of some of the cases that have achieved great public notoriety. (p. 124)

The assessment of risk and working towards ensuring child safety is a complex task in an uncertain environment. Munro (1999), in reviewing child death reviews, identified that workers are reluctant to revise judgements based on new information. Professionals who have heavy caseloads and are pressured towards speedy case resolution rely on first impressions and “vivid, current information from interviews” (p. 754), which renders the assessment process static rather than dynamic and multidimensional (Reder & Duncan, 1999; Reder et al. 1993). As Reder et al. (1993) explain:

Once a case becomes dominated by a fixed view, workers’ selective attention is likely to distort their observations and any contradictory information becomes difficult to acknowledge. (p. 92)

Pervasive or fixed beliefs were prevalent in the narrative of Baby Kate. Baby Kate was discharged from hospital in Lisa’s care contingent on the presence and support of Lisa’s partner, John. This arrangement lasted for four days as John decided to leave the relationship (Queensland Ombudsman, 2003). This significant and unique change in circumstances should have triggered a re-assessment and analysis of Baby Kate’s circumstances considering that the protective factor (John) that buffered future risk of harm disappeared. Failure to incorporate new information occurs when a fixed view dominates intervention (Reder et al. 1993). The legislative imperative to preserve families was strongly embraced and the overarching goal of intervention “was to keep this baby with her mum so mum has the opportunity to demonstrate that she can learn what she needs to learn to be a parent” (Queensland Ombudsman, 2003, p. 63). Keddell’s (2013) assertion that family preservation or family maintenance is a default setting in decision-making is applicable in Baby Kate’s narrative:

In my opinion, their decisions were influenced too much by their desire to keep baby Kate with her mother, rather than by Lisa’s ability to care for baby Kate. (Queensland Ombudsman, 2003, p. 63)

The *rule of optimism* (Dingwall et al. 2014) was at play. Baby Kate’s mother, Lisa, acknowledged that she needed help, was co-operative and “willing to do anything we suggest or recommend” (Queensland Ombudsman, 2003, pp. 62-63), further grounding an ethos of family preservation. It was “taking the least intrusive approach and minimal intervention” (p. 65), and maintaining Lisa’s right to be a parent; and a parent who presents as contrite, willing and co-operative results in a more positive assessment (Buckley, 2003; Keddell, 2013; Thorpe, 1994):

She was working with us and doing the right thing and the Act...very clearly states minimal intervention but supporting parents in their role if at all possible. (Queensland Ombudsman, 2003, p. 62)

Practice was more *pragmatic than reflective* (Turnell, 2011). There was a lack of depth in understanding the complex nature of Baby Kate's situation and her developmental vulnerability. There is an over-representation of children with parents who have intellectual disabilities in the child protection system. Research and practice suggest that intellectual disability in itself does not equate with dangerous parenting, although some families and children benefit from long-term informal and formal support (McConnell & Llewellyn, 2002). A comprehensive assessment and provision of appropriate intervention may have grounded Baby Kate's long-term safety. The SCAN (Suspected Child Abuse and Neglect) team recommended that Lisa and Baby Kate attend Riverton Early Parenting Centre, which would have provided DOF with a "detailed assessment of Lisa's parenting ability and the interventions that were required during her admission" (Queensland Ombudsman, 2003, p. 68). This would have informed longer term planning and intervention to ensure Baby Kate was provided with every opportunity to flourish. This referral did not progress because there was a belief that sending Lisa to Riverton Early Parenting Centre "was setting Lisa up to fail" (p. 67). The workers had already identified that Lisa's "parenting skills were in question and that she basically needed a lot of support and the opportunity to learn" (p. 67). Previous information indicated that even when Lisa was provided with support from her foster mother, a pattern emerged indicating that "Lisa was not coping and experiencing high levels of stress and frustration when required to attend to Baby Kate's needs, particularly at night" (p. 76).

Instead of Riverton Parenting Centre, Lisa and Baby Kate were referred to, and accepted at, Fernbrook, a residential home for homeless women and their children. The worker informed Fernbrook that "Lisa has a very minor intellectual disability, has limited parenting skills but is doing well; Child Health and Family Services will be involved, and Ex-partner has been emotionally abusive etc and won't be involved in raising the child" (Queensland Ombudsman, 2003, p. 73). On the basis of the information provided, the manager of Fernbrook accepted the referral, "However, the Manager...once she observed Lisa's '**high needs**', she assessed that Fernbrook was an inappropriate placement (Queensland Ombudsman, 2003, p. 73).

The accommodation service was not equipped to provide intensive support, supervision or learning opportunities, which is what Lisa required. The manager of Fernbrook made attempts to discuss her concerns with the worker, however her assessment of the worker's assessment was, "she thinks there's been a wonderful change in this girl [Lisa]...and that's what we hear from her" (Queensland Ombudsman, 2003, p. 79).

## Reflections: childism in statutory child protection

At its basis, childism is a legitimization of an adult's or a society's failure to prioritize or make paramount the needs of children over those of adults, the needs of the future adults over the needs of the present adults. (Young-Bruehl, 2012, p. 280)

Dean, Jack, Ebony and Baby Kate were children who required statutory child protection intervention. As identified in Chapter 7, their rights were severely violated in a context of family relationships that were detrimental to their development and wellbeing. The parents, instead of providing a protective and nurturing environment, rendered the children silent and powerless.

Childism erodes and degrades children's moral status. The analysis presented in this chapter is illustrative of childism in statutory child protection where the State authorities are unable to fulfil their recognised obligations to the children. The circumstances Dean, Jack, Ebony and Baby Kate experienced warranted the State, as *parens patriae*, to intervene, protect and rehumanise them. State parties were obligated to ensure that the children were safe and protected, as enshrined in the UNCRC (United Nations, 1989) and domestic legislation. Rights delineate responsibilities:

[They] should function to distend and decenter, as opposed to contract and consolidate, social creativity among humanity. Existing social relations should be made more rather than less fully responsive to humanity's true diversity of lived experience. (Wall, 2010, p. 126)

The ethical basis of social structures is "to expand systems of interdependent relations as diversely as possible" (Wall, 2010, p. 104). The worth or value of social systems, or in this case statutory child protection, should be judged by the degree of "their other-responsiveness" (p. 104). Social narrowing or destruction of the other leads to disenfranchisement and dehumanisation (Wall, 2010, p. 105).

The domestic child protection legislations in the jurisdictions of Queensland and New South Wales in the early to mid-2000s grounded legitimacy of State intrusion into families' lives. As stated earlier in Chapter 1 and the Introduction to this chapter, the principles that underscored the moral and legal imperatives for both jurisdictions included: the safety and wellbeing of the child is of paramount consideration; children should be provided with a stable, safe and nurturing environment; provision of support for parents and preservation of family relationships; and the child, where able, is to be given the opportunity to participate in decision-making processes and freely express their views and opinions about their circumstances. It is important to reiterate these principles here because they are reflective of contemporary child protection practice and are enshrined in the UNCRC.

Viewing the narratives through the lens of the Emergent Model of Morally Just Practice (EMMJP) exemplified that the needs, interests and wellbeing of Dean, Jack, Ebony and Baby Kate were far from being up front and centre. Children have a right to be free from violence but in this case, the children's best interests, voice and visibility did not find their way from the legislative rhetoric to frontline practice. The children at the centre of this study were receiving statutory child protection services in an environment of substantial reform, increasing workload demands, diminishing

resources and a workforce well versed in a narrow forensic approach. These issues conspired in the establishment of childist dynamics that excluded the children from the moral community and denied them protection. Exclusion from protection exacerbated their trauma, oppression and dehumanisation; tragically, these children met their demise.

The bureaucratisation, medicalisation and increasing technology obscured the children's humanity. The use of technology is dehumanising when "it involves the robotic pursuit of efficiency and regularity, automaton-like rigidity and conformity" (Haslam, 2006, p. 254). These processes create an environment where workers are unable to engage with the children's suffering and adversity. Moral distance and insensitivity is created, sustaining the children's depersonalisation and dehumanisation. This was most evident in the examples of missed opportunities and conveyor-belt social work that prevented opportunities for understanding the children's lived experiences, or developing relationships or working alliances with them or their parents. Episodic and fleeting responses to notifications where factors contributing to maltreatment are chronic and pervasive in nature are counterproductive. These responses are based on assumptions that parents have the strength and resources to shift from parenting that is not good enough to good enough parenting.

Children who experience neglect and cumulative trauma are more likely to be excluded or eliminated from the system; a dominant theme in child protection discourse (Buckley, 2003; Daniel, 2015; Bromfield et al. 2007). This phenomenon is evident from the philanthropic beginnings of child protection. It was cemented further when child abuse was rediscovered. Children experiencing chronic neglect represent society's moral disintegration and envelop workers in a sense of hopelessness about effecting sustainable change. The medicalisation of child abuse resulted in the development of forensically driven systems that diverted attention from the complex nature of maltreatment whereby children experience neglect and deprivation (Scott & Swain, 2002). The disease model provides a simplistic and reductionist view of a complex problem, ignoring children's suffering and oppression.

Professionals operating in a system where children are devalued, and where there are inadequate staff and funding resources experience erosion of their confidence and commitment. Children who are maltreated are powerless and oppressed; they have no control or influence over their circumstances or environment. Workers in statutory child protection are perceived as having absolute power. The use of power in an authoritarian manner promotes intervention that relies predominantly on surveillance and monitoring strategies that may not produce sustainable change. The use of authority and control, although necessary in some situations, may result in superficial and temporary deference. There is evidence in this analysis that workers experienced a sense of powerlessness to effect change. Wardhaugh and Wilding (1993) argue that in organisations where staff are "simultaneously powerless and powerful" it "creates a dangerous ambivalence" (p. 12). If

staff feel that their moral status is diminished, then they may “cease to behave in a fully moral fashion” (p. 12).

A consistent lack of resources exacerbated by a high workload environment diminishes and undermines the moral legitimacy of statutory child protection work. Lack of resources and inadequate staffing levels is a dominant theme not only in this analysis but also in contemporary child protection literature. The growing number of children requiring services from statutory child protection is consequential to the reform agendas implemented in New South Wales and Queensland in the early to mid-2000s. These agendas have enlarged the gap between the rhetoric of policy and stark realities of frontline practice. Lack of resources and facilities at the disposal of staff communicates “the low value which society puts upon their work and upon their clients. Official aspirations and standards are therefore deprived of legitimacy” (Wardhaugh & Wilding, 1993, p. 14).

## **Concluding remarks**

This chapter has provided an analysis and understanding of childism in statutory child protection drawing on the narratives of Dean, Jack, Ebony and Baby Kate. Several factors were identified that contrived the children’s exclusion from the moral community and denied them protection. The children were in receipt of services in a context of substantial reform of the child protection systems, which were suffering from growing demands and inadequate resources. The wellbeing of children at that time was *not* paramount. Speedy casework resolution, consistent with a neoliberalist and managerialist ethos that promotes efficiency and meeting targets, contributed to the children’s demise.

Childism within statutory child protection is facilitated by moral distance, moral invisibility and depersonalisation, operationalised through screening out of notifications and a narrow forensic approach to intervention. A pressured high workload environment and a consistent theme of inadequate staffing and resources diminishes and undermines the moral legitimacy of the work, rendering children and staff devalued and powerless. It is time to PUT CHILDREN FIRST. This is the focus of the next (final) chapter.



# CHAPTER 9

## CHILDREN MUST COME FIRST: MORALLY JUST SOCIAL WORK PRACTICE

### Introduction

This final chapter joins the pathways of understanding, knowledge and development that have been travelled in the journey towards emerging from moral ignorance (Bauman & Donskis, 2013). The termination of this journey takes us into the reconstruction phase of CSR, and shows the empowering and transformative face (Wall, 2013) of anti-childist practice. It highlights implications for social work in the context of statutory child protection so that moral obligations can be fulfilled through the enhancement of attentiveness, responsiveness and responsibility towards children who experience significant adversity and suffering. There are parallel themes of power, powerlessness and dehumanisation that infiltrate the narratives of Dean, Jack, Ebony and Baby Kate, and the statutory child protection responses they received. The findings have implications not only for social work and associated disciplines but also contribute to the imperative for transformative action in statutory child protection.

This study has provided a basis for a morally just discourse for children who experience adversity and harm. The discourse has been grounded in philosophical considerations and other compelling factors, positioning children centrally and engaging with their humanity. My gaze has been averted from dominant neoliberalist agenda and challenged to engage with a morally accountable discussion. My intent was to look away from issues of compliance and accountability in statutory child protection, which drive so many reviews and child death inquiries. Instead, this research study has enabled me to reflect on the moral status of children, and in doing so I have articulated the moral obligations that children should expect from society, particularly when their rights, best interests and wellbeing are severely compromised. The construct of moral status is particularly beneficial in the fields of bioethics (Warren, 1997), and environmental ethics and law (Dwyer, 2011a). Moral status delineates to whom we are morally obliged. There are limitations to the concept, however, particularly in discussions about children and more specifically children who experience trauma, oppression and dehumanisation. Philosophically speaking, other compelling factors require consideration. Individuals who are 'ordealing', socially excluded and on the margins of the human community are vulnerable and deserving of protection and moral concern.

This final chapter has three parts. Part A: Joining of Pathways, will draw together understandings, knowledge and findings that have emerged from the study. Part B: Critique of the *Emergent Model of Morally Just Practice* as an interpretive framework, asks from a reflexive stance whether the model is applicable as a social work practice framework. Part C: Possibilities concludes the chapter with

recommendations about social work practice to enhance the moral status of children who have been maltreated, and to contribute to the degradation of childism.

## Part A: Joining of pathways

To respond ethically to children's experiences – as well as the experiences of any other person or group – is always to expand or exceed oneself in the direction of others' distinctive differences. (Wall et al. 2010, p. 252)

The social work profession has a long tradition in statutory child protection and is well placed to attend to the interests, needs and wellbeing of children who experience trauma, oppression and dehumanisation. This study has argued that a transformative agenda is contingent on engaging in a philosophical discourse that highlights the centrality and humanity of children. Wall et al. (2010) suggest that the moral deliberations about children are inextricably linked to a struggle to "understand children's common yet distinctive humanity" (p. 248). A historical account of child protection has identified that processes and strategies which set out to protect and humanise children have also inadvertently dehumanised them:

While there is something humanizing about recognizing children's inner struggles and public needs, however, history has also shown that the notion of childhood unruliness or moral lack is dehumanizing in its own way. (Wall et al. 2010, p. 250)

Contemporary statutory child protection is operationalised within a context of increasing complexity and uncertainty, and driven by a neoliberalist and managerialist ethos demanding efficiency and accountability. These dynamics contribute to childism through exclusion and moral distance that obscures the visibility and voice of children, thus diminishing and compounding their experiences of trauma, oppression and dehumanisation.

The consensual starting point (Wolff & de-Shalit, 2013) for this study is unwavering in that *children have moral status*; they count morally and are morally considerable. In reviewing the philosophical deliberations of moral status, it becomes evident that a more robust theoretical account is required. Several authors concur with the notion that children have moral status, although theoretical accounts do not actively focus on children who are maltreated. The ethics as ordeal (Massey, 2000) and the *marginal humans* perspective (Fox, 2002; Kittay, 2005) provided a sharper theoretical focus. There can be no denying that we are morally obliged to protect children who experience maltreatment. They are valuable members of the human community and worthy of attention, protection and moral consideration.

The United Nations Convention on the Rights of the Child (UNCRC) (United Nations, 1989) exemplifies children's moral status and importance. Children's rights demarcate social responsibilities and create social relations that are expansive and facilitate responsiveness to otherness. Both Wall (2010) and Young-Bruehl (2012) identify that the ratification of the UNCRC was the beginning of ongoing conversations in acknowledging and stipulating the obligations owed to

children by parents, carers and governments. The best interests principle, in particular, provides the foundation for policies and practices in statutory child protection. The concept of children's best interests encapsulates references to their needs, development and wellbeing, and attachment within families and family environments (Melton, 2010). Social workers in statutory child protection must make judgements on a daily basis about children's best interests so that children are free from violence and adversity. Determination about children's best interests includes consideration of: rights and relationships; child wellbeing; rights and duties of parents; and what constitutes 'good enough parenting' informed by theoretical perspectives of attachment, family preservation and relationships (Archard, 2003; Hansen & Ainsworth, 2009; Keddell, 2013; United Nations, 1989).

Children's rights provide a fundamental transformation in the way we view children. The very idea of extending human rights to children is a recognition of previous exclusion of their lived experiences. It is societies' "creative response to human difference" (Wall, 2013, p. 81). More specifically:

The purpose of rights is not to guarantee, encourage, or protect individual agency but to decenter collective life around humanity's widest possible experiential diversity. Existing structures of social, cultural, and power relations should constantly be deconstructed and reconstructed in order, all at once, to provide for those they exclude, protect those they do harm, and increase participation for those they silence. In short, human rights exist to help societies expand their moral imaginations and thereby grow in humanity. (Wall, 2013, p. 82)

The UNCRC grounds domestic legislation in statutory child protection practice. Although there is a chasm between the rhetoric and reality Wardhaugh and Wilding (1993) state that, "Policy is built up of fine words but the reality of what is provided for these groups denies their truth" (p. 14). The critical research methodology used in this study has facilitated the exposure of childist strategies within statutory child protection. The critical-dialectical process of deconstruction and reconstruction was informed by an interpretive conceptual framework of the *Emergent Model of Morally Just Practice* (EMMJP). This framework facilitated the exposure of childism. As Young-Bruehl (2012) asserts, childism has been in operation since the first wave of the discovery of child abuse in the nineteenth century. Well-intentioned philanthropists responded to the increased visibility of children who were victims of industrialisation and the rise of capitalism. The children needed saving but they also represented a threat to the moral order of society:

The child-savers thought that the solution to the social problem the poor children represented was to protect good people and good society from them. The strategies they came up with were to further eliminate the destitute, to further manipulate the delinquent, and to further erase the neglected. (Young-Bruehl, 2012, p. 282)

Strategies employed to protect society and further marginalise children led to their sequestration to alleviate social and professional anxiety. The second wave in the discovery of child abuse in the 1960s was a fateful moment that has had a profound impact on child protection practice and how children are conceptualised. The neglect and abuse of children was reconceptualised within a medical paradigm, giving rise to identification, assessment and treatment systems. Child abuse, as

a disease, fixated on evidence gathering and attributing the cause to parental psychopathology, thereby marginalising children who experienced chronic neglect and emotional abuse.

This simplistic and reductionist approach, although appealing to those espousing economic rationalism and managerialism, negated the complexity of child abuse. The multitude of factors that culminate in the adversity, trauma and oppression of children were minimised and simplified. A forensic, narrow and risk averse approach to statutory child protection persists irrespective of consistent reform agendas and recommendations stemming from child death reviews. Child protection practice has become increasingly complex and insistent on control in a context of uncertainty where the visibility, centrality and moral status of the child has diminished.

The vertical and horizontal readings of the narratives of Dean, Jack, Ebony and Baby Kate have enabled the exposure of childism within their families and contemporary statutory child protection agencies. This analysis has expanded on the work commenced by Young-Bruehl (2012). Childism in the families of the four children central to this study was maintained through strategies of elimination and erasure. The children were unwanted and/or burdensome (Young-Bruehl, 2012). The private and moral worlds of Dean, Jack, Baby Kate and Ebony excluded them from the human community – they were kept traumatised, oppressed and dehumanised.

The children were entitled to be safe, protected and flourishing, but multiple interacting forces colluded in childism within statutory child protection agencies to deny them safety. The gatekeepers of the statutory child protection agencies recognised the children's lived experiences of adversity but in a context of competing priorities, increasing workloads and diminishing resources, the children, particularly Dean, Jack and Ebony, were not provided with intervention to secure their safety and wellbeing within the context of family environments. When assessment and/or intervention was provided, attentiveness and responsiveness was lacking – practice was consistent with conveyor belt social work and there was a pervasive ideology of blame. Exclusionary strategies and diversionary tactics shifted blame and responsibility from statutory child protection agencies to parents who lacked the emotional and psychological capacity to attend to their children's needs, interests and wellbeing. The strategies contributed to the prohibition of best interests, voice and visibility. Statutory child protection, morally speaking, inadvertently became complicit in the children's subsequent trauma, oppression and dehumanisation; their rights violated and their humanity ignored.

Childism in statutory child protection, as identified in the narratives of Dean, Jack, Ebony and Baby Kate, exemplifies practices that are organisationally-focused instead of child-focused. Children are objects of concern where their humanity is obscured. These findings are not new and have been illuminated in other studies (Buckley, 2003; Parton et al. 1997) and child death reviews (Brandon et al. 2009):

Indeed failings in the child protection system are often associated with social workers minimizing, discounting or marginalizing the needs and views of children, if they are sought at all, or paying attention to the needs and interests of adults over and above those of the child. (Horwath & Tarr, 2015, p. 1381)

The study demonstrates that for some children, statutory child protection services do not achieve the vision and outcomes stipulated in *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020* (Council of Australian Governments, 2009). This visionary document demonstrates a commitment to a long-term, national approach to the protection of Australian children. Outcome four is specific to statutory child protection, stating that, Children who have been abused or neglected receive the support and care they need for their safety and wellbeing. Furthermore, "children and young people who have been abused (or are at risk of abuse) receive timely, appropriate, high-quality child protection and other support services to secure their safety and promote their long-term wellbeing" (Council of Australian Governments, 2009, p. 25). More specifically:

To secure children's safety and wellbeing in the short and long term they need high-quality child protection services that are evidence based, child-focused, attend to the children's development needs and help children overcome the effects of trauma, abuse and neglect. (Council of Australian Governments, 2009, p. 25)

This cannot be disputed. The vision, which is reflective of the ethos of UNCRC and principles in domestic legislation, needs to be translated from rhetoric to frontline practice. Turnell et al. (2013) proclaim that the heart of the statutory child protection system's capacity to enhance the status and safety of children is dependent on the "quality of service that frontline workers offer to families" (p. 200). My study extends this notion and proposes that the quality of frontline practice and ability to attend to moral responsibilities towards children and their family environments (Melton, 2010) are dependent on humane and morally just statutory child protection practices that attend to the needs, interests and wellbeing of workers.

Reforms in statutory child protection that have arisen from child death reviews and other relevant inquiries have been traditionally associated with recommendations focused on managerial and structural changes (Brandon et al. 2011; Turnell, Munro, & Murphy, 2013). Recommendations and projected outcomes include legislative changes, new policies, improved technology, organisational restructure, a child death review, increased compliance measures or implementing a new practice model (Turnell et al. 2013). I concur with the assertions of Turnell et al. (2013) that:

The harder work almost always lies in the soft stuff, the mortar that holds these tangible elements together. The "soft" stuff resides in the skilfulness of the professionals, which is determined by the human attitudes and responses to the uncertainty and anxiety of child protection work that either elicit or diminish intelligence and practice depth. (p. 201)

A transformative agenda is dependent on the soft stuff, which in my view is twofold. First, it is the implementation of a conceptual framework considerate of the rights, development and wellbeing of children within a moral context of relationships. Second, it invests in statutory child protection

workers so they have the knowledge, skills and courage to engage in morally just practice and thus rehumanise the children with whom they work. Rehumanisation of children is dependent on an in-depth understanding of their lived experiences and implementing interventions that change their concrete realities. It entails ensuring that their circumstances shift from their rights being violated to a position where their rights are realised within the context of nurturing and loving relationships:

If a parent fails to meet the needs of a child, then the child's health and development are affected.... if managers fail to meet the needs of practitioners, then the health and development of the workers are affected, with potentially serious implications for practice. (Horwath, 2015)

The joining of the pathways in this study has brought us to the end of one journey. However, other paths emerge, grounding further research and deliberation. What stands out most decisively is that enhancing the humanity of children who are so profoundly violated is dependent on the enhanced humanity of statutory child protection workers. The next section provides a critique of the *Emergent Model of Morally Just Practice* as an interpretive framework and determines its applicability as a morally just social work practice framework.

## **Part B: Emergent Model of Morally Just Practice (EMMJP): from research to social work practice (MJSWP)**

This study has trialled the *Emergent Model of Morally Just Practice* (EMMJP), which delivers a synthesis between the *Just Practice Framework* (JPF) (Finn & Jacobson 2003a, 2003b), the *Ecological-Transactional Perspective* (ETP) (Cicchetti & Valentino, 2006) and the *Capabilities Approach* (CA) (Nussbaum, 2011). The embryonic model preserves modern attention to concrete realities (things that happen to children) while applying a postmodern sensitivity that produces “a reconceptualization of practice that is informed by critical social...theory” (Finn & Jacobson, 2003a, p. 67). The EMMJP as an interpretive framework was developed to form a bridge between the philosophical construct of moral status and mid-range theories applicable in the context of statutory child protection. It meets the criteria established by Wolff (2011) wherein the conceptual framework is translated from the ideational to practice realities. It facilitated an interpretation of childism, thereby enhancing the discourse of possibilities for social change for children who are recipients of statutory child protection services.

I have applied some questions to guide the critique of the EMMJP framework. While not exhaustive, the questions provide a basis from which to determine whether the interpretive framework can transition from a research-based model to a model for morally just social work practice (MJSWP). Is it comprehensive? Does it direct inquiry into the right areas (meaning, history, power, context and possibility)? Does it allow vigorous enough attention to all levels in the ecological framework? Does it give pointers to social assessment and case planning? Is it sufficiently sensitive to risk? Is it an effective training tool?

Knowledge and theory development for practice is a dynamic process under constant construction, where “decisions about theory use can only be made in specific institutional contexts of practice and in relation to specific practice purposes” (Healy, 2005, p. 105). There are no absolutes in social work practice. Social workers must make judgements in a context of complexity and uncertainty; no single model is sufficiently realistic about the complex nature of decision-making processes (Taylor & White, 2001). Practising reflexivity in relation to social work enables practitioners to:

... subject their own and others’ knowledge claims and practices to analysis. Knowledge, in particular, becomes not simply a resource to be deployed in practice but a topic which is worthy of scrutiny. (Taylor & White, 2001, p. 55)

### **EMMJP: a reflexive critique**

Wolff’s (2011) leadership has been instrumental for this study. Wolff asserts that ethical public policy must be informed by moral theory. In turn, moral theory must be translated from the ideational and embedded within concrete realities to ensure its relevance to social change and transformative agendas. In this study, I have translated the philosophical construct of moral status to mid-range theories which, when applied to the concrete realities of children who are maltreated, demonstrates the moral obligations of child protection practitioners and policy-makers towards them. The *Emergent Model of Morally Just Practice* (EMMJP) was developed to fill a gap in recognised theoretical perspectives that inform social work practice, offer a critical perspective, and are inclusive of children’s rights, development and wellbeing within multiple ecologies. The trauma, oppression and dehumanisation of children is a profound violation of their rights and humanity. If they are to be morally just, statutory child protection workers and their practices must embrace this ontologically challenging reality and strive to ensure the realisation of children’s rights. We are morally obliged to do so. The EMMJP is sensitive to these particular elements, as demonstrated by the interpretive framework’s application as a lens through which the narratives of Dean, Ebony, Jack and Baby Kate were analysed, which facilitated an understanding of childism in the children’s families and statutory child protection. In-depth understanding breeds compassion and provides a springboard from which to implement change.

### ***Is it comprehensive? Does it allow vigorous enough attention to all levels in the ecological framework? Does it give pointers to social assessment and case planning?***

From a research perspective, I found the EMMJP effective in enabling a comprehensive and intimate assessment of the lived experiences of Dean, Jack, Baby Kate and Ebony, and the ecologies in which they were situated. The inclusion of the CA in the conceptual framework enabled an analysis where the focus was squarely on them, as valued individuals who were injured and oppressed instead of being objects of a risk orientated perspective that focuses on future harm and risk minimisation. The children were positioned at the heart of the ecology; THEY WERE VISIBLE. The application of the capability domains, as identified by Biggeri et al. (2006), facilitated an analysis of the rights and well-being of the children central to this study. Children who are central to this study were severely violated and their humanity ignored; they were eliminated and erased, leading to their

social exclusion and dehumanisation. Their physical and emotional needs were unmet in the context of relationships and their wellbeing severely compromised, culminating in their deaths.

The CA approach facilitated an in-depth analysis exemplifying the lived experiences of children within a children's rights framework. The capabilities identified by Nussbaum (2011) and Biggeri et al. (2006,) at a bare minimum, are the central capabilities required for children to have a life that is humane, dignified and flourishing. This approach enables child protection responses to shift from a narrow forensic approach to a children's rights paradigm where it can actively support the entitlements and flourishing of children. As a practitioner, I was able to avert my gaze from an analysis focused on risks and concentrate on the children as individuals worthy of my moral concern and protection. A conceptual framework that is inclusive of children's rights may contribute to a transformative agenda reducing the gap between the rhetoric and reality of child protection practice.

The particular strength of the ecological perspective (ETP) is recognition that individuals and their environments are inextricably linked; they exist in unending transactions with each other (Finn & Jacobson, 2003a). Use of the EMMJP enabled me to step beyond the children's ecology and examine protective or risk factors in the ecological levels that hindered or fostered childism in the family and in statutory child protection. This generated depth of knowledge and identification of missing pieces in the statutory child protection system. One of the gaps I noted was a lack of scrutiny in the exosystem ecology, which can be explained in two ways. First is the omission of documented information about issues relating to poverty, income, unemployment, social isolation and neighbourhood factors from the children's narratives. The New South Wales and Queensland Ombudsmen's investigation parameters narrowed to a focus on determining compliance with policy and procedural guidelines. The inclusion of structural information relevant to the family was outside their purview. This brings me to the second point. Although it is well recognised in child protection discourse that structural issues detrimentally affect the lives of children and exacerbate parental stress, social work assessment and intervention within the context of statutory child protection continues to be narrow and individualistic (Parton, 2014). Striving towards practice that is morally just must not forsake attention to structural issues.

***Does it direct inquiry into the right areas (meaning, history, power, context and possibility)?***

The critical frames of meaning, power, context, history and possibilities in the EMMJP assisted me to visualise morally just social work practice and provided me with the frames for critical reflection and action. The five key frames, or themes, developed by Finn and Jacobson (2003, 2008) "provide the foundation for critical questions and for imagining other possibilities" (2003, p. 72). There is constant interplay between these frames, thus giving them attention is imperative. The interplay shifts scrutiny from a narrow focus to one that recognises that knowledge development and direct social work practice require a critical methodology that stimulates dialogue and the moral imagination.



A dominant theme in child protection literature and discourse is that practice continues to reflect the narrow, forensic approach that emanated from the work of Kempe (Wood, 2008; Parton, 2014). Furthermore, there is a preponderance of, and preoccupation with, identifying and minimising risk. The critical frames provide a reconceptualisation of practice from a narrow conveyor belt social work approach to social work that is informed by critical theory. Critical frames also convey the message that practice, in the wider sense, “refers more broadly to human action in the world as a process wherein we are both shaped by the prevailing social order and are active participants in the creation of that order” (Finn & Jacobson, 2003a, p. 67). Morally just social work practice depends not only on understanding the lived experiences of children and their families, but being attentive and responsive to the broader forces that impact on their adversity and oppression. As moral agents, we are obliged to do so.

### ***Is it sufficiently sensitive to risk?***

The EMMJP is sensitive to risk while not offering a technical rational approach to risk assessment or providing prescriptive risk management strategies. The intention of morally just practice is to move away from actively constructing children and their families as “objects of risk to be studied, measured and corrected, which works against their own and social workers’ interests” (Stanford, 2010, p. 1067). The ETP offers a perspective that not only identifies factors that contribute to, and sustain, child maltreatment but also enables an assessment of the transactions amongst risk factors that may hinder or foster future child maltreatment, as explained in Chapter 2.

This study has been methodologically challenging yet rewarding. The challenges experienced only exemplify the context of uncertainty and complexity within which social work must practice. The study counteracts a dominant ideology that child abuse and the protection of children is a linear process of identification, categorisation, assessment and treatment. This powerful and seductive ideology for the proponents of the economic neoliberalist ethos is reductive and offensive to children and families who have endured suffering, and experience a sense of powerlessness and hopelessness. The EMMJP has facilitated the visualisation of childism within families and statutory child protection, and the factors that hinder parents and governments from meeting their moral and legal obligations.

The operationalisation of the EMMJP as an interpretive lens was applied to secondary data sources where there was no interaction with individuals involved in the children’s narratives. This left many questions unanswered. There was no opportunity to interrogate the data and draw out further nuances and intricate dynamics. However, this significant limitation does not minimise the importance and veracity of examining child death reviews as case studies. Studying cases has advantages. Interrogation of the narratives or cases of children who are deceased provides valuable opportunities to extrapolate particular information and dynamics that can be studied in depth. There are grounds to believe that similar processes or dynamics are in operation in similar situations.

### ***Is it an effective training tool?***

The EMMJP incorporates a sound philosophy and knowledge base that informs the ability to conduct a comprehensive assessment. The implementation of a multidimensional and comprehensive framework may be counterproductive in a statutory child protection environment dominated by a neoliberalist and managerialist ethos. Many authors have promoted reform agendas to enhance ethical and humane practice in statutory child protection and they recognise the challenges in the current political climate (Featherstone et al. 2014; Lonne et al. 2016; Parton, 2014; Rogowski, 2013). As a child protection practitioner, I have reservations about suggesting that the framework is directly transferable, in its current state, as a morally just framework for social work practice in the current political climate.

At this point in time, the framework has value in the education and professional development of statutory child protection workers. It is philosophically sound and grounded in the importance and moral worth of children. The mid-range theories are consistent with the value and knowledge base of the UNCRC. Conceptually, the EMMJP framework promotes ethical and moral statutory child protection practice, and promotes the rehumanisation of children who experience trauma, oppression and dehumanisation. A workforce that is competent, confident and valued has the capacity and resources to attend to the needs, best interests and wellbeing of children:

Our capacity to prevent severe child maltreatment depends above everything on building and sustaining intelligent, compassionate and imaginative staff who have the courage to engage with the complex circumstances our societies' most vulnerable children live in. (Turnell, 2013, p. 213)

In her theorising, Tronto (2009) asserts that competence is important in caregiving contexts such as statutory child protection. The intention to provide care, then subsequent failure to do so, means that needs have not been met. Tronto (2009) acknowledges that there are situations where lack of resources compromises adequate caregiving. Beyond this point, however, ensuring that professionals are competent demonstrates the moral importance and moral worth of others: "...making certain that the caring work is done competently must be a moral aspect of care if the adequacy of care given is to be a measure of success of care" (p. 133).

### **Is the EMMJP transferable from being a research framework to a framework for Morally Just Social Work Practice (MJSWP)?**

The EMMJP, although it has value and substantial potential, is still in an embryonic stage. I have demonstrated its usefulness and applicability as a research framework and value as a framework for social workers' professional development. The transferability from an interpretive conceptual framework to a social work practice framework requires further clarification, research and adjustment, which will be elaborated in Part C of this chapter. Before engaging in a discussion about future possibilities and recommendations, I would like to focus on the key elements of a practice framework that will facilitate the transition from rhetoric to reality.

### ***What is a practice framework?***

Statutory child protection has made increasing attempts to influence and shape practice. For example, over the last decade “the emergence of a seeming proliferation of assessment frameworks has had a substantial impact on the rhetoric, if not the practice, of social work in the UK, Australia and elsewhere” (Crisp, Anderson, Orme, & Green Lister, 2007, p. 1060). The notion of having assessment frameworks is to improve services and encourage effective outcomes that will emanate from the standardisation of practice. At its most basic, an assessment framework provides guidance and direction about concepts or domains within which assessment should be conducted. Crisp et al. (2007) assessed four assessment frameworks in use in the UK. They found that some of the frameworks are standalone documents whereas others “are incorporated into broader frameworks for service with particular client groups” (p. 1062). Assessment frameworks are not synonymous with assessment tools or information collection procedures, although tools have been developed for some frameworks to ensure the translation of rhetorical principles to practice realities (Crisp et al. 2007; Horwath, 2002). The gathering and analysis of information provide the foundation to make sound social work judgements.

Practice frameworks are much more complex than providing guidance on gathering information. Practice frameworks “provide the means through which theory, research and practice can be interrelated to support positive outcomes for children and families” (Connolly, 2007, p. 835). The development of, and move towards, the implementation of practice frameworks has evolved from a realisation that risk assessment tools or professional judgement on their own are not sufficient to ensure best practice outcomes for children and their families (Winkworth & McArthur, 2009). According to Winkworth and McArthur (2009), practice frameworks offer a more flexible and conceptual approach as grounded, research-informed strategies.

Practice frameworks articulate the links between philosophy, theory and practice. Frameworks operationalise these links and, in the context of statutory child protection, facilitate an understanding of, and activate, best practice outcomes. Connolly (2007) articulates that there are core elements necessary to build an effective practice framework. These elements influenced the development of the New Zealand child welfare practice framework. First, the practice framework must be useful and accessible for all practitioners irrespective of professional qualifications and practice experience. Second, higher level principles need to be established that function as prompts for best practice. Third, practice frameworks must incorporate best practice initiatives that are socially and culturally relevant. Winkworth and McArthur (2009) concur on these points. Reviewing these elements will test the transferability of the EMMJP to a “Morally Just Social Work Practice Framework”.

### ***Is it readily accessible for practitioners?***

It is imperative that a practice framework is a “useful and readily accessible tool” (Connolly, 2007, p. 827) for all practitioners irrespective of experience or qualifications. As stated previously, in its current form the EMMJP framework is predominantly philosophical and theoretical in nature; not

readily accessible for practitioners in my view. It is an ambitious framework with high level principles, although a much stronger link to practice needs to be articulated, including practice principles, domains of practice and phases of practice (Winkworth & McArthur, 2009).

The framework must be consistent with the legislative context and ensure that rhetoric is translated into children's concrete realities. Its philosophical and theoretical components must also engage with the phases of practice according to the context within which it will be situated. For example, Connolly (2007) developed a practice framework that catered to the legislative environment and three phases of practice in New Zealand: the assessment and engagement phase; the finding of solutions phase; and the securing of safety and belonging phase. Specific language was used to shift the culture from a narrow forensic approach to a child centred approach.

***What are the broad assumptions that inform the framework?***

Social work is a value-based profession. Therefore, it is imperative that the fundamental values that provide the work's purpose, meaning and direction are clearly articulated. Principles that underpin the EMMJP include: the moral worth of children; respect for the dignity, integrity and humanity of individuals; children's rights; and the importance of relationships to ensure the capabilities and flourishing of children and a trigger for change; authoritative practice; and moral obligations. These values are internationally recognised, resonate with the UNCRC and are consistent with social work values (AASW, 2010). The values, philosophy and theories provide the foundation for the framework and the motivation for statutory child protection. These must be visible and clearly stipulated for social workers to engage them in their work with children who experience adversity.

***What is the social and cultural context for the practice framework?***

The EMMJP framework has not been developed within a particular social and cultural context. It is currently generic in nature. Connolly (2007) argues that a practice framework "needs to resonate with cultural belief systems and be culturally responsive to an increasingly diverse society" (p. 828). This means that to progress the development of the EMMJP from a research framework to a practice framework (MJSWP) it is imperative that further development occurs in consultation with policy makers and social workers in the relevant statutory child protection context. The development of a MJSWP must be inclusive and responsive to otherness.

The philosophical and theoretical foundation of the EMMJP is pertinent for the advancement of the MJSWP framework. Nevertheless, further progression and research work is necessary to render the EMMJP framework useful and accessible for social workers as a MJSWP framework. It needs to establish a clear vision that is useful, accessible and consistent with a particular social, cultural and political environment, thus embedding it in the concrete realities of practice. As a concept, it will provide conceptual clarity and understanding of statutory child protection and what is important in enhancing the moral status of children in their family contexts. As a tool for practitioners, it will

promote interventions that are philosophically and theoretically informed, and thus linked to best practice.

The next section takes us into anti-childist practice - the transformative and morally just pathway towards statutory social work practice.

## **Part C: Possibilities: Morally Just Social Work Practice**

This study has exposed childism in families and statutory child protection. I have presented a compelling case where we – practitioners and policymakers - must emerge from moral ignorance. This study has demonstrated our moral ignorance. Statutory child protection agencies fail to engage with, react to, and understand others' suffering, and through this insensitivity avert our gaze from those who most need protection and moral consideration (Bauman & Donskis, 2013). Children such as Dean, Ebony, Baby Kate and Jack, who experience trauma, oppression and dehumanisation, are deserving of moral concern from child protection practitioners and policymakers. They are morally worthy of statutory child protection interventions that go beyond assessment and recognition of risk and risk minimisation strategies towards achieving their capabilities within the context of nurturing and loving relationships. It is time to reposition children centrally; to ensure they are visible and heard, and that we attend to their needs, best interests and wellbeing. The best interests and the voice of the child must find their way from legislation to frontline practice, as exemplified in best practice principles of child protection (Ferguson, 2011; Munro, 2008; 2011). A transformative childist methodology promotes social practices that are attentive and responsive to the suffering of children, and will “expand rather than contract the sphere of social inclusiveness in light of those most easily left out” (Wall, 2010, p. 104).

My study has made a contribution to statutory child protection discourse. The philosophical construct of morally just practice joins with other authors in advancing a manifesto for ethical and humane practice (Featherstone et al. 2014; Ferguson, 2011; Lonne et al. 2016; Parton, 2014). However, further work is required. The application of the EMMJP to the narratives of deceased children has commenced an essential dialogue. In its current format, this interpretive framework is valuable as a research tool. Further application to the narratives of other children will continue to embrace “an emergent, dialogical approach to knowledge development and practice” (Finn & Jacobson, 2003a, p. 74).

Wall (2010; 2013) calls for the strengthening of children's rights and recognition that “[h]uman rights guarantee simultaneously non-interference with human otherness and life's necessary basic social supports” (Wall et al. 2010, p. 263). The capabilities approach provides a framework for assessing children's rights and wellbeing but there is a lack of consensus about what capabilities are applicable to children. There is a view that the core capabilities identified by Nussbaum (2011) are universal. While Biggeri et al. (2006) honoured Nussbaum's work and premise, they developed a list of

capabilities in consultation with children acknowledging diversity. The CA is an approach that is gaining momentum in statutory child protection (Lonne et al. 2016) but is still in its infancy. Further research is required to shift from a predominantly theoretical approach to engaging with the concrete realities of children who are maltreated. The work of Wolff and de Shalit (2013) in *Disadvantage* provides a valuable exemplar of progressing this work. Progressing this research and discussion will enhance philosophical and empirical understanding of the domains of child wellbeing that are relevant and pertinent in the context of statutory child protection. Intervention that aims to improve capabilities towards the flourishing of children in the context of their family relationships will degrade childism.

As stated previously, further work is required for the EMMJP to be valid as a social work practice framework. More synthesis is required to simplify the model without losing its philosophical and theoretical edge. In its further advancement, it must be considerate of the political environment in which it will be implemented. This should then be followed with a broad consultation with social workers in statutory child protection to embed it in the concrete realities of practice. According to Wardhaugh and Wilding (1993), there is considerable evidence to suggest that, in the context of residential care, the inclusion of staff in decision-making, generation of new ideas, and strengthening of expectations and possibilities increases staff commitment and their sense of worth. An organisation that invests in professional staff empowers and reinforces the concept of good and proper practice. Without such outlay, the “best elements of professionalism wither and perish for lack of nourishment” (Wardhaugh & Wilding, 1993, p. 22).

This brings me to the final point. The implementation of morally just practice in statutory child protection is contingent on a confident, competent and authoritative (Sidebotham, 2013) workforce. The complexity and uncertainty of statutory child protection cannot be underestimated. Social workers need to be attentive, empathic and responsive to children and families who experience profound trauma, oppression and dehumanisation. Social workers are not bureaucrats. Imposing a vast array of procedural requirements and demanding accountability measures constrains their capacity to “exercise their judgement, develop their imagination, or cultivate an “enlarged mentality”” (Passerin d’Entrèves, 2000, p. 256). Social workers are like creative artists. They need the knowledge and skills to understand the context within which they work, and have an in-depth appreciation of children and their families, and the complex dynamics of child maltreatment (Howe, 2014). Social workers are required to have the commitment, capacity and knowledge to not only recognise children’s suffering and adversity, but also be able to build a working alliance and keep the parent in mind:

Being held in mind by the worker is a powerful way of containing the parent’s anxiety, fear, doubts, anger and sadness. This makes it safer for the parent to think about the child who is therefore not only more likely to be in mind but also in sight, and as a result a bit safer (Howe, 2010, p. 337).

The moral imperative is to keep the child up front and centre – visible and heard. Their needs are irreducible (Young-Bruehl, 2012). Childism will be eroded with this recognition. Parents and governments must recognise that they are obliged to cherish their children and ensure that their needs, interests and wellbeing must take precedence.

## **The end of the journey**

Child death reviews and child protection inquiries consistently highlight the invisibility and silence of children who are maltreated. This study has presented a case for us – child protection practitioners, policy makers and academics - to emerge from moral ignorance and recognise that it is time to enhance children's centrality and moral status within the context of statutory child protection. Since the inception of the child rescue movement, there have been consistent efforts and development to protect and humanise children, although some of these efforts have, unintentionally, resulted in their dehumanisation.

This study is not representative of the lived experiences of all children who are recipients of statutory child protection. The analysis of the narratives of Dean, Ebony, Jack and Baby Kate have provided a glimpse into their worlds and the responses they were provided. The CSR methodology, operationalised through a critical-dialectical process and the interpretive lens of the EMMJP, facilitated the exposure of childism within the families and statutory child protection agencies. The knowledge that has been generated is a valuable contribution in advancing the ethos of shifting from a dominant neoliberalist agenda and an ideology of blame to a discourse premised on the philosophical importance of children who are maltreated.

There are no easy solutions in the eradication of childism in statutory child protection. The factors are pervasive and complex. The rhetoric of the rights, safety and protection of children must be translated into frontline practice. There must be a frank and honest engagement with the philosophical importance of children who are maltreated; they are valuable members of the human community, deserving of protection and moral consideration. The rehumanisation of children is dependent on the rehumanisation of statutory child protection workers. Like the children, they need to be nurtured, supported and provided with the necessary resources, knowledge and skills to become confident and competent in ensuring that CHILDREN MUST COME FIRST.

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# APPENDIX 1 THE CHILD PROTECTION PROCESS

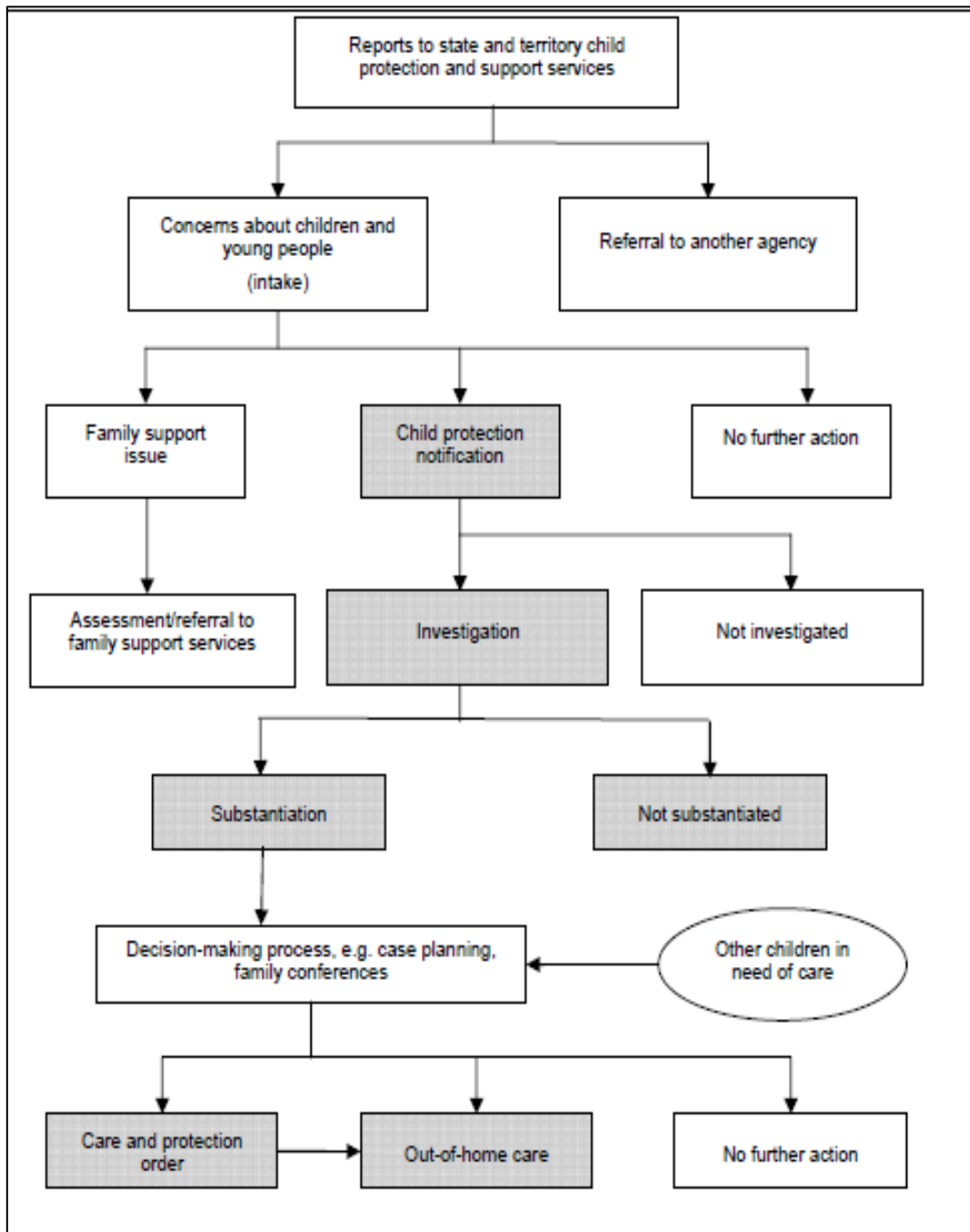


Figure 10: The Child Protection Process (Australian Institute of Health and Welfare, 2007)

## APPENDIX 2 CASE STUDY FRAMEWORK TEMPLATE

<b>CASE STUDY</b>	<b>NAME OF CHILD (DOB:) (DECEASED: )</b>
<b>DOCUMENTS REVIEWED</b>	Reference documents that have informed the case study analysis

### SUMMARY OF CHILD'S NARRATIVE

<b>Genogram (if possible)</b>	
<b>Who are the people involved?</b>	Who are the important people in this child's narrative? What are their relationships?
<b>What are the key points of the child's narrative?</b>	Describe the key features of the child's narrative providing h an overview of the child's circumstances.
<b>What was it like to be [the child]?</b>	Describe what it would be like for the child enhancing their visibility and suffering they endured.
<b>Type of abuse experienced by [the child]?</b>	Briefly describe the type of maltreatment the child experienced

### CHRONOLOGY OF EVENTS AND RESPONSES

This is a chronology of events. This is the vertical reading of the narratives. Document events relevant for the child (ie notifications) and the responses provided by the statutory organisations. References to be used.

Date	Events	Responses

## ANALYSIS DOMAINS

This section is the horizontal reading of the children's narratives.

<p><b>Ontology and Moral status of child</b></p> <ul style="list-style-type: none"> <li>• <b>Developmental needs</b></li> <li>• <b>Rights</b></li> <li>• <b>Wellbeing</b></li> </ul>	<p><b>Child characteristics</b></p> <ul style="list-style-type: none"> <li>• Age</li> <li>• Gender</li> <li>• Ethnicity</li> </ul> <p><b>Development</b></p> <ul style="list-style-type: none"> <li>• Education</li> <li>• Behaviour</li> <li>• Social relationships</li> <li>• Identity</li> <li>• Independence</li> <li>• Health</li> <li>• Growth</li> <li>• Disability</li> <li>• Illness</li> </ul> <p><b>These domains have been adopted from the Capabilities Approach as they are relevant and consistent with moral status.</b></p> <ul style="list-style-type: none"> <li>• Right to life or opportunities to flourish and in good health?</li> <li>• Adequate nourishment, shelter, clothing, good health?</li> <li>• Secure and safe from violence?</li> <li>• Opportunities to engage in educational activities and have experiences that are pleasurable and free from pain and suffering?</li> <li>• Emotional security through attachments – being nurtured and free from fear and anxiety?</li> <li>• Being able to participate in one's life?</li> <li>• Ability and opportunities to engage with others and form relationships through social interaction?</li> <li>• Ability and opportunities to engage in play and encouraged to explore the environment?</li> </ul>
<p><b>Microsystem</b></p> <ul style="list-style-type: none"> <li>• <b>Parental histories</b></li> <li>• <b>Parental characteristics</b></li> <li>• <b>Protective factors</b></li> <li>• <b>Family dynamics</b></li> <li>• <b>Parenting responsibilities</b></li> </ul>	<p><b>Parental histories/ontology:</b></p> <ul style="list-style-type: none"> <li>• Considerable attention must be paid to parents' developmental histories which contributes to intergenerational transmission of parenting styles.</li> <li>• History of maltreatment</li> <li>• Maternal neglect and witnessing of intrafamilial violence</li> <li>• Attachment issues with caregiver/s</li> <li>• Being raised in foster care</li> </ul> <p><b>Parental characteristics:</b></p> <ul style="list-style-type: none"> <li>• Parental factors or characteristics that impede parental attunement and mind-mindedness that contribute to the maltreatment of children. Factors</li> </ul>

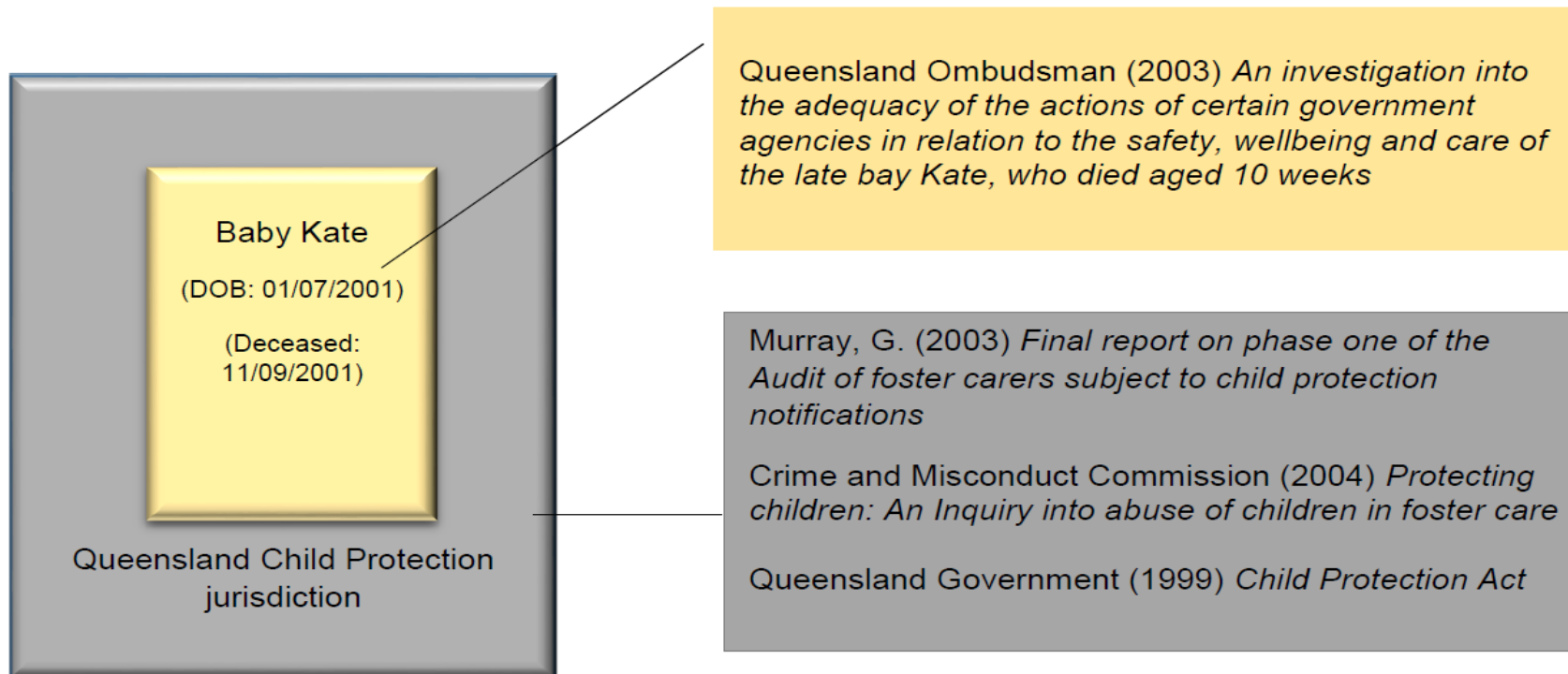
	<p>may be biological, historical, psychological, sociological/cultural or situational</p> <ul style="list-style-type: none"> <li>• Important to determine whether the factors are of an enduring and long lasting rather than challengers that are transient in nature. For example, grief and loss; physical injury, legal problems.</li> <li>• Parental age; domestic violence; drugs and alcohol; mental health; disability; criminal activity</li> </ul> <p><b>Protective factors:</b></p> <ul style="list-style-type: none"> <li>• Protective factors are those circumstances that are enduring or permanent and contribute to the decreased risk of child maltreatment</li> <li>• Buffers are protective factors that may be transient in nature</li> </ul> <p><b>Family dynamics:</b></p> <ul style="list-style-type: none"> <li>• Family conflict and anger need not be restricted within the immediate family but may include extended family members such as in the case of Maria Colwell.</li> <li>• Conflict and anger may be more characteristic of abusive family whereas social isolation may be more characteristic of neglectful families</li> <li>• Wider family relationships; social integration and support; stability</li> </ul> <p><b>Parenting styles and responsibilities:</b></p> <ul style="list-style-type: none"> <li>• Provision of basic care</li> <li>• Health</li> <li>• Safety</li> <li>• Emotional warmth</li> <li>• Stimulation</li> <li>• Guidance and boundaries</li> <li>• Stability</li> </ul>
<p><b>Exosystem</b></p> <ul style="list-style-type: none"> <li>• <b>Structural issues (poverty, unemployment, social isolation etc)</b></li> <li>• <b>Protective factors (eg other services, family; schools; church etc)</b></li> </ul>	<p><b>Factors that impact on family functioning:</b></p> <ul style="list-style-type: none"> <li>• Wider family relationships</li> <li>• Employment and income</li> <li>• Social integration and support</li> </ul> <p><b>Engagement with services:</b></p> <ul style="list-style-type: none"> <li>• Which services involved?</li> <li>• Level of engagement with services? (eg co-operative or hostile; voluntary or involuntary?)</li> <li>• Responses by services:</li> <li>• What responses/services provided?</li> </ul>

<p><b>Macrosystem</b></p> <ul style="list-style-type: none"> <li>• <b>Statutory child protection</b></li> <li>• <b>Broader child protection context</b></li> </ul>	<p><b>Individual worker/Practitioner issues:</b></p> <ul style="list-style-type: none"> <li>• Knowledge</li> <li>• Training</li> <li>• Performance</li> <li>• Decision-making and judgements</li> </ul> <p><b>Agency:</b></p> <ul style="list-style-type: none"> <li>• Continuity and consistency</li> <li>• Resources</li> <li>• Staffing and workload</li> <li>• Culture</li> </ul> <p><b>Interagency:</b></p> <ul style="list-style-type: none"> <li>• Communication</li> <li>• Systems</li> </ul> <p><b>State child protection system:</b></p> <ul style="list-style-type: none"> <li>• Legislative context</li> <li>• Child protection context (service provision)</li> </ul>
<p><b>Narratives (Documents from investigation/Review)</b></p>	<ul style="list-style-type: none"> <li>• Terms of reference/scope of the report</li> <li>• Identify why the child's narrative warranted a public inquiry?</li> <li>• What was the aim of the public inquiry and the focus of the person/organisation conducting the inquiry?</li> </ul> <ul style="list-style-type: none"> <li>• Methodology</li> <li>• Who contributed?</li> <li>• Family involvement</li> <li>• Analysis</li> <li>• Parallel processes</li> </ul> <ul style="list-style-type: none"> <li>• Outputs</li> <li>• Conclusions</li> <li>• Learning points</li> <li>• Recommendations</li> <li>• Action plans</li> </ul>



## APPENDIX 3 BABY KATE

### Child's Details and Documents in Scope



## Chronology of Events and Responses

DATE	EVENT	RESPONSE
February 2001	<p>Lisa was pregnant with baby Kate. Lisa's former foster carer contacted Lisa's previous case-worker to inform her of Lisa's pregnancy and that she had concerns about the baby for the following reasons:</p> <ul style="list-style-type: none"> <li>• Lisa was in an abusive relationship and that she had been physically assaulted by her partner</li> <li>• Lisa had been drinking heavily during the pregnancy</li> <li>• Lisa had difficulty managing her own hygiene, health and daily care and unlikely to be able to safely care for her child once born, and</li> <li>• Lisa had not sought ante-natal care (QLD Ombudsman, 2003).</li> </ul>	<p>The DOF worker who had previously worked with Lisa was notified of the specific circumstances. The worker believed that the baby, once born, would be at significant risk of harm. The worker documented her concerns:</p> <p>“Lisa's low levels of intellectual functioning, her history of abuse and her lack of basic hygiene and self-care skills places her unborn baby at significant risk of possible neglect and/or physical and emotional harm” (QLD Ombudsman, 2003, p. 29)</p> <ul style="list-style-type: none"> <li>• The worker carried out the following tasks to communicate the concerns and assessed level of risk to the child when born: <ul style="list-style-type: none"> <li>○ The local area office, near to which Lisa was believed to be residing was contacted and the concerns were discussed with an intake officer</li> <li>○ Lisa's previous worker recommended to the local area office intake worker that DOF should be at the hospital when her baby was born and that the infant should be placed in care</li> <li>○ Details recorded in a “case file” as follows: <p>“Expected date of confinement – July 2001. Still do not have an address for Lisa. Apparently, Lisa whose birthday is in July has said that she hopes to put the child in care for a few weeks so that she can party for her birthday. There is still the belief that the relationship is one of domestic violence and suspicions</p> </li> </ul> </li> </ul>

		<p>that this is occurring whilst she is pregnant” (QLD Ombudsman, 2003, p. 31)</p> <ul style="list-style-type: none"> <li>• In the “Decision and Action” section of the case file, the worker wrote that the hospital social worker would be notified about the expected date of confinement.</li> <li>• Queensland Health advised the Ombudsman during the investigation that there was no record that the DOF worker contacted the hospital social worker or any other employee (QLD Ombudsman, 2003).</li> </ul>
<p><b>Early July 2001</b></p>	<ul style="list-style-type: none"> <li>• Kate was born <b>1 July 2001</b> in Hospital Green.</li> <li>• Lisa was 20 years of age when Kate was born.</li> <li>• The nursing staff held concerns about Lisa’s “coping ability” ((QLD Ombudsman, 2003, p. 30) <ul style="list-style-type: none"> <li>○ Lisa was distracted and difficult to teach</li> <li>○ Lisa spent a lot of time outside smoking and she had to be called to attend to Kates’s needs</li> </ul> </li> <li>• On the <b>4<sup>th</sup> July 2001</b>, Lisa was observed by the Director of Nursing that “she had observed Lisa shaking baby Kate and being verbally aggressive and swearing at her” (QLD Ombudsman, 2003, p. 30)</li> <li>• Prior to this incident, other nursing staff had expressed concerns about Lisa’s ability to care for Kate.</li> </ul>	<ul style="list-style-type: none"> <li>• The staff at Hospital Green opted to transfer Lisa and Kate to Hospital White instead of discharge</li> <li>• The decision to transfer rather than discharge was based on the assessment that Lisa required support and education prior to her release into the community.</li> <li>• Lisa and Kate were transferred on <b>3<sup>rd</sup> July 2001</b></li> <li>• In the transfer letter, the Nurse Practice Co-ordinator wrote:  “Lisa needs a lot of encouragement and support with her parenting skills” (QLD Ombudsman, 2003, p. 30).</li> <li>• The Medical Superintendent at Hospital White contacted the Paediatrician at Hospital Green to discuss the issues</li> <li>• It was agreed that Lisa and Kate should be transferred back to Hospital Green for further review</li> <li>• The Medical Superintendent advised the Ombudsman during the investigation that Lisa did not wish to be transferred and would not</li> </ul>

	<ul style="list-style-type: none"> <li>• On the <b>6<sup>th</sup> July</b>, Lisa and Kate were transferred to the children’s ward of Hospital Green</li> <li>• The Paediatrician had decided it was appropriate to make a notification to DOF however because Kate was in a safe and protected environment for the weekend, it was decided to wait until Monday to make the notification (QLD Ombudsman, 2003).</li> <li>• A notification was made to DOF on <b>9<sup>th</sup> July</b> - approximately 8 days following (some discrepancy about exact date and time of notification) Kate’s birth. The information recorded was as follows: <ul style="list-style-type: none"> <li>○ Lisa has extensive history with DOF and raised in care</li> <li>○ Nursing staff concerned about Lisa’s ability to care for Kate. Lisa was easily distracted and difficult to teach. Lisa spent a lot of time away from Kate smoking. Nursing staff frequently had to find Lisa to request that she attend to Kate’s needs</li> <li>○ Approximately four days following Kate’s birth, Lisa was observed shaking baby Kate and being verbally aggressive towards her.</li> <li>○ Staff were apprehensive about Lisa’s ability to attend to and care for Kate.</li> </ul> </li> </ul>	<p>accept that there were any problems in relation to her parenting abilities</p> <ul style="list-style-type: none"> <li>• Lisa was persuaded to agree to the transfer.</li> <li>• In his referral letter, the Medical Superintendent wrote: <p>“Lisa is struggling. This is 7 days post-natally and I have concerns about her ability to maintain the care of the child. She seems to bond minimally with Kate, only doing the minimum for her. Kate’s crying irritates her...she seems willing to learn but is easily frustrated and has very little spontaneous interest. I have global concerns for both mum and baby” (QLD Ombudsman, 2003, p. 30)</p> </li> <li>• There was an understanding between the medical officers that Lisa would be assessed from a psychiatric perspective however this did not occur (QLD Ombudsman, 2003).</li> </ul>
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	<ul style="list-style-type: none"> <li>○ Medical and nursing staff were providing observation and supervision to assist Lisa in managing Kate</li> <li>○ Baby's father, John, reluctant and at times unwilling to be involved</li> <li>○ Parents verbally abusive towards each other with John "denigrating of mother's apparent intellectual impairment and lack of skills regarding the baby" (QLD Ombudsman, 2003, p. 31)</li> </ul> <p>The Paediatrician had also received a letter from the former foster mother. A copy of the letter was given to DOF. Some of the key points of the letter were as follows:</p> <ul style="list-style-type: none"> <li>○ Lisa has had assessments over the years and was diagnosed with a particular intellectual impairment (not specified)</li> <li>○ Lisa displays "eccentric and sometimes bizarre behaviours" (QLD Ombudsman, 2003, p. 31)</li> <li>○ Lisa experiences relationship difficulties with her current partner managing finances and concerned that they will not have adequate funds for formula and other necessities</li> <li>○ The foster mother has heard Lisa make "unacceptable remarks to her baby" (QLD Ombudsman, 2003, p. 31). Furthermore:</li> </ul> <p>"Since transferring to Hospital Green, she has told her sister in law that she hears the baby cry at night but is not interested in getting out of bed to attend to it" (p. 31)</p> <ul style="list-style-type: none"> <li>○ The foster mother was fearful for Kate if she was to be released into the care of her parents</li> </ul>	<p>Following the receipt of the notification, DOF workers in the local area office were directed to respond and conduct an initial assessment.</p> <p>"The notification was assessed to be a priority one case in accordance with DOF's strategy for deciding which matters were to be prioritised" (QLD Ombudsman, 2003, p. 31)</p> <p>On the <b>10<sup>th</sup> July</b>, two workers for DOF attended the hospital to commence the assessment processes. Key points as follows:</p>
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		<ul style="list-style-type: none"> <li>○ Lisa, reluctantly engaged with workers and explained that she did experience some problems in feeding Kate</li> <li>○ Lisa also disclosed that she does get frustrated when she [Kate] cried for nothing</li> <li>○ Lisa believed that John would be able to help her when she went home</li> <li>○ Workers from DOF requested to speak with John. Lisa said that he would be very angry that DOF was involved (QLD Ombudsman, 2003).</li> </ul> <p>Arrangements were made to speak with John. Police presence required as he had been acting aggressively towards hospital staff.</p> <p>Workers from DOF attended the hospital the same afternoon and interviewed Lisa and John. Police present during the interview for 45 minutes. John noted to be co-operative and composed however when police left he become unco-operative and pacing the floor.</p> <p>Key points:</p> <ul style="list-style-type: none"> <li>○ John was not sure if he was Kate's father. Lisa also not sure of Kate's paternity</li> <li>○ John expressed that he did not want DOF involved and that he was embarrassed that he was the talk of the town. He elaborated saying that "the whole town was talking about how Lisa was too stupid to care for Kate and that she was a retard" (QLD Ombudsman, 2003, p. 48)</li> <li>○ John expressed that he was making a huge sacrifice taking on Lisa and Kate</li> <li>○ John was informed by the workers that Kate could not go home unless he was able to support Lisa in caring for Kate.</li> <li>○ Workers informed Lisa and John that Kate would only go home if John is willing to assist Lisa</li> <li>○ The workers requested that John stay at the hospital so that the hospital staff could assess his abilities to parent Kate and support Lisa. John reluctantly agreed to participate in an assessment process.</li> <li>○ John informed the workers that he needed to leave the hospital and would return in the evening to commence the assessment process</li> <li>○ It was reported by nursing staff that John telephoned the hospital and said that would not be able to return to the hospital until 10 am on 13<sup>th</sup> July, 2001(QLD Ombudsman, 2003)..</li> </ul>
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	<ul style="list-style-type: none"> <li>• On <b>13<sup>th</sup> July 2001</b>, John arrived at Hospital Green and stayed with Lisa and Kate until 16<sup>th</sup> July 2001 to undergo assessment.</li> <li>• Nursing staff recorded their observations of Lisa's parenting skills and to a certain extent John's parenting ability</li> <li>• The arrangement of the parenting assessment was a verbal agreement between the DOF worker and paediatrician. The reason for John spending time at the hospital was not well understood nor well communicated to the nursing the staff (QLD Ombudsman, 2003).</li> </ul>	<p>Following the initial contact, a referral was made to the SCAN (Suspected Child Abuse and Neglect) team which is a forum for consultation on complex child protection cases where a multi-disciplinary approach is warranted. They were provided with the above mentioned information and also informed of the progress that Lisa had made:</p> <ul style="list-style-type: none"> <li>○ No domestic violence observed between Lisa and John</li> <li>○ Lisa keeps iterating that John would help her with caring for Kate</li> <li>○ Lisa's parenting skills had improved 200% over the last four to five days</li> <li>○ Lisa is asking relevant questions</li> <li>○ Lisa is highly dependent on John's support and assistance</li> <li>○ John is disapproving of Lisa</li> <li>○ Lisa has no idea about managing money</li> <li>○ Lisa experiences discomfort with breastfeeding</li> <li>○ Lisa has agreed to do anything requested by DOF except go to Riverton</li> <li>○ Lisa needs to be taught how to care for Kate and John needs to be supportive and provide assistance (QLD Ombudsman, 2003)</li> </ul> <p>"The SCAN team made recommendations that DOF 'talk to John about committing to Lisa and baby Kate going home by showing that he can support Lisa' and that a 96-hour order be made if John attempted to remove baby Kate from Hospital Green" (QLD Ombudsman, 2003, p. 33).</p> <ul style="list-style-type: none"> <li>• On <b>16<sup>th</sup> July</b> workers from DOF attended the hospital to determine Kate's future. The workers had made an assessment and recorded that "<b><i>that there were minimal risks for the baby to return home</i></b>" (p. 33). According to the QLD Ombudsman (2003), there was little documentation as to how this decision was reached.</li> </ul>
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		<ul style="list-style-type: none"> <li>• The workers were present at the hospital for 45 minutes prior to finalising the assessment.</li> <li>• Most of the time was spent “talking to John” (QLD Ombudsman, 2003, p. 33)</li> <li>• Workers could not recall if they had spoken with Lisa or with hospital staff</li> <li>• One of the workers claimed: <p style="margin-left: 40px;">“that she spoke with a nurse who was ‘positive’ about how John handled baby Kate and told her that he had also interacted positively with another child in the ward” (QLD Ombudsman, 2003, p. 33)</p> </li> <li>• The Manager at DOF was contacted by the workers who conveyed that their assessment was that baby Kate should be released from hospital into John and Lisa’s care</li> <li>• This recommendation was accepted by the Manager (QLD Ombudsman, 2003).</li> </ul> <p>The outcome of the assessment was ‘substantiated risk of harm and neglect’. A recommendation was made for ongoing intervention by DOF in the form of child protection follow up. The rationale for this decision as follows:</p> <p style="margin-left: 40px;">“Given Lisa’s own disability, concerns remain in terms of her ability to make appropriate decisions for the care of Kate. While Lisa acknowledged shaking Kate she has been able to identify strategies for dealing with this...John has stated that he is willing to support and assist Lisa with the care of Kate however, this has yet to be demonstrated on a long-term basis. Without assistance it is unknown if Lisa can care for Kate independently” (QLD Ombudsman, 2003, p. 33)</p> <p>An additional statement was included about Kate’s protective needs:</p> <p style="margin-left: 40px;">“Kate needs to be in an environment where her emotional, psychological and physical needs are met. Kate needs to live in an environment where she is safe from aggression, both directed at her and between her parents” (QLD Ombudsman, 2003, p. 33)</p>
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<p><b>Mid-late July 2001</b></p>	<p>Lisa and Kate were discharged from hospital on <b>16<sup>th</sup> July</b>. The day following discharge, a worker conducted a home visit.</p> <p>On <b>20<sup>th</sup> July</b>, Lisa's foster mother contacted the DOF worker informing them that the relationship between Lisa and John had ended. John had failed to return home the previous evening to assist Lisa with Kate (QLD Ombudsman, 2003).</p> <p>On <b>20<sup>th</sup> July</b> Lisa also contacted the DOF worker at the local office requesting assistance because John had been abusing alcohol and was not supporting her in caring for Kate (QLD Ombudsman, 2003).</p> <p>On the <b>24<sup>th</sup> July</b>, the "House mother" contacted the DOF worker and reported the following:</p>	<p>Home visit conducted by a DOF worker on <b>17<sup>th</sup> July</b>. The documentation from this visit (recorded the day after Kate's death on 11<sup>th</sup> September) included the following:</p> <ul style="list-style-type: none"> <li>• John was not present at the beginning of the home visit but arrived twenty minutes later</li> <li>• The house was clean</li> <li>• The fridge was full of fruit and vegetables</li> <li>• Kate's sleeping area was very clean and appropriate</li> <li>• Lisa keenly showed the worker all of Kate's clothes, and that she was organised in terms of having adequate amounts of baby formula, sterilisers, bottles etc</li> <li>• The worker observed Lisa and John bathing and dressing Kate and they appeared comfortable doing so</li> <li>• Lisa was observed as being very gentle and careful when bathing and dressing Kate</li> <li>• Lisa and John were receptive to visits and support by Child Health and Community Health Worker (QLD Ombudsman, 2003).</li> </ul> <p>The DOF worker arranged for Lisa and Kate to reside in a local group home between the 20<sup>th</sup> – 26<sup>th</sup> July where the 'house mother' would provide support and supervision.</p>

	<p>“Lisa is in good spirits and has demonstrated that she is capable of caring for Kate. The only problem seems to be that Lisa is reluctant to get up to Kate in the night for feeding. House mother informed Lisa that she is reporting back to the department and this could be a concern if it continues. House mother also stated that sometimes in the morning Lisa needs a bit of a ‘shove’ to fix Kate if Lisa is playing on the Nintendo but there are not significant concerns regarding Lisa’s care of Kate” (QLD Ombudsman, 2003, p. 62)</p> <p>On the <b>26<sup>th</sup> July</b>, Lisa and Kate travelled to Brisbane to stay with Lisa’s foster mother while alternative accommodation was being organised.</p> <ul style="list-style-type: none"> <li>• Lisa stayed with her foster family for three weeks.</li> <li>• During that time the foster mother kept a diary which was sent to the DOF worker highlighting Lisa’s ability to care for Kate (QLD Ombudsman, 2003)..</li> </ul>	<ul style="list-style-type: none"> <li>• The DOF workers explored other placement options for Lisa and Kate. The workers were insistent that they wished to find a placement for both Lisa and Kate together. The workers were also adamant that it was Lisa’s right to care for her child. Other factors that informed their rationale was that Lisa was co-operative and it was important to support Lisa and minimise intervention “It was how can we keep this baby with her mum so mum has the opportunity to demonstrate that she can learn what she needs to learn to be a parent” (QLD Ombudsman, 2003, p. 63)</li> <li>• On <b>26<sup>th</sup> July</b>, the SCAN team reviewed Kate’s circumstances. The minutes from the meeting noted the following points: <ul style="list-style-type: none"> <li>○ The SCAN team was informed that Lisa and Kate were going to Riverton</li> <li>○ The DOF workers were also exploring long term placement options such as the Sisters of Mercy or Fatima</li> <li>○ The SCAN team advised that “John was no help to Lisa, Lisa had bonded well with baby Kate and is willing to learn skills to keep baby Kate and she is still being supervised with Kate” (QLD Ombudsman, 2003, p. 34)</li> <li>○ The SCAN team recommended that DOF continue with the outlined plan (QLD Ombudsman, 2003).</li> </ul> </li> </ul>
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<p><b>August 2001</b></p>	<p>On the <b>7<sup>th</sup> August</b> (prior to Lisa and Kate moving to another facility) the foster mother sent a diary to the worker outlining her concerns about Lisa's ability to care for Kate without high level supervision. The diary documented the following (QLD Ombudsman, 2003, p. 75):</p> <p>"We seem to be constantly nagging Lisa to do her baby chores"</p> <p>"Lisa loses interest in her baby at night and is unco-operative and full of self-pity if she is forced to get out of bed. On other occasions she responds to the baby crying without any prompting from us. I have no doubt that she loves her baby"</p> <p>"On 3<sup>rd</sup> August, we had a second really bad night where Lisa literally left us 'holding the baby' because she wanted to sleep...Good nights only occur when Lisa goes to bed early and I give the baby her late feed. I offer to do this as Lisa simply does not function when she is tired"</p>	<ul style="list-style-type: none"> <li>• On the <b>7<sup>th</sup> August</b>, a referral was forwarded to Riverton by the DOF worker as recommended and endorsed by the SCAN team however not followed through despite a request for further information by Riverton staff. The rationale for this change in case management direction was scrutinised. The worker explained that following through with the referral was <i>setting Lisa up to fail</i> because they were aware that Lisa needed support with parenting and sending her to Riverton would not provide her with the necessary support (QLD Ombudsman, 2003).</li> <li>• On the <b>12<sup>th</sup> August</b>, 2001 Lisa and Kate were referred to Fernbrook which is a residential hostel operated by a non-government organisation that provides short-term accommodation for a maximum of 12 weeks for homeless women and their children. It is a former motel where residents are provided with their own room with bed, bathroom, refrigerator and TV. Three meals a day provided. All residents are linked with a case-worker who provides support and assistance on a needs basis.</li> <li>• Information provided in the referral to the accommodation facility by the DOF worker as follows:</li> </ul>
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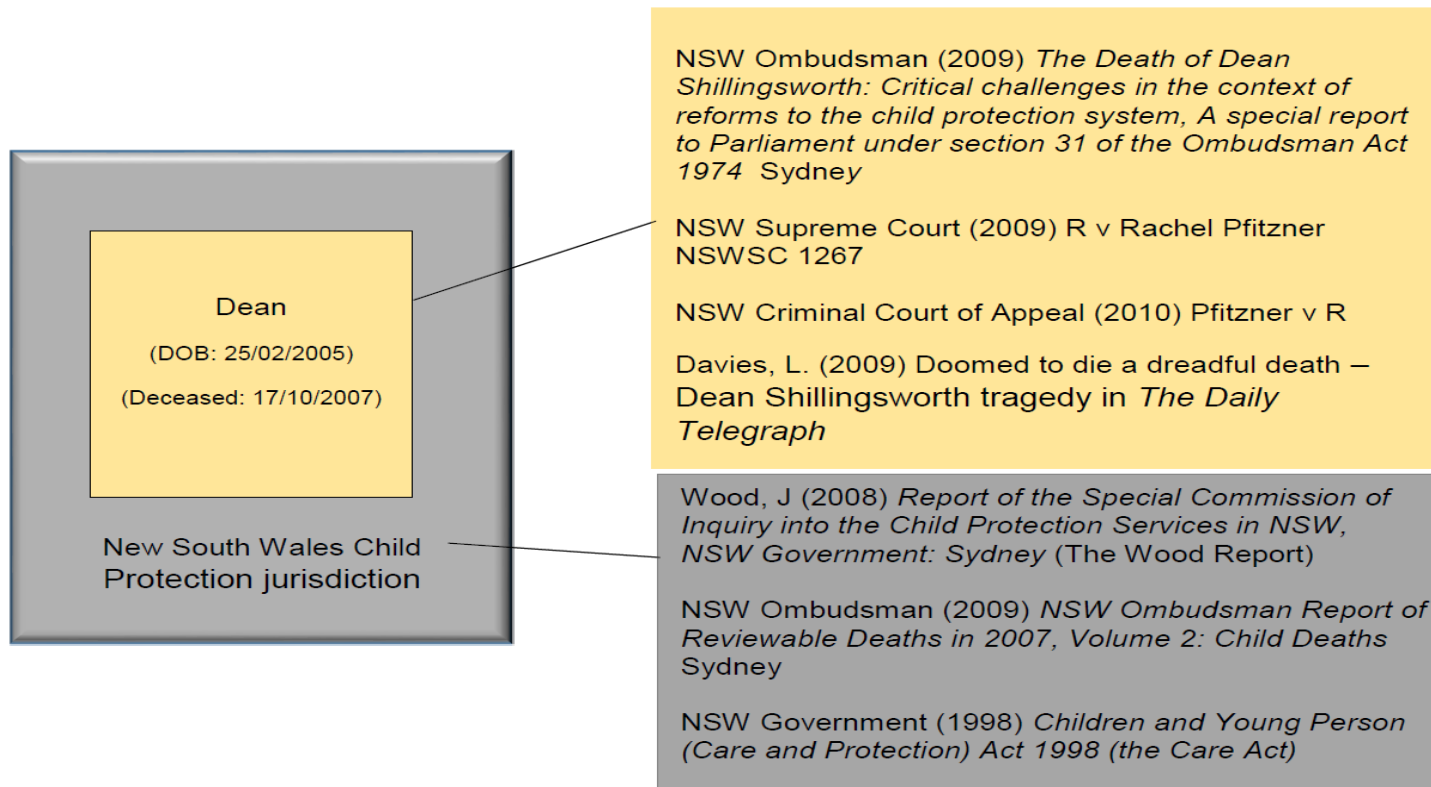
	<ul style="list-style-type: none"> <li>• On the <b>13<sup>th</sup> August</b>, Lisa and Kate moved to Fernbrook and resided there for four weeks.</li>   <li>• On the <b>21<sup>st</sup> August</b> there is evidence to suggest that Lisa had attended Area Office White (the local area office for Fernbrook Accommodation). She requested that a local caseworker be assigned to her because she felt having someone she could see “face-to-face” would have been beneficial (QLD Ombudsman, 2003).</li> </ul>	<ul style="list-style-type: none"> <li>○ Lisa has a mild intellectual disability and has limited parenting skills but she is doing well</li> <li>○ Child Health and Family Services will be involved</li> <li>○ Ex-partner has been abusive and will not be involved in the parenting Kate</li> <li>• On the basis of the information provided, the Manager of Fernbrook believed that Lisa met the criteria and that she and Kate would be provided with accommodation.</li> <li>• The Manager at Fernbrook advised the QLD Ombudsman (2003) that once she had observed Lisa she recognised Lisa had “high needs” and, therefore believed that Fernbrook was an inappropriate placement.</li>   <li>• Contact between Fernbrook and the DOF worker was limited to two telephone conversations on the <b>20<sup>th</sup> and 28<sup>th</sup> August</b>.</li> <li>• On the 21<sup>st</sup> and 28<sup>th</sup> August, there were two documented telephone calls between Lisa and her DOF worker.</li>   <li>• On the <b>21<sup>st</sup> August</b>, Lisa’s case worker informed her that she would organise for her “case” to be transferred to the local area office.</li> <li>• Lisa’s caseworker had prepared the case ready for transfer however the Team Leader was not progressing the transfer due to workload demands and other priorities</li>   <p>“She needed a caseworker that she could talk to...it was important for me that by then my relationship with Lisa was such where she trusted me and we hadn’t tried to take her baby...It was important to me that she had a worker and also in terms of those concerns that were there I really think that this was still a priority one case and it meant ongoing constant work” (QLD Ombudsman, 2003, p. 83)</p> </ul>

<p><b>September 2001</b></p>	<ul style="list-style-type: none"> <li>• On the <b>3<sup>rd</sup> September</b>, The Manager of Fernbrook contacted the foster mother and a worker from another office (with whom she had a professional relationship) to discuss her concerns about Lisa's ability to care for Kate. The foster mother recorded the telephone conversation. The Manager conveyed the following concerns (QLD Ombudsman, 2003, p. 79): <ul style="list-style-type: none"> <li>○ Lisa seldom bathed Kate;</li> <li>○ Lisa left Kate alone for hours without checking on her;</li> <li>○ The other residents cared for Kate;</li> <li>○ Lisa needed constant reminders to attend to Kate's needs;</li> <li>○ Lisa did not show Kate affection;</li> <li>○ Kate is often left crying and when residents complained Lisa turned music up loud</li> </ul> </li>   <li>• The Manager of Fernbrook was particularly concerned as DOF was considering independent living options for Lisa (QLD Ombudsman, 2003).</li>   <li>• The Manager did not feel confident in discussing her concerns with Lisa's worker because "I can say there's been an inference given [by the worker] that she thinks there's been a wonderful change in this girl and you know what I mean and that's what we hear from her" (QLD Ombudsman, 2003, p. 79).</li>   <li>• Following her conversation with the foster mother, the Manager of Fernbrook decided to ring the local area office instead of the caseworker and discuss her concern because she had a good working relationship with the workers</li> </ul>	<ul style="list-style-type: none"> <li>• On the <b>3<sup>rd</sup> September</b>, a DOF worker from the Area Office White (local office to Fernbrook) contacted Lisa's worker to discuss the concerns raised by the Manager of Fernbrook. Key points: <ul style="list-style-type: none"> <li>○ Lisa and Kate would remain at Fernbrook</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"><li>• On the <b>11<sup>th</sup> September</b>, baby Kate died.</li><li>• Lisa placed Kate on her stomach and covered her head with a blanket and two jumpers</li></ul>	<ul style="list-style-type: none"><li>○ Lisa's caseworker in Area Office Green advised the worker from Area Office White that the initial assessment was being finalised and the case prepared for transfer</li><li>○ This information was conveyed to the Manager of Fernbrook (QLD Ombudsman, 2003).</li></ul>
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## APPENDIX 4 DEAN

### Child's Details and Documents in Scope



## Chronology of Events and Responses

<p><b>Between 2001-2004</b></p>	<ul style="list-style-type: none"> <li>• Prior to Dean's birth and between the period of 2001-2004, DoCS received 12 risk of harm reports in relation to Trish (Dean's sibling)             <ul style="list-style-type: none"> <li>○ The first five reports alleged that Trish sustained unexplained bruising when she was six months of age</li> <li>○ In 2002, a report alleged that Rachel had been assaulted by a male in the presence of Trish. The male was affected by alcohol.</li> <li>○ In 2003, it was alleged that Trish witnessed domestic violence between Rachel and her partner</li> <li>○ In July 2004, DoCS received a report alleging that Trish, who was aged three, walked 1-2 kilometres on her own from her home to the home of a relative. Trish reported to the relative that she had been kicked and hit by Rachel's partner.</li> <li>○ Police had been called and notified to DoCS that Rachel and her partner had been drinking heavily</li> <li>○ In December 2004, a report was made that Trish had witnessed the sexual assault of a teenage family member (NSW Ombudsman, 2009a).</li> </ul> </li>   <li>• During the period between 2001-2004, records indicate that:             <ul style="list-style-type: none"> <li>○ Rachel engaged in episodes of heavy drug and alcohol use and had contact with the police</li> <li>○ Rachel and Trish also moved frequently. They stayed in various crisis refuges or other temporary accommodation across NSW</li> <li>○ Rachel and Trish also stayed for short periods of time with friends and relatives</li> <li>○ Transient lifestyle resulted in reports about Trish's adversity being reported to multiple DoCS offices</li> <li>○ While Rachel was staying with Ms Coffey, she met Paul Shillingsworth (NSW Ombudsman, 2009a).</li> </ul> </li> </ul>	
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		<ul style="list-style-type: none"> <li>• DoCS did not have direct contact with either Trish or Rachel in response to any of the allegations</li> <li>• On two occasions, DoCS Helpline had phone contact with other agencies (NSW Ombudsman, 2009a).</li> </ul>
<b>February 2005</b>	<ul style="list-style-type: none"> <li>• Prior to Dean’s birth, DoCS was notified about “domestic violence and an unsafe home environment as risks for both the little girl and the unborn child” (NSW Ombudsman, 2009a, p. 4)</li> <li>• After Dean’s birth and while still in hospital, DoCS received further reports informing of the following: <ul style="list-style-type: none"> <li>○ Paul’s abusive behaviour towards Rachel while visiting and Dean in hospital</li> <li>○ Rachel leaving the hospital with Dean without formal discharge and without any formula, clothing, or other necessary items, and</li> <li>○ Physical assault of Rachel by Paul while both intoxicated (NSW Ombudsman, 2009a)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The report was not allocated at the relevant DoCS office and subsequently closed because of “current competing priorities” (p. 4)</li> <li>• The reports were closed by the relevant DoCS office due to “current competing priorities” (NSW Ombudsman, 2009a)</li> </ul>
<b>Early 2005</b>	<ul style="list-style-type: none"> <li>• Three more reports were made to DoCS about Dean and Trish.</li> <li>• It was reported that Rachel was moody, edgy and withdrawn after leaving Paul due to domestic violence and being homeless on two separate occasions (NSW Ombudsman, 2009a).</li> </ul>	<ul style="list-style-type: none"> <li>• One of reports received a response where Helpline staff arranged and paid for overnight accommodation for the family.</li> <li>• All three reports were subsequently closed due to “current competing priorities” (NSW Ombudsman, 2009a).</li> </ul>
<b>July 2005</b>	<ul style="list-style-type: none"> <li>• Rachel was arrested by police relating to charges of maliciously damaging a motorcycle.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Rachel was allegedly intoxicated when arrested and during the arrest process she assaulted an officer.</li> <li>• She was arrested, charged, convicted and placed on a good behaviour bond for 12 months (NSW Ombudsman, 2009a).</li> </ul>	
<b>August - December 2005</b>	<ul style="list-style-type: none"> <li>• By August, Rachel, Dean and Trish were residing in a refuge.</li> <li>• In September Paul was again incarcerated however no details available</li> <li>• Rachel, Dean and Trish remained homeless, staying in various temporary accommodation facilities (NSW Ombudsman, 2009a)</li> </ul>	
<b>Early 2006</b>	<ul style="list-style-type: none"> <li>• Paul was released from jail and the family was reunited, staying with friends and family</li> </ul>	
<b>February 2006</b>	<ul style="list-style-type: none"> <li>• Dean's sister, Trish was seriously assaulted by a relative.</li> <li>• In retaliation, Rachel and Paul physically assaulted the relative and were consequently charged, convicted and incarcerated.</li> <li>• Rachel remained incarcerated only for a short time. (Exact time unclear – NSW Ombudsman (2009a) report states that it was “some weeks” (p. 4) however Pfitzner V R (2010) states that Rachel was granted bail after two days (S5)</li> <li>• Rachel requested that Dean and Trish be placed with family members. While Paul and Rachel were incarcerated, Dean and his sister, with DoCS support were placed in the care of the paternal grandmother, Ms Coffey.</li> <li>• This arrangement was supported by Paul and Rachel.</li> <li>• Paul remained in custody but Rachel was released some weeks after and resumed care of Dean and Trish and resided in refuge accommodation.</li> <li>• After this time, Ms Coffey cared for Dean for a few days a time and had custody of Dean on full-time basis through the latter part of 2006-2007 which was formalised through the Family Court (R v Pfitzner, 2009).</li> </ul>	<ul style="list-style-type: none"> <li>• As noted by the NSW Ombudsman's (2009), this was the first occasion that DoCS had face-to-face contact with Rachel, Dean and Trish</li> <li>• No comprehensive risk assessment was conducted in relation to the assault experienced by the child (NSW Ombudsman, 2009a).</li> </ul>

		<ul style="list-style-type: none"> <li>DoCS noted that the actions of the parents were documented as “protective” (NSW Ombudsman, 2009a, p. 4).</li> </ul>
<b>March 2006</b>	<ul style="list-style-type: none"> <li>Rachel sought assistance for drug, alcohol and anger management issues (NSW Ombudsman, 2009a).</li> <li>Rachel failed to follow through with appointments and the health file was closed (NSW Ombudsman, 2009a).</li> </ul>	<ul style="list-style-type: none"> <li>DoCS provided Rachel with some financial assistance for one-off accommodation expenses (NSW Ombudsman, 2009a).</li> </ul>
<b>April – May 2006</b>	Dean’s sister, Trish went to live with her father (NSW Ombudsman, 2009a).	
<b>May 2006</b>	<ul style="list-style-type: none"> <li>DoCS received a report that Rachel had resumed a relationship with an ex-partner, Clifford Connors who was a known heroin user.</li> <li>Shortly after the report was made, Dean’s extended family forcefully took Dean from Rachel. They allegedly took this action in response to the information that Rachel had reunited with her ex-partner and that both were using heroin (NSW Ombudsman, 2009; Pfitzner v R, 2010)</li> </ul>	<ul style="list-style-type: none"> <li>This report was recorded as “Information only” because the person reporting did not know Rachel and Clifford’s address (NSW Ombudsman, 2009a).</li> </ul>
<b>July – October 2006</b>	<ul style="list-style-type: none"> <li>In July, Rachel was convicted of larceny and sentenced to 100 hours Community Service</li> <li>In August, Rachel was arrested for an outstanding warrant for failure to report under previous bail conditions</li> <li>At the time of Rachel’s arrest, neither Dean or Trish were in her care however she was pregnant with her third child</li> <li>Rachel was sent to Mulawa Detention Centre in August and released in October 2006 (NSW Ombudsman, 2009a)</li> </ul>	

<p><b>October– December 2006</b></p>	<ul style="list-style-type: none"> <li>• Following her release in October 2006, Rachel regularly engaged with Probation and Parole Services (NSW Ombudsman, 2009a).</li> </ul>	<ul style="list-style-type: none"> <li>• Rachel and her Probation and Parole worker developed a service plan that included an agreement that Rachel was to receive counselling for personal issues and assist in management of her anger (NSW Ombudsman, 2009).</li> <li>• Rachel also sought help from a range of services to assist her in restabilising her life and resume care of her children.</li> <li>• Rachel engaged the services of a Family Support Service (FSS) in Sydney whose main aim was to “support and strengthen families through practical assistance, role modelling, referrals, advocacy and advice” (NSW Ombudsman, 2009a, p. 5).</li> <li>• Rachel was provided with services from November 2006 until Dean’s death in October 2007</li> </ul>
<p><b>January – April 2007</b></p>	<p>This appeared to be a period where Rachel focused on restabilising her life and making some important decisions (NSW Ombudsman, 2009a):</p> <ul style="list-style-type: none"> <li>• Rachel resumed care of her daughter, Trish</li> <li>• Rachel was also placed on a Good Behaviour Bond for offences committed in 2005</li> <li>• Rachel initiated court action in the matter of Trish’s sexual assault</li> <li>• Applications were made with Family Law so that she could resume custody of Dean</li> <li>• Rachel commenced counselling with a psychologist which was consistent with the plan made with Probation and Parole</li> <li>• Rachel gave birth to her son, Brenton in April 2007 and accepted Department of Housing accommodation</li> <li>• Rachel informed the FSS worker that she was meeting with a psychologist in relation to her depression and anger management issues and that she hoped to start attending a parenting course.</li> </ul>	<ul style="list-style-type: none"> <li>• The Family Support Service supported Rachel in applying for housing</li> </ul>
<p><b>May 2007</b></p>	<ul style="list-style-type: none"> <li>• Ms Coffey, Dean’s paternal grandmother, made application to the Family Court seeking custody of Dean.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Ms Coffey specified in her application that she wanted Rachel and Paul to have contact with Dean on the basis that they do not consume drugs or alcohol and that Rachel has a monthly urine test</li> <li>• In late May, Rachel attended a court mediation phone conference. The outcome was that Ms Coffey was to have custody of Dean and Rachel to have defined periods of access providing that Rachel was not to use drugs. Regular phone contact also to occur.</li> <li>• An agreement was reached and it was recorded that Rachel was happy with the outcome of the mediation (NSW Ombudsman, 2009a)</li> </ul>	<ul style="list-style-type: none"> <li>• DoCS received a subpoena from the Family Court.</li> <li>• DoCS declined to provide records for the Family Court on the basis that they only held risk of harm reports and, on this basis, they were not compelled to provide information to the Family Court (NSW Ombudsman, 2009)</li> <li>• Rachel had contact with a number of agencies at this time including; <ul style="list-style-type: none"> <li>○ Child and Family nurse conducted home visits to assess Brenton's progress with no reported concerns except that Rachel was experiencing stress due to Family Court issues;</li> <li>○ Probation and Parole officer reported that "The Mother was noted to be looking well, to be happy and have her own home, and to be receiving help from the father of her third child" (NSW Ombudsman, 2009a, p. 5).</li> <li>○ A letter was written by the Probation and Parole officer to the Family Court stating that Rachel had not been observed to be affected by drugs or alcohol (NSW Ombudsman, 2009a).</li> </ul> </li> <li>• The FSS worker wrote a letter, at Rachel's request, to the Family Court. The letter indicated that the family support worker did not have any concerns about Rachel's parenting based on regular visit over the past few months (NSW Ombudsman, 2009a).</li> </ul>
<p><b>June 2007</b></p>	<ul style="list-style-type: none"> <li>• An interim order in relation to the custody of Dean was issued by the Family Court as per the agreement reached during counselling.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Rachel had contact with Dean for the first time in June 2007. Rachel had not had contact with Dean May 2006; “the offender [Rachel] told the caseworker that she was happy about the prospect of having access” (R v Pftzner, 2009, para. 6)</li> </ul>	<ul style="list-style-type: none"> <li>• June 2007 was a period where there was a marked decline in support services having contact with Rachel. <ul style="list-style-type: none"> <li>○ Probation and Parole spoke only once by phone with Rachel</li> <li>○ Staff from the baby clinic only saw Rachel and Brenton once</li> <li>○ The family support worker documented two home visits. Clifford, Braydon’s father was present at the first visit</li> <li>○ Rachel informed the worker that she enjoyed her visit with Dean and was looking forward to the next visit (NSW Ombudsman, 2009a).</li> </ul> </li> </ul>
<p><b>July 2007</b></p>	<ul style="list-style-type: none"> <li>• Dean had his second contact visit with Rachel in early July. Dean was to have had a day visit with Rachel however she failed to return him to his grandmother’s care by 5 pm as arranged.</li> <li>• The police were contacted by Ms Coffey and she requested that they check on Dean’s welfare however the police could not locate the family</li> <li>• Ms Coffey tried to locate Dean by herself which resulted in Rachel’s family making complaints to the police</li> </ul>	<ul style="list-style-type: none"> <li>• The police documented the matter as a custody dispute</li> <li>• The police attempted to make a report to DoCS however they waited on the phone to speak with someone for over 10 mins.</li> <li>• DoCS records confirm that the police successfully reported the matter several weeks later (NSW Ombudsman, 2009).</li> <li>• The information was recorded by DoCS and retained by the Helpline as “information only”</li> </ul>

	<p>Professionals involved with Rachel discovered that Rachel had failed to return Dean to his paternal grandmother who had full-time custody:</p> <ul style="list-style-type: none"> <li>• The family support worker was notified by Rachel that she had kept Dean in mid-July.</li> <li>• The solicitor had been advised by Rachel of her actions. The solicitor advised her to return Dean to Ms Coffey's care however Rachel had decided to wait for the outcome of the court process.</li> <li>• The Probation and Parole officer, on finding out about the situation, reiterated the advice given by Rachel's solicitor.</li> <li>• Rachel told her probation and parole officer that she was aware that Ms Coffey had applied for a recovery order and she was feeling concerned about a long custody case.</li> <li>• Rachel also expressed concern that when Paul was released from jail in the next month, he would take Dean and stop her from having contact with Dean (NSW Ombudsman, 2009a).</li> <li>• Rachel and Dean attended a parenting group and the family support worker noted that "the child appeared to be well, enjoying himself, and to be 'very attached to his mother' (NSW Ombudsman, 2009a, p. 6).</li> <li>• According to court documentation (R v Pfitzner, 2009) "She [Rachel] told the case worker on 16<sup>th</sup> July 2007 that she had not returned Dean after the last access visit because she '<i>felt emotionally attached to him</i>'.</li> <li>• The following week, Rachel attended the baby health clinic and reported that she had breached access conditions (NSW Ombudsman, 2009a).</li> <li>• In late July, Ms Coffey filed for a recovery order with the Family Court. The matter was listed for hearing in September (NSW Ombudsman, 2009a).</li> </ul>	
<p><b>August 2007</b></p>	<ul style="list-style-type: none"> <li>• Rachel had contact with two agencies during the month of August – family support services and the agency running the young parents' group.</li> <li>• Rachel failed to attend interviews with Probation and Parole and did not continue her sessions with the psychologist.</li> <li>• On the 1<sup>st</sup> August the family support worker conducted a home visit and noted that "Dean appeared happy and contented to be with his mum" (NSW Ombudsman, 2009a, p. 6).</li> <li>• Dean was also observed to be dressed appropriately, was tidy and well behaved (R v Pfitzner, 2009)</li> </ul>	

	<ul style="list-style-type: none"> <li>• At a playgroup in early August, there were indications that Rachel's ability to care for Dean commenced deteriorating. Rachel appeared teary at a play group meeting and informed the family support worker that "<i>she was feeling upset with [Dean] because he reminded her of his father</i>", and that "[Dean's] father had hurt her a lot in the past" (NSW Ombudsman, 2009a, p. 6)</li> <li>• Rachel's parenting of Dean's siblings, Trish and Brenton, was considered appropriate however Dean was treated differently. "She began to think that Dean had been spoiled by his grandparents and was acting out. She told her case worker that she would "get that out of him". She told various people that Dean's behaviour was unreasonably wilful and disobedient. She punished him severely and frequently. She said to one of the neighbours that he was a "<i>little bastard</i>". To another neighbour she described him as "<i>an asshole</i>". She sometimes banished him from the house, forcing him to stay outside in the cold. Dean was often hungry and would forage for food but she punished him for doing so. He was not completely toilet trained but the offender blamed him for that. She said she was sick of cleaning up after him and expected him to clean up any mess that he made. Dean would seek the offender's affection but this would cause her to become angry as she thought he was being overly clingy" (R v Pfitzner, para. 9)</li> <li>• The situation continued to deteriorate as Rachel repeatedly disclosed to people that "he [Dean] reminded her of his father whom she loathed and feared" (para. 10).</li> <li>• Dean was observed by people known to Rachel (her partner, her mother and a family friend) that he had bruises over his body. Rachel's mother made comment during the trial that Dean was "<i>looking great</i>" and "<i>a really happy kid</i>" when he returned from</li> </ul>	<ul style="list-style-type: none"> <li>• With agreement from Rachel, the family support worker arranged counselling. An appointment was made in early October</li> </ul>
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	<p>residing with his grandmother however he had transformed into a “<i>nervous wreck</i>” when he was with his mother Rachel.</p> <p>Furthermore:</p> <p>“Mr Connors described Dean as being terrified of his mother. He said that the offender [Rachel] would hit Dean about three times each day for doing things like wetting himself and eating leftover food. Mr Connors perceived the mistreatment of Dean as being so bad that he considered contacting the Department of Community Services. Ms Daley described Dean as being “<i>so scared of her when she was around that it was not usual</i>”. The offender [Rachel] complained to Ms Daley that Dean was “<i>getting worse; he won’t listen to me. He gets up at night looking for food and he won’t go in the toilet</i>”. She also said that she did not look at Dean like he was her son. Neighbours described Dean being locked out of the house and hitting the doors whilst crying and trying to get back inside. He was repeatedly heard to cry out, <i>Mummy, mummy, I am sorry</i>”. (para. 12)</p>	
<p><b>September 2007</b></p>	<ul style="list-style-type: none"> <li>• At the beginning of September, the police attended “a verbal argument between the mother and the father of her third child...both had been drinking alcohol ‘<i>all afternoon</i>” (NSW Ombudsman, 2009a, p. 7).</li> <li>• DoCS received a report from the police and it was recorded as alcohol related domestic violence</li> </ul>	<ul style="list-style-type: none"> <li>• The report was sent through to the local DoCS office and the report was forward to the Early Intervention Team.</li> <li>• The family were assessed for an early intervention response through the “Brighter Futures” program.</li> <li>• The service assessed that Dean and his family were ineligible for the program due to the extensive child</li> </ul>

	<ul style="list-style-type: none"> <li>• A week after the domestic violence incident the family support worker conducted a home visit – the first since mid-August. Rachel informed the family support worker that she was stressed out and that Dean was acting out and the children were fighting. The mother informed the family support worker that she would attend a course on behaviour management.</li> <li>• In late September, the family support worker conducted a home visit.  <p>“The mother was upset and crying and said that she had decided to give Dean back to his grandmother because she was not coping. She gave the family support worker permission to speak with her solicitor and to tell them she would not be attending Court for the hearing listed for a few days later” (NSW Ombudsman, 2009a, p. 7). The worker conveyed this message to the solicitor as requested.</p> </li> <li>• The family support worker rang Rachel and informed her that she had conveyed the message to the solicitor. Rachel told the family support worker that “there would be no court; the police <i>‘will come and get [Dean] not sure when’</i> (NSW Ombudsman, 2009a, p. 7).</li> <li>• In court documents (R v Pfitzner, 2009)  <p>“On 24<sup>th</sup> September, four days before Ms Coffey’s application was listed for hearing in the Federal Magistrates Court, the offender contacted her solicitors and told them that she would comply with any recovery order made by the court...She was later to tell the police that this was after she had been told that Paul Shillingsworth had said that when he found her he was</p> </li> </ul>	<p>protection history and that the risk was “too high” (NSW Ombudsman, 2009a).</p> <ul style="list-style-type: none"> <li>• Brighter Futures referred the report back to DoCS however the notification was closed three weeks later due to competing priorities (NSW Ombudsman, 2009a).</li> </ul>
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	<p>going to kill her. She heard this around early to mid September” (S13)</p> <ul style="list-style-type: none"> <li>• In late September a new Probation and Parole officer conducted a home visit. Rachel told the Probation and Parole officer that she was receiving support from a family support worker and all was going well</li> <li>• The Probation and Parole officer enquired after Dean because he appeared unwell. Rachel, in response, stated that he was ill because “of death threats made by the boy’s father, she was returning him to his grandmother’s care and had withdrawn from the custody proceedings” (NSW Ombudsman, 2009a).</li> <li>• On the same day that Rachel was contacted by her parole officer, the Family Court commenced hearing the matter in relation to Dean’s custody. Concerns were raised in relation to the delay in hearing the matter. “<i>There’s a mother with a drug problem who hasn’t returned the child. And here we are in September with it before the Court</i>” (NSW Ombudsman, 2009a, p. 7). Despite the initial delay (application for recovery order made in July 2007) the matter was further adjourned as Ms Coffey required urgent medical attention. The Court arranged for an expedited hearing and adjourned until 11<sup>th</sup> October, 2007 (NSW Ombudsman, 2009a).</li> </ul>	
<p><b>October 2007</b></p>	<ul style="list-style-type: none"> <li>• The mother, Rachel failed to attend a counselling session. “She told the worker who had organised the counselling appointment that she had decided to return Dean to his grandmother ‘because [the boy’s] father had been released from prison’ (NSW Ombudsman, 2009a, p. 7)</li> <li>• Prior to Dean’s death, Rachel presented as extremely distressed on a number of occasions and desperate for Dean to be returned to his grandmother’s care. Different perspectives in relation to the days prior to Dean’s death were presented. The NSW Ombudman’s report (2009a) states that:  “the family support worker visited the mother. She found the mother stressed after ‘ringing the Court to see when someone was going to come and get Dean ... They have</li> </ul>	

*told her it goes back to court on the 18th October. The mother doesn't want to go back to court she just wants her son picked up by police and taken back to his grandmother. My observation is the sooner the better ... There was also tension with the mother who was very stressed when [Dean] came near her. She just can't stand him. The mother just wanted him gone as soon as possible. Suggestions by the mother [Rachel] were to just take him to DoCS and leave him there..."* (p. 7)

"During the visit the mother made a number of calls using the worker's mobile phone. She rang the Family Court to clarify that she did not need to attend court but was unable to establish this. She rang her solicitor, who was not available. She rang the Federal Police to find out whether they would be collecting the boy. They did not know" (p. 7)

"According to a statement provided to us by the worker, the worker then suggested the mother telephone the grandmother's solicitor with a view to making an arrangement to hand Dean to his grandmother." (p. 7)

"The worker said she also '*tried to confirm that [the mother's suggestion of taking the boy to DoCS] was really what she wanted to do*'. She also recorded in a file note that was made after Dean's death, that she asked the mother if she felt she may harm him. The mother reportedly said no. According to the worker's notes, the mother decided to take no further action in relation to the boy until she could discuss the situation with her mother [Ms Pfitzner]" (p. 7)

In the report R v Pfitzner (2009) it states that:

"A recovery order was made ex parte in the Federal Magistrates Court on 11 October 2007. That morning the offender walked to the home of Ms Daley [friend/neighbour] with Dean and Brenton. Prior to arriving at Ms Daley's house the offender [Rachel] warned Dean not to eat anything whilst they were there. The offender

[Rachel] used Ms Daley's house phone to call the court to inquire whether the recovery order had been made. She was not given any information because of a court policy about giving information over the phone. Ms Daley's brother and her partner brought home some food from McDonalds. It became apparent that Dean was hungry and one of the men gave him a hamburger. The offender came into the room and saw Dean eating and became enraged. She took the food from him and promptly took Dean and B home. Ms Daley observed on this day that Dean had bruises over his face and scratches and bruises on his arms. The offender murdered Dean soon after they arrived home. He died from asphyxiation. She wrapped his body in plastic bags, placed it in a suitcase and then threw it into a duck pond near her home." (para. 17 and 18)

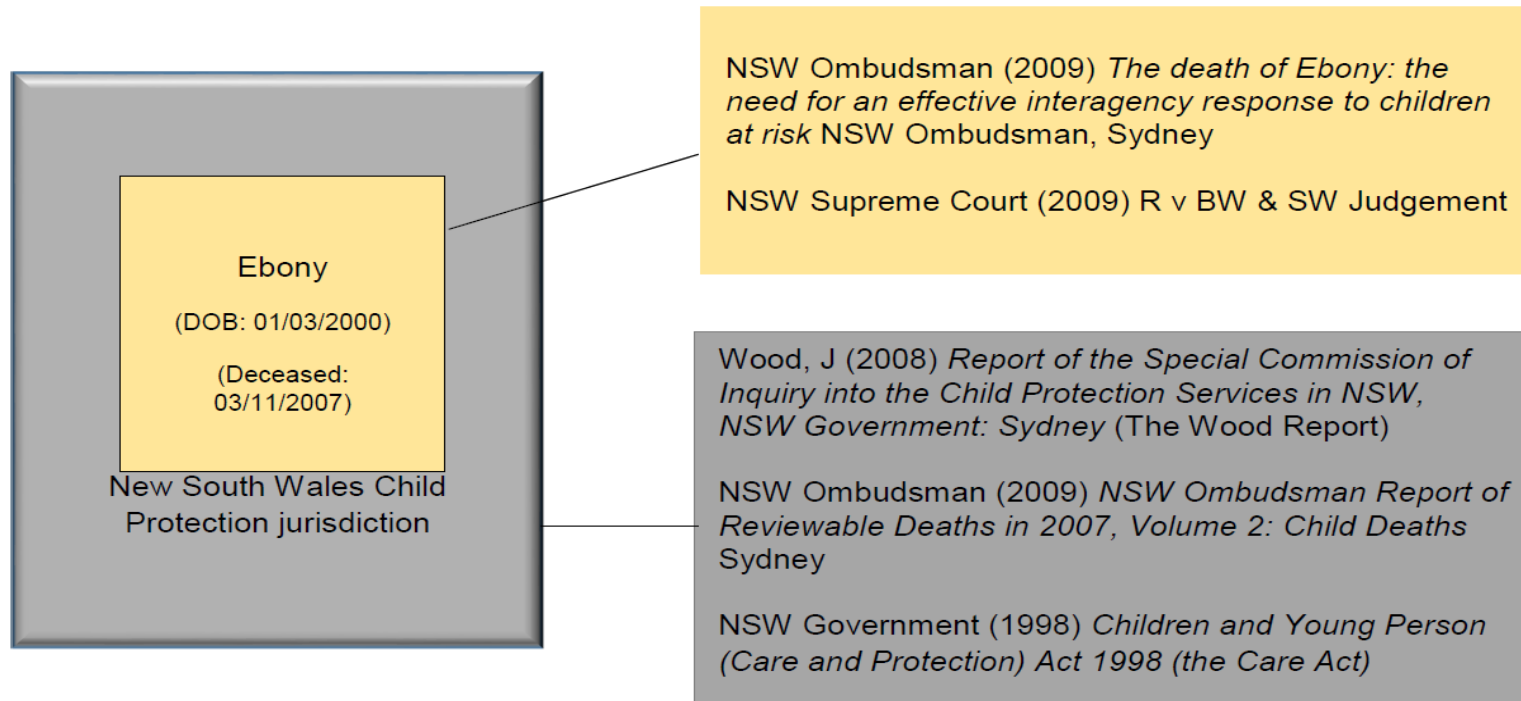
Judge R A Hulme J (R v Pfitzner, 2009) summarised

"In the weeks leading up to the murder the offender displayed considerable inappropriate and unjustified anger towards Dean. She had an irrational perception that he was deliberately misbehaving and defying her. Making him clean up after himself when he had a toileting accident and locking him out of the house are just two examples of her attitude of mistreatment of him. The fact that the offender had adequate and appropriate parenting skills in relation to her two other children demonstrates that her behaviour towards Dean was not an inherent inadequacy of skills but something that was targeted at him alone...I am satisfied that she came to loathe Dean because he reminded her of his father towards whom she held ambivalent feelings. I am satisfied that in the weeks prior to the murder she was in fear of Mr Shillingsworth and, in that period, she more hated than loved him. She was also concerned that by retaining custody of Dean there was a greater prospect of Mr Shillingsworth finding out where she was living and doing her harm...Nevertheless, despite these feelings about Dean, she did not want to voluntarily surrender his care to others. She had ample opportunity to do so. Her caseworker was supportive of her and

	offered assistance which was not taken up. Her mother had also offered to assist" (Paras. 77-79)	
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## APPENDIX 5 EBONY

### Child's Details and Documents in Scope



## Chronology of Events and Responses

DATE	EVENT	RESPONSE
<b>Prior to March 2000</b>	<ul style="list-style-type: none"> <li>• Prior to Ebony's birth in March 2000, DoCS had minimal involvement with the family</li> <li>• Three reports had been recorded in relation to Ebony's two older siblings expressing concerns about a high level of school absenteeism (NSW Ombudsman, 2009b).</li> </ul>	<ul style="list-style-type: none"> <li>• Two of the reports were investigated by DoCS – DoCS did not identify any significant concerns regarding the children (New South Wales Ombudsman, 2009b).</li> <li>• The school wrote to the parents about the level of school absenteeism inviting them to discuss the issues. The parents failed to attend school meetings.</li> <li>• School liaison officer was allocated to follow up issues (NSW Ombudsman, 2009b).</li> </ul>
<b>March 2000</b>	<ul style="list-style-type: none"> <li>• Ebony was born (NSW Ombudsman, 2009b).</li> </ul>	
<b>April 2000</b>	<ul style="list-style-type: none"> <li>• Ebony's older siblings were transferred to another school (NSW Ombudsman, 2009b).</li> </ul>	
<b>September 2000</b>	<ul style="list-style-type: none"> <li>• The School contacted DoCS and a report and the following issues were recorded:               <ul style="list-style-type: none"> <li>○ The poor school attendance of Ebony's older siblings, and</li> <li>○ concerns about their general welfare (NSW Ombudsman, 2009b).</li> </ul> </li> </ul>	<p>The school liaison officer scheduled a number of meetings to address absenteeism however parents did not attend scheduled meetings</p>
<b>June 2001</b>	<ul style="list-style-type: none"> <li>• The school contacted DoCS on two further occasions.</li> <li>• Two more at risk reports were recorded raising issues about the older girls' absenteeism from school and apprehensions about their general welfare (NSW Ombudsman, 2009b).</li> </ul>	<ul style="list-style-type: none"> <li>• School made numerous attempts to engage parents in discussion however parents failed to attend meetings</li> </ul>



		<ul style="list-style-type: none"> <li>Following the receipt of the second report, DoCS commenced a risk assessment (NSW Ombudsman, 2009b).</li> </ul>
<b>January 2002</b>		<p>Attempts were made to conduct a risk assessment however:</p> <p>“the parents were evasive, did not follow up referrals and the older children continued to miss significant amounts of school. DoCS had also identified concerns about Ebony’s low birth weight and small size” (New South Wales Ombudsman, 2009b, p. 10)</p> <p>In response, DoCS lodged an application with the Children’s Court for an assessment order and a supervision order (New South Wales Ombudsman, 2009b)</p>
<b>March 2002</b>	<p>The birth of Ebony’s younger sibling who was born with significant health problems (New South Wales Ombudsman, 2009b).</p>	<p>DoCS decided to add Ebony’s younger sibling to the existing Court Proceedings (New South Wales Ombudsman, 2009b)</p> <p>While the matter was before the Children’s Court the following actions occurred:</p> <ul style="list-style-type: none"> <li>Health assessments for all four children were conducted</li> <li>A Children’s Court clinician conducted an assessment.</li> <li>Reports were provided by the Department of Education</li> <li>The clinician noted in the assessment report that: <ul style="list-style-type: none"> <li>Ebony presented as “<i>an extremely worrying child</i>” due to her significant developmental delay (NSW Ombudsman, 2009, p. 10)</li> <li>There was no existing medical reason explaining the high rate of absenteeism</li> </ul> </li> <li>The clinician who conducted the assessment concluded that the three older children were not at risk of harm,</li> </ul> <p>The Children’s Court clinician recommended that “they would need to be closely monitored by services” (New South Wales Ombudsman, 2009b, p. 10)</p>

<b>May 2002</b>		<p>The Children's Court issued final orders in regards to all four children:</p> <ul style="list-style-type: none"> <li>• A Supervision order was granted for nine months and for parents to agree to undertakings</li> <li>• The objectives of the orders were to ensure that the older children attended school and that appropriate services were provided to meet the assessed needs of all children (New South Wales Ombudsman, 2009b)</li> </ul>
<b>June 2002</b>	<ul style="list-style-type: none"> <li>• There were medical concerns that Ebony's younger sibling was failing to thrive while in her parent's care (New South Wales Ombudsman, 2009b).</li> <li>• The parents were also failing to abide by their undertakings made before the Children's Court (New South Wales Ombudsman, 2009b)</li> </ul>	<ul style="list-style-type: none"> <li>• The fact that Ebony's younger sibling was failing to thrive prompted DoCS to apply for an Emergency Care and Protection Order. Ebony's youngest sibling was removed from her parent's care and placed in emergency foster care (New South Wales Ombudsman, 2009b)</li> <li>• DoCS also lodged a breach application with the Children's Court because the parents, SW and BW were not abiding by their undertakings (New South Wales Ombudsman, 2009b)</li> </ul>
<b>June to December 2002</b>	<ul style="list-style-type: none"> <li>• Children transferred to a third primary school in October 2002 by parents.</li> <li>• DoCS received reports from The Department of Education, and health professionals that SW and BW had improved their level of co-operation (New South Wales Ombudsman, 2009b)</li> </ul>	<p>DoCS' case plan was to bring three older children into care which included Ebony but only youngest child was removed. The plan for removal of the children did not proceed due to reports that the parents had improved their level of co-operation (New South Wales Ombudsman, 2009b)</p>
<b>December 2002</b>		<p>The Children's Court issued final orders for the three children including Ebony (New South Wales Ombudsman, 2009b):</p> <ul style="list-style-type: none"> <li>• The supervision order and undertakings to continue until February 2003</li> </ul>

		<ul style="list-style-type: none"> <li>• Parental responsibility for medical issues to be shared between the parents and the Minister for the remainder of the Supervision order</li> <li>• Following expiration of the supervision order, the parents were to undertake that the two older children continue to attend school on a full time basis for a further 12 months (New South Wales Ombudsman, 2009b)</li> <li>• Department of Education provided information to the NSW Ombudsman (2009b) that they were not notified of the particulars of the orders granted.</li> </ul>
<b>January 2003</b>	<ul style="list-style-type: none"> <li>• A Paediatrician at Sydney Children’s hospital diagnosed Ebony, who was three, as having a “moderate global developmental delay” (New South Wales Ombudsman, 2009b, p. 32)</li> </ul>	<ul style="list-style-type: none"> <li>• Ebony was referred to Department of Ageing, Disability and Home Care Community Support Team (CST) for case management, speech and occupational therapy (New South Wales Ombudsman, 2009b).</li> </ul>
<b>February 2003</b>		<ul style="list-style-type: none"> <li>• The supervision order for the children expired</li> <li>• Active supervision by DoCS concluded after the expiration of the supervision order</li> <li>• DoCS had planned to reunify the youngest child with her family however this did not eventuate because of the following reasons. <ul style="list-style-type: none"> <li>○ BW and SW failed to acknowledge the reason as to why their youngest child was placed in alternative care, and</li> <li>○ BW and SW ceased to maintain contact visits with the youngest child</li> <li>○</li> </ul> </li> <li>• As a consequence, DoCS made recommendations that Ebony’s youngest sibling should not be reunified with her family and remain in long term foster care (New South Wales Ombudsman, 2009b)</li> </ul>

	<ul style="list-style-type: none"> <li>The mother informed the Department of Ageing, Disability and Health that Ebony was already in receipt of services so they did not require any additional services (New South Wales Ombudsman, 2009b)</li> </ul>	<ul style="list-style-type: none"> <li>In response to the mother's rejection of services, Ebony was not provided with case management, speech and occupational therapy by CST (New South Wales Ombudsman, 2009b)</li> </ul>
<b>August 2003</b>	<ul style="list-style-type: none"> <li>DET noted that school attendance by Ebony's siblings had worsened throughout the year following expiration of court order in February 2003 (New South Wales Ombudsman, 2009b)</li> <li>It was noted that Ebony's older siblings were struggling with their academic performance</li> </ul>	<ul style="list-style-type: none"> <li>The school wrote to the family inviting them to discuss the issue of school absenteeism. The older child had missed the equivalent of 2.6 yrs and the second child had been absent for the equivalent of 2.4 yrs since commencing kindergarten (NSW Ombudsman, 2009b)</li> <li>A school liaison officer was re-engaged to address poor school attendance issues and document all contact with the family (New South Wales Ombudsman, 2009b)</li> </ul>
<b>October 2003</b>		<ul style="list-style-type: none"> <li>The Children's Court issued the final order for Ebony's younger sibling who was to remain in long term foster care (NSW Ombudsman, 2009b).</li> </ul>
<b>2004</b>	<ul style="list-style-type: none"> <li>DoCS received one risk of harm report about Ebony and her siblings from a person who knew the family. The issues raised by the notifier were not specified (New South Wales Ombudsman, 2009b).</li> <li>Pattern of chronic school absenteeism continued. In August it was found that Ebony's siblings had a 48% attendance rate (New South Wales Ombudsman, 2009b).</li> </ul>	<ul style="list-style-type: none"> <li>As the report was based on "hearsay" the information was recorded and retained at the DoCS Helpline.</li> <li>DET made another referral to the home school liaison program to follow up the issue of absenteeism (New South Wales Ombudsman, 2009b)</li> </ul>

2005

In 2005, DoCS received a total of six at risk of harm reports concerning Ebony and her siblings. Reported allegations included the following:

- SW and BW finding it difficult to deal with Ebony's challenging behaviour
- Ebony's siblings continued to be absent from school
- Concerns that Ebony's siblings were deliberately kept home from school by their parents
- Concerns that the children were being neglected within the home (New South Wales Ombudsman, 2009b)
  
- More specifically:
  - Both of Ebony's siblings had been removed from their schools after a series of absences (some medical certificates provided) on the basis that they were being bullied and that the family was relocating (NSW Ombudsman, 2009b).
  
  - In **May, August and November**, the primary school made a reports to DoCS about the second child's chronic absenteeism of the second child and that she had been withdrawn from school
  
  - The high school made similar reports to DoCS in **June, August and November**. The NSW Ombudsman (2009) notes that in the DET records, a note was made "*DoCS will not be taking action*" (p. 25)

- Of the six at risk of harm reports, one of the reports was kept by DoCS Helpline whereas the other five reports were sent to the relevant Community Service Centre
  
- All of the five reports received by the Community Service Centre were closed without further assessment due to competing priorities (NSW Ombudsman, 2009b).
  
- In **November**, a successful contact was made with the parents by DET and a meeting was convened by DET to which the parents attended.

	<ul style="list-style-type: none"> <li>In <b>May 2005</b>, a Paediatrician again made a referral for Ebony to receive services from CST requesting behaviour intervention and speech pathology. The referral stated:  “dysfunctional family that are chronic non-attendees of appointments. DoCS has been involved with the family and the youngest child is now living with foster family. Mum has a past history of dependence on pain killers. DoCS not involved with Ebony. The paediatrician considering a notification” (NSW Ombudsman, 2009b, p. 32)</li> <li>The Paediatrician was informed by DADHC CST, that Ebony has been attending pre-school (NSW Ombudsman, 2009b).</li> </ul>	<ul style="list-style-type: none"> <li>According to the NSW Ombudsman (2009b) the outcome of the meeting was a documented agreement:  “that the parents were to seek assessments for the two older children to inform their resumption of school attendance. The parents provided a psychologist’s report recommending home schooling – 18 months later (May 2007)”(p. 25)</li> <li>Attempts had been made to conduct a needs assessment for Ebony on two occasions – once in May and in June however attempts were unsuccessful.</li> <li>On <b>18<sup>th</sup> July 2005</b>, DADHC was informed by the pre-school that Ebony had been withdrawn from the pre-school because the family was allegedly relocating.</li> <li>In response, DADHC closed the file for Ebony (NSW Ombudsman, 2009b).</li> <li>For unknown reasons, DADHC re-opened the case in <b>November 2005</b> and made further attempts to contact the family</li> <li>The mother was contacted by DADHC and arrangements made to conduct needs assessment with Ebony on <b>7 &amp; 8 November</b></li> <li>Ebony was assessed at pre-school. Findings included the following: <ul style="list-style-type: none"> <li>Ebony was challenged by limited communication.</li> <li>Ebony required speech pathology, occupational therapy, physiotherapy and case management services</li> </ul> </li> </ul> <p>“The assessment noted that Ebony had a lovely smile, would soon be six, and <i>‘would be best suited to attending school’</i>. She was noted to be <i>‘achieving well at her current placement’</i>...recommended that Ebony receive therapy services in the school setting...there were <i>‘concerns about</i></p>
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	<ul style="list-style-type: none"> <li>• <b>In December 2005</b>, Ebony was offered a place at a special school (NSW Ombudsman, 2009b).</li> </ul>	<p><i>[Ebony's] developmental attainments and the need to provide her and her family with a comprehensive early intervention service"</i>(NSW Ombudsman, 2009b, p. 32)</p> <ul style="list-style-type: none"> <li>• In the period between <b>8 December 2005 and 8 February 2006</b>, DET informed DADHC that Ebony had been offered a place at the special school. In a subsequent conversation, between DADHC and the special school staff it was recorded that "the school would take the lead role regarding school attendance, and an apparent agreement that the school would contact DADHC when Ebony started school" (New South Wales Ombudsman, 2009b, p. 25)</li> </ul>
<p><b>February 2006</b></p>	<ul style="list-style-type: none"> <li>• During the home visit, SW (the mother) informed the worker from DADHC that Ebony had not commenced school (NSW Ombudsman, 2009b)</li> </ul> <p>A person known to the family contacted the DoCS Helpline with information that</p> <ul style="list-style-type: none"> <li>• Ebony's mother was in poor health, and</li> <li>• BW's alleged drug use and domestic violence (NSW Ombudsman, 2009b).</li> </ul>	<ul style="list-style-type: none"> <li>• On the <b>8<sup>th</sup> February 2006</b>, the case manager from DADHC conducted a home visit</li> <li>• On <b>10<sup>th</sup> February 2006</b>, as previously organised, the case manager accompanied SW to view Ebony's new school</li> <li>• On <b>20<sup>th</sup> February</b>, the DADHC case manager made attempts to contact parents by telephone to check on Ebony commencing school – no response (NSW Ombudsman, 2009b).</li> <li>• The DoCS Helpline assessed the information and made a determination that risk to the children to be "medium".</li> <li>• The report was forwarded to the relevant Community Service Centre for a response within 10 days.</li> <li>• Report was closed without further inquiries (NSW Ombudsman, 2009b)</li> </ul>

	<ul style="list-style-type: none"> <li>• Ebony was seen at Sydney Children’s Hospital in <b>February 2006</b> for a hernia repair.</li> <li>• During the health visit at Sydney Children’s Hospital, Ebony was recorded as weighing 20.5 kg which was in the 75<sup>th</sup> percentile for age and height (R v BW &amp;SW)</li> <li>• Ebony was taken to the general practitioner in <b>February 2006</b>.</li> </ul> <p>“He noted that she exhibited features of autism with poor eye contact and repetitive and disruptive behaviours. He had not seen her since September 2003 and he noted that she had made a physical transformation to have become ‘quite a chubby six year old’ (RvSW&amp;BW, 2009. S23)</p>	<ul style="list-style-type: none"> <li>• Staff from DET convened a meeting to discuss educational supports for Ebony and her siblings. After the meeting, participants sought advice from DADHC and DoCS about supports. <ul style="list-style-type: none"> <li>○ DADHC advised that a needs assessment was in progress for Ebony and that her sisters were not eligible for any supports from the health service</li> <li>○ No reply recorded for DoCS (NSW Ombudsman, 2009b)</li> </ul> </li> </ul>
<b>March 2006</b>	<ul style="list-style-type: none"> <li>• Ebony was returned to the general practitioner for her final vaccinations</li> </ul> <p>“She was reported to look well as she did the previous month. This was the last occasion Ebony was seen by any medical profession” (R v SW &amp; BW, 2009, S24)</p>	
<b>April 2006</b>	<ul style="list-style-type: none"> <li>• The family accepted the school placement for Ebony in the special school (NSW Ombudsman, 2009b)</li> </ul>	
<b>May 2006</b>	<ul style="list-style-type: none"> <li>• DET contacted the DADHC case manager and informed him/her that Ebony had not commenced school</li> <li>• The principal wanted to explore with DADHC what supports could be offered to facilitate Ebony’s school attendance (NSW Ombudsman, 2009b).</li> <li>• Following the home visit and on the same day in <b>May 2006</b>, the DADHC case manager contacted DoCS to make a risk of</li> </ul>	<ul style="list-style-type: none"> <li>• In response to the contact from DET in <b>May 2006</b>, a home visit was conducted by the DADHC case manager accompanied by the A/Manger. There was no answer and a note was left for the parents inviting them to contact DADHC (NSW Ombudsman, 2009b).</li> </ul>



	<p>harm report about Ebony notifying them that she had not taken up her position at the special school. Additional information was provided:</p> <ul style="list-style-type: none"> <li>○ When the home visit was conducted by workers it was observed that there was '<i>lots of rubbish in back yard</i>'(NSW Ombudsman, 2009b, p. 33)</li> <li>○ Ebony was not attending any of her scheduled appointments</li> <li>○ DADHC workers left a card at Ebony's home for the parents to contact however "<i>they were notorious for not responding</i>" (NSW Ombudsman, 2009b, p. 33)</li> <li>○ The DADHC case manager informed DoCS that DADHC is a voluntary organisation and that Ebony was missing out on valuable support services</li> <li>○ The doctor who made the referral to DADHC for Ebony to be provided with services, "had refused to provide the mother with dexamphetamine to control Ebony's behaviour in May 2005" (NSW Ombudsman, 2009b, p. 33)</li> </ul>	<ul style="list-style-type: none"> <li>● The DoCS Helpline assessed the risk to be "medium" and report was sent through to the relevant CSC to be actioned within 10 days</li> <li>● The report was closed by the CSC without further investigation (NSW Ombudsman, 2009b)</li> </ul>
<p><b>June 2006</b></p>	<ul style="list-style-type: none"> <li>● The DADHC manager contacted DoCS to clarify status of the at risk of harm report made in May 2006. The Manager of DADHC recorded in the file that:</li> </ul> <p>'They [DoCS} have rated the referral as not needing a case manager. Asked that a file note be made stating we are going to request a combined Dept Ed/DADHC/DoCS [meeting]' (New South Wales Ombudsman, 2009b, p. 33)</p>	<ul style="list-style-type: none"> <li>● The DADHC manager, referred the matter back to the case manager to take over (NSW Ombudsman, 2009b)</li> </ul>



<p><b>October 2006</b></p>		<ul style="list-style-type: none"> <li>• A meeting occurred between regional DET staff and DoCS specialist caseworker to discuss the issues about Ebony and her family. The outcome of the meeting was that the staff were instructed to follow up and attend an urgent meeting with DoCS (NSW Ombudsman, 2009b).</li> </ul>
<p><b>November 2006</b></p>		<p>In November 2006, DoCS made contact with other agencies as a follow up of at risk of harm report in August 2006:</p> <ul style="list-style-type: none"> <li>• DoCS issued a formal request (para. 248) “for information to DOH about whether Ebony’s family continued to reside at Matraville and whether there were <i>“any child protection concerns noted by officers from DOH”</i> (New South Wales Ombudsman, 2009b, p. 40)</li> <li>• A phone conversation occurred between DOH team leader and DoCS caseworker. It was recorded in the DoCS file:</li> </ul> <p><i>“The last [DOH] contact with the family was around October this year in relation to some maintenance issues. Nothing unusual had been observed...will send someone to check out and would get back to DoCS if there is anything that is a cause for concern”</i> (New South Wales Ombudsman, 2009b, p. 40)</p> <ul style="list-style-type: none"> <li>• Inquiries were made of a person who knew the family and DoCS was informed that they did not have any current information about the family</li> <li>• Inquiries of DADHC established that they were no longer providing services to the family due to lack of engagement</li> <li>• Inquiries of DET established that they continued to have concerns about all three children</li> <li>• Following these inquiries DoCS closed the report due to competing priorities (New South Wales Ombudsman, 2009b, p. 4)</li> </ul>
<p><b>January 2007</b></p>	<ul style="list-style-type: none"> <li>• BW contacted student services to say that all the children will be residing with an uncle on Central Coast while SW (the mother) was having major surgery. All the children would be away for months (NSW Ombudsman, 2009b).</li> </ul>	<ul style="list-style-type: none"> <li>• The student welfare officer, in response to BW’s contact, encouraged BW to enrol the children in the local school where they will be residing with their uncle on the Central Coast</li> </ul>

	<ul style="list-style-type: none"> <li>On <b>17 January</b>, an officer from DOH inspected the family property and found the property to be in an appalling condition – stove not functioning and no running water in kitchen. BW was asked how he cooked as the stove seemed unusable.  “BW responded that the stove had not been working for two years and that there was no water in the kitchen taps” (New South Wales Ombudsman, 2009b, p. 40)</li> <li>On <b>25 January</b>, DOH was notified that the contractor was to install a new gas stove could not be completed due to pests and the smell of the residence (NSW Ombudsman, 2009)</li> </ul>	<ul style="list-style-type: none"> <li>BW refused to do so (NSW Ombudsman, 2009b)</li> <li>On <b>18 January</b>, the DOH Team Leader requested a client services officer to arrange a property inspection</li> <li>As a result of the issues experienced by the contractor, DOH issued a work order for the property to be cleaned prior to the installation of the new stove (NSW Ombudsman, 2009b).</li> </ul>
<p><b>February 2007</b></p>		<ul style="list-style-type: none"> <li>A client services officer from DOH organised for a house inspection to be conducted in March however a senior officer directed a formal letter to be sent to BW “directing” that BW allow entry to the property</li> <li>A visit was scheduled for 23<sup>rd</sup> February (NSW Ombudsman, 2009b).</li> </ul> <p>DET convened a student services executive meeting in DET</p> <ul style="list-style-type: none"> <li>At the meeting it was noted that Ebony continued to be absent from school</li> <li>A decision was made at a student services executive meeting in relation to the issue of chronic absenteeism of Ebony that DET was to progress with prosecution of parents. DET to contact DoCS about this decision. No available information to suggest that this occurred (New South Wales Ombudsman, 2009b).</li> </ul>

	<ul style="list-style-type: none"> <li>• A concerned community member contacting DET and “was said to be raising unspecified concerns” (NSW Ombudsman, 2009, p. 26).</li> <li>• On <b>22 February</b>, the client services officer from DOH called to the family premises regarding the visit scheduled for the next day and left a “call note”. The worker recorded her observations:  <p>“Went around to the rear of the yard, back yard covered in rubbish right up to doorstep...Matter now considered bad property issue” (NSW Ombudsman, 2009, p. 40)</p> </li> <li>• BW contacted the client services officer from DOH in response to the “call note”</li> <li>• BW claimed that SW, the mother, was recovering from cancer and wanted the visit postponed.</li> <li>• The client services officer insisted that the visit continue as scheduled for the next day.</li> <li>• The client services officer recorded in the file “<i>won’t go down the hall</i>” (NSW Ombudsman, 2009, p. 40)</li> </ul>	<ul style="list-style-type: none"> <li>• House inspection conducted <b>23 February</b> by client services officer from DOH – BW only allowed worker to inspect rear yard, kitchen, lounge and hallway and was not allowed to see rest of the property. The client services officer recorded her observations from the house inspection in late February:  <p>“She observed that the lounge and hallway were cluttered with things and rubbish and that the kitchen was infested with cockroaches, mice and spider webs. The client service officer wrote to BW concerning the issue of unsatisfactory property care” (NSW Ombudsman, 2009, p. 40)</p> </li> <li>• On <b>27 February</b>,  <p>“the client services officer made a referral to the senior client service officer specialist. The referral noted the ages of the children, concerns with the state of the property and BW’s advice that he would be away for two weeks from 26 February. Under the heading ‘comments and concerns’ the client services</p> </li> </ul>
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		<p>officer noted <i>“Property care needs immediate attention as the 3 Daughters are living in this un-cleanliness. There has been previous DoCS involvement for information concerning children’s welfare” (New South Wales Ombudsman, 2009b, p. 40)</i></p> <ul style="list-style-type: none"> <li>On <b>28 February</b>, the senior specialist accepted the referral and contacted DoCS. The worker from DOH who contacted DoCS recorded:  “spoke with [intake worker] – case closed following inability to gain access. Can’t get through on phone – DoCS closed because of this without further investigation” (p. 40)</li> <li>The DOH senior specialist noted BW’s request that the next home visit be postponed until 12 March</li> </ul>
<p><b>March 2007</b></p>	<ul style="list-style-type: none"> <li>On <b>12 March</b>, DOH client services officer conducted another home visit and interviewed BW and highlighted the appalling state of house.</li> <li>He refused to let officers enter the bedrooms because his wife was recovering from hospitalisation.</li> <li>BW recognised that the property was in an appalling condition. BW did not accept any responsibility and asserted that the state of the house was due to his children suffering from ADHD (NSW Ombudsman, 2009b).</li> </ul> <ul style="list-style-type: none"> <li>On <b>13 March</b>, senior specialist worker from DOH made a risk of harm report to DoCS informing them about the squalid state of the family home (NSW Ombudsman, 2009b).</li> </ul>	<ul style="list-style-type: none"> <li>The senior specialist in DOH directed BW to clean the property and made a report to DoCS</li> <li>The senior specialist also recorded in the files:  “Follow up with intake at Department of Community Services. Case unallocated at present, although concerns are noted and concurrence of need of further investigation” (NSW Ombudsman, 2009, p. 41)</li> </ul> <ul style="list-style-type: none"> <li>Report made by DOH assessed by DoCS Helpline as “high risk” and transferred to the CSC for a further risk assessment within 72 hours</li> </ul>

	<ul style="list-style-type: none"> <li>• On <b>26<sup>th</sup> March</b>, a senior specialist of the DOH conducted another home visit. State of property improved. Other observations: <ul style="list-style-type: none"> <li>○ Window in one of the children’s rooms boarded up</li> <li>○ Father requested that the board remain in place because rocks had been thrown at the window</li> <li>○ The family was in process of relocating to the Central Coast</li> <li>○ BW failed to take responsibility for the state of the property (NSW Ombudsman, 2009b).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• In the following week a DoCS child protection worker contacted a worker from Department of Education and found that none of the children had been attending school</li> <li>• Intake worker at DoCS recommended that the “at risk” of harm report should not be closed considering that: <ul style="list-style-type: none"> <li>○ children continue to be absent from school;</li> <li>○ the unhygienic state of the house, and</li> <li>○ the history of reports (NSW Ombudsman, 2009b).</li> </ul> </li> <li>• A “high priority allocation sheet” was completed. The information included in the sheet was a summary of DoCS extensive involvement with the family including: <ul style="list-style-type: none"> <li>○ The removal of Ebony’s youngest sibling due to failure to thrive,</li> <li>○ previous concerns about Ebony’s development</li> <li>○ the 2002 supervision order, and</li> <li>○ the successive breach of undertakings (New South Wales Ombudsman, 2009b),</li> </ul> </li> <li>• The senior specialist from DOH made a follow up report to DoCS because they had considerable concerns about the children’s welfare</li> <li>• The DOH specialist advised DoCS of the following <ul style="list-style-type: none"> <li>○ that Ebony and her siblings were not present during the home visit;</li> <li>○ the children were not sighted</li> <li>○ BW alleged that the children were being home schooled in West Gosford (NSW Ombudsman, 2009b)</li> </ul> </li> </ul>
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<p><b>April 2007</b></p>		<ul style="list-style-type: none"> <li>• On the <b>2<sup>nd</sup> April</b> the matter was allocated to a child protection case worker</li> <li>• The case worker was instructed with the following tasks: <ul style="list-style-type: none"> <li>○ Conduct a home visit</li> <li>○ Interview the parents</li> <li>○ Ascertain children's whereabouts, sight the children and interview them, if possible</li> <li>○ If necessary, obtain a police search warrant (NSW Ombudsman, 2009b).</li> </ul> </li> <li>• On the <b>5<sup>th</sup> April</b>, a further home visit was conducted by DOH senior specialist. The following issues were reported to the DOH team leader via email that: <ul style="list-style-type: none"> <li>○ BW was aggressive during visit</li> <li>○ He complained about DOH not attending the property for over two years</li> <li>○ He refused to allow entry to the bedrooms</li> <li>○ He was unhappy about complaints made against him to DOH by community member</li> <li>○ SW was home but none of the children were sighted (NSW Ombudsman, 2009b).</li> </ul> </li> <li>• The DoCS caseworker contacted the worker from DOH. The worker from DOH provided the following information: <ul style="list-style-type: none"> <li>○ BW, the father had been evasive and would not allow the worker to sight the children</li> <li>○ The DOH worker also fearful that children may be kept locked in the bedrooms</li> <li>○ BW was wishing to relocate the family to Gosford (NSW Ombudsman, 2009b).</li> </ul> </li> <li>• DoCS informed DOH worker that the family had an allocated caseworker</li> </ul>



		<ul style="list-style-type: none"> <li>• On <b>10<sup>th</sup> April</b>, the DOH senior specialist contacted the allocated caseworker at DoCS and requested that they forward a “para. 248 request for the purpose of DOH providing photos of the Matraville property to DoCS”(NSW Ombudsman, 2009, p. 41)</li> <li>• Home visit conducted by DoCS worker but no-one home</li> <li>• Second home visit by DoCS worker three days later but no-one answered the door. BW drove into driveway and spoke with worker and informed the worker of the following: <ul style="list-style-type: none"> <li>○ He was making arrangements for children to be home schooled</li> <li>○ Ebony’s siblings were on medication – dexamphetamine</li> <li>○ Ebony has autism and some form of bone disease and she was very small (New South Wales Ombudsman, 2009b)</li> </ul> </li> <li>• BW said he was concerned that the youngest child had been removed from their care. He also stated that he would contact the worker the next day to discuss sighting of the children and discuss other issues (NSW Ombudsman, 2009b).</li> <li>• BW contacted the DoCS worker the next day by phone and said the following: <ul style="list-style-type: none"> <li>○ He had organised for Ebony’s siblings to see a psychologist for a home schooling assessment</li> <li>○ He gave the worker names of the general practitioner and paediatrician (No evidence that these doctors had been contacted)</li> <li>○ Appointment made for case worker to visit the next week</li> </ul> </li> <li>• There is no evidence that the case worker contacted the doctors to verify the information (New South Wales Ombudsman, 2009b)</li> <li>• Prior to the next meeting with Ebony’s parents, the DoCS caseworker met with her supervisor. A decision was made to issue the parents with a notice that they were to present Ebony and her siblings to Child Protection Unit at Sydney Children’s Hospital for medical assessments.</li> <li>• On <b>20<sup>th</sup> April</b>, a home visit was conducted by DoCS caseworker and a colleague as previously arranged</li> </ul>
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		<ul style="list-style-type: none"> <li>○ BW refused to have Ebony and her siblings examined as proposed because of his previous involvement with DoCS and the removal of his youngest child</li> <li>○ BW said that Ebony and her siblings had a paediatric appointment at the Prince of Wales hospital on 23 May. The case worker confirmed the appointments – the older girls had paediatric appointments on 16 May and Ebony on 23 May.</li> <li>○ The case worker sighted Ebony’s siblings who were observed to be “physically within normal range for their ages” (NSW Ombudsman, 2009b, p. 13).</li> <li>○ When the caseworker asked to see Ebony she was told conflicting information – her siblings said she was next door and BW said she was asleep. “A subsequent assessment report recorded ‘<i>Natural parents did not permit caseworker to sight the youngest child</i>’(NSW Ombudsman, 2009b, p. 13)</li> <li>○ As medical appointments had been confirmed, the notice requiring the parents to present the children was not issued</li> </ul> <ul style="list-style-type: none"> <li>● On the <b>24<sup>th</sup> April</b>, the allocated caseworker met with her supervisor.  <p>“The manager caseworkers told us that she was cognisant of the fact that the caseworkers had not sighted Ebony. Given the caseworkers’ description of the older girls, she ‘did not think there would be anything different for Ebony’. In relation to the medical and psychological assessments, the manager caseworker said that she instructed the caseworker to make sure they happened. This instruction – as it related to the medical assessments – was not recorded” (New South Wales Ombudsman, 2009b, p. 14)</p> </li> </ul>
<p><b>May 2007</b></p>	<ul style="list-style-type: none"> <li>● On <b>4<sup>th</sup> May</b>, DoCS received a copy of two reports and a letter from the mother from a psychologist recommending that the older girls be schooled at home (NSW Ombudsman, 2009b).</li> <li>● On <b>16<sup>th</sup> May</b>, a paediatrician from Prince of Wales Hospital contacted the allocated DoCS case worker by telephone with</li> </ul>	

	<p>concerns about Ebony's older siblings (No details provided). The paediatrician also informed the worker that she had a scheduled appointment with Ebony the following week (NSW Ombudsman, 2009b).</p>	<ul style="list-style-type: none"> <li>• The caseworker did not inform the supervisor of the conversation she had with the paediatrician because on the supervisor handed over case management responsibilities to another supervisor</li> <li>• A home visit was conducted by DoCS on <b>30<sup>th</sup> May</b> – no-one home and the house appeared vacant (NSW Ombudsman, 2009b).</li> </ul>
<p><b>June 2007</b></p>		<ul style="list-style-type: none"> <li>• No further action by DoCS until the <b>27<sup>th</sup> June</b>. On that day the caseworker contacted other professionals/agencies including: <ul style="list-style-type: none"> <li>○ Paediatrician</li> <li>○ Department of Education</li> <li>○ Department of Health</li> <li>○ Psychologist</li> </ul> </li> <li>• The paediatrician informed the caseworker that Ebony had not attended her appointment and the parents had cancelled all subsequent appointments.</li> <li>• The psychologist recommended that Ebony and her siblings should be home schooled however the assessment was based on one hour interview – no testing was undertaken and the psychologist was not aware that the children had not been attending school</li> <li>• The caseworker was unable to speak to Department of Education or Housing staff (NSW Ombudsman, 2009b).</li> </ul>
<p><b>July 2007</b></p>	<ul style="list-style-type: none"> <li>• A member of the community reported to the student welfare officer during the home visit that there was a “screaming young child and claimed that the mother and children rarely left the house” (NSW Ombudsman, 2009, p. 26).</li> </ul>	<ul style="list-style-type: none"> <li>• The Student welfare officer from DET conducted a home visit – no answer</li> </ul>

	<ul style="list-style-type: none"> <li>• The student welfare officer from DET contacted DoCS and reported the information.</li> <li>• Furthermore, the student services officer documented contact with a private psychologist. The psychologist recommended in April 2007 that the children should be home schooled due to the children suffering anxiety, depression and obsessive compulsive behaviour” (New South Wales Ombudsman, 2009b, p. 26)</li> </ul>	<ul style="list-style-type: none"> <li>• On <b>26<sup>th</sup> July</b>, the student welfare office conducted another home visit as community member who contacted advised them that somebody was home.</li> <li>• Father reported to the student welfare worker that family was away and they were planning to move to the Central Coast and support was being provided by DOH</li> <li>• Letter sent to father from DET requesting him to attend a meeting in August – he failed to attend.</li> <li>• On <b>12<sup>th</sup> July</b>, the caseworker met with her new manager to discuss her cases particularly since the caseworker was about to leave DoCS. The NSW Ombudsman (2009) notes that although nothing was recorded in the file the caseworker was directed to: <ul style="list-style-type: none"> <li>○ Follow up with paediatrician, education and housing staff.</li> <li>○ The caseworker did not follow through on making contacts with professionals in other organisations before she left</li> </ul> </li> <li>• A worker from DET contacted DoCS caseworker to express concern about the psychologists’ assessment supporting home schooling for Ebony and her siblings. The DoCS caseworker advised the DET worker that the case would be transferred to another caseworker</li> <li>• Handover between caseworkers did not occur reportedly due to workload pressures (NSW Ombudsman, 2009b)</li> </ul>
<p><b>August 2007</b></p>		<ul style="list-style-type: none"> <li>• On <b>21<sup>st</sup> August</b>, the DoCS caseworker and student welfare officer from DET discussed concerns about: <ul style="list-style-type: none"> <li>○ The inadequate psychologist’s assessment about children being home schooled</li> <li>○ Possible prosecution by DET of the parents in regards to the chronic school absenteeism of Ebony and her siblings, and</li> <li>○ The urgent need to locate children (NSW Ombudsman, 2009b).</li> </ul> </li> </ul>

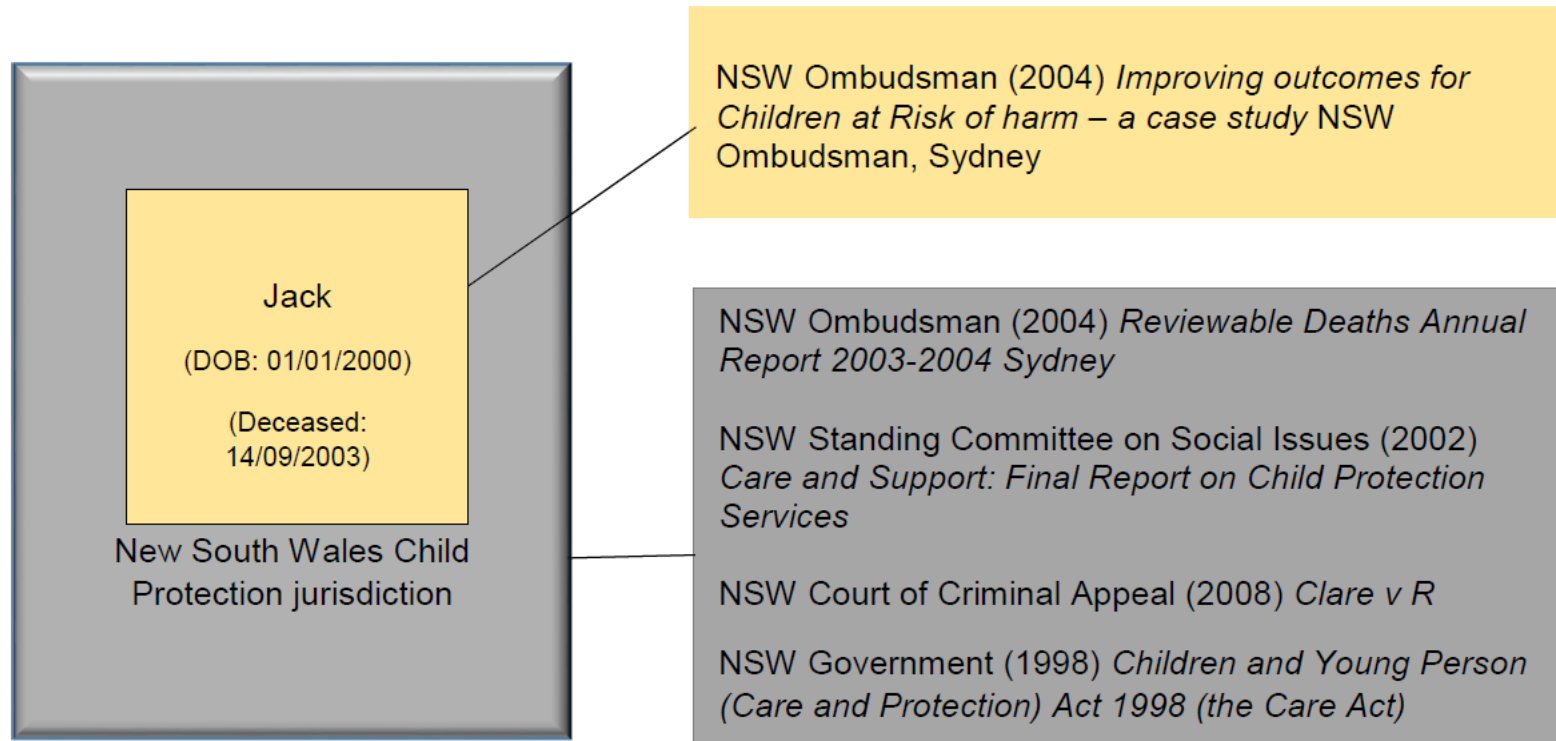
	<p>On the <b>31st August</b>,</p> <p>“a concerned member of the community advised DET that the family was moving that day. The student welfare</p>	<ul style="list-style-type: none"> <li>• On the same day, the DoCS caseworker sought legal advice about what was required for her to have the matter heard in the Children’s Court. The worker informed the NSW Ombudsman (2009b) during the investigation that  “she did this because in her experiences it was extremely difficult to succeed on a neglect case or in a case where the risks are not immediate” (p. 16)</li> <li>• The caseworker was advised by the legal officer to undertake the following: <ul style="list-style-type: none"> <li>○ Collate evidence from DET about the children’s chronic absenteeism and any other concerns,</li> <li>○ Attend the home address and inform BW that the children need to be sighted within 24 hours</li> </ul> </li> <li>• The worker acted on some of the advice “however there was no evidence that she made a home visit or took any other action to contact BW” (NSW Ombudsman, 2009, p. 16)</li> <li>• On <b>28<sup>th</sup> August</b>, the student welfare consultant reported a meeting with the DoCS caseworker. DoCS “reportedly had said that she had instructions to seek a care application. She requested supported evidence from DET “(p. 26)</li> <li>• The caseworker made attempts to follow up the family’s address: <ul style="list-style-type: none"> <li>○ She had contacted the DOH and had several conversations with the housing specialist officer</li> <li>○ There were delays in establishing contact due to being on sick leave at the time</li> <li>○ She requested information about DOH involvement with the family and a possible forwarding address (NSW Ombudsman, 2009b).</li> </ul> </li> <li>• Information from the DOH to the NSW Ombudsman (2009) suggested that the caseworker’s contact with them had not occurred with the housing specialist officer until the <b>18<sup>th</sup> September</b></li> </ul>
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	<p>children. The team leader could not recall this conversation” (p. 41)</p>	<p>of circumstances. Reports were forwarded to the allocated caseworker (NSW Ombudsman, 2009b)</p> <ul style="list-style-type: none"> <li>• On the <b>14<sup>th</sup> September</b>, the caseworker sought advice, via email, about how to proceed in light of the information that Ebony and her family had relocated.</li> <li>• On the <b>19<sup>th</sup> September</b>, DoCS contacted DOH seeking the family’s new address. On the same day, DOH provided the information to DoCS that the family had relocated to Hawk’s Nest (NSW Ombudsman, 2009b).</li> <li>• On <b>20<sup>th</sup> September</b>, the DoCS caseworker went on sick leave for two weeks</li> <li>• On <b>21<sup>st</sup> September</b>, arrangements had commenced to transfer of the case.</li> <li>• The relevant CSC indicated that they would discuss the transfer of the case “when the secondary risk assessment and other relevant documentation were completed” (NSW Ombudsman, 2009b, p. 17)</li> </ul>
<p><b>October 2007</b></p>		<ul style="list-style-type: none"> <li>• On the <b>9<sup>th</sup> October</b>, the caseworker returned from sick leave. “She did some work on the risk assessment before leaving for another job within DoCS on 23<sup>rd</sup> October” (NSW Ombudsman, 2009b, p. 18)</li> <li>• On <b>26<sup>th</sup> October</b>, the manager completed the risk assessment. On <b>30<sup>th</sup> October</b>, following a case transfer discussion with the new CSC, the case was transferred.</li> <li>• Case transfer discussion with manager of receiving CSC highlighted:  “Harm consequences for Ebony to be ‘<i>extreme</i>, protective factors not in place and the harm probability was ‘<i>highly likely</i>’ (NSW Ombudsman, 2009b, p, 18)</li> </ul>
<p><b>November 2007</b></p>	<p>Ebony died on <b>3<sup>rd</sup> November</b>, 2007</p>	<p>Case had been transferred to the relevant CSC but not allocated.</p>

## APPENDIX 6 JACK

### Child's Details and Documents in Scope





## Chronology of Event and Responses

<p><b>2 June 2000</b></p>	<ul style="list-style-type: none"> <li>• Notification made by child care centre staff who were caring for Jack and his sister, Jane. The staff telephoned a DoCS Community Service Centre (CSC) and they raised concerns in relation to the following issues:             <ul style="list-style-type: none"> <li>○ the health and development of Jack;</li> <li>○ neglect of Jack and Jane (often appearing dishevelled), and</li> <li>○ alleged lack of parenting capacity of Ellen and the father;</li> <li>○ parents experiencing financial difficulties as child care fees were in arrears;</li> <li>○ worried about the home environment of the grandmother due to overcrowding and of frequent arguments (NSW Ombudsman, 2004).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• There was a history of notifications in relation to neglect and domestic violence involving the grandmother and her husband.</li> <li>• DoCS responded to the notification made by the child care centre by contacting the father the next day, attended the child centre and “sighted” Jack.</li> </ul> <p>The following events occurred subsequent to DoCS contact:</p> <ul style="list-style-type: none"> <li>• Both Jack and Jane were examined by a GP who referred them to a paediatrician for a full assessment.</li> <li>• No health or developmental issues identified by the paediatrician for either child however Jack needed another assessment as he “scraped through” his developmental test.</li> <li>• A further appointment was made with the paediatrician in July 2000 (NSW Ombudsman, 2004).</li> </ul>
<p><b>23 June 2000</b></p>		<p>Home visit conducted by DoCS caseworker to grandmother’s house</p> <ul style="list-style-type: none"> <li>• House assessed as a ‘little cluttered’, but otherwise satisfactory</li> <li>• Children observed to interact positively with parents</li> <li>• Parents articulated that they were experiencing difficulties in paying child care fees however they were in negotiation with the child care (NSW Ombudsman, 2004).</li> </ul>
<p><b>4 July 2000</b></p>	<ul style="list-style-type: none"> <li>• The mother, Ellen contacted DoCS informing them that Jack’s father had left the family home</li> </ul>	

	<ul style="list-style-type: none"> <li>Ellen explained that she had organised child care for Jack and Jane and that the grandmother was also assisting in caring for the children (NSW Ombudsman, 2004).</li> </ul>	
<b>5-20 July 2000</b>		The DoCS worker contacted the mother and informed her that the case would be closed after Jack had attended the paediatrician's appointment (NSW Ombudsman, 2004).
<b>21 July 2000</b>		<ul style="list-style-type: none"> <li>The DoCS file was closed</li> <li>Outcome recorded as 'not confirmed' indicating that there was no evidence to substantiate concerns outlined in the report made by the child care centre staff</li> <li>There was no evidence in the DoCS file that there had been any contact with the paediatrician prior to case closure (NSW Ombudsman, 2004).</li> </ul>
<b>30 July 2000</b>	<p>A letter was forwarded to the General Practitioner by the Paediatrician who assessed Jack and Jane stating:</p> <p>"I have not seen these children since I last wrote to you, as I believe they were taken into state care. I have attempted to contact their district officer but to date have not been able to, and will let you know of any further developments" (NSW Ombudsman, 2004, p. 6)</p>	
<b>5 October 2000</b>	<ul style="list-style-type: none"> <li>Ellen, the mother, contacted the DoCS caseworker with whom she had had previous contact in June.</li> <li>Ellen stated that she had an argument with her mother's partner who abused her</li> <li>Jack and Jane were present during the violent incident</li> <li>The grandmother's husband told Ellen that she and her children needed to move out of the family residence</li> <li>Ellen stated to DoCS that she needed to find alternate accommodation but did not feel unsafe and would remain in the home with her mother until she found accommodation through the Department of Housing (DOH) (NSW Ombudsman, 2004).</li> </ul>	<ul style="list-style-type: none"> <li>The DoCS worker referred Ellen to DoH and the Domestic Violence line</li> </ul>

		<ul style="list-style-type: none"> <li>The report was filed as a “Contact” and that Ellen was to keep DoCS informed. The report was added to Jack and Jane’s file stating that:  ‘[Ellen] is acting protectively’ and the DoCS worker considered that there were no risk or wellbeing issues” (NSW Ombudsman, 2004, p. 6).</li> <li>The information was not added to the electronic Client Information System. The recorded information was therefore only accessible through Jack and Jane’s written records.</li> </ul>
<p><b>30 October 2000</b></p>	<ul style="list-style-type: none"> <li>A notification was facsimiled to DoCS CSC H by the police alleging that Jack and Jane were at risk of harm. The notification was made following a report made by the grandmother alleging domestic violence between the grandmother and her husband.</li> <li>The grandmother alleged that following an argument, her husband, who had been drinking alcohol began to violently smash items in the kitchen</li> <li>Information suggested that Jack was present during the incident</li> <li>Jane and the grandmother’s children, girls aged 5 and 13 who normally reside with the grandmother, were at a neighbour’s house</li> <li>The police attended the grandmother’s home and her husband was removed from the premises.</li> <li>The police applied for an Apprehended Domestic Violence Order (ADVO) and included Jack and Jane.</li> <li>The police also included in the notification that the grandmother’s house “was not a suitable residence for children” (p. 1)</li> <li>The DoCS summary of the report was as follows:  “the front yard and driveway is strewn with rubbish as is the interior...Police did not venture far inside the house due to the overwhelming stench...DVLO [Domestic Violence Liaison Officer] stated that DoCS should visit the family home as it is extremely dirty and not suitable [e]nvironment for children to live” (NSW Ombudsman, 2004, p. 7)</li> </ul>	<ul style="list-style-type: none"> <li>The at risk report was substantiated by DoCS</li> <li>The report recommended the following actions:</li> </ul>

	<ul style="list-style-type: none"> <li>The DoCS report also included historical information about the grandmother's children in relation to issues of neglect, physical abuse and domestic violence recorded as being 'confirmed' (NSW Ombudsman, 2004).</li> </ul>	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>Conduct a home visit and sight children</li> <li>Full risk assessment</li> </ul> </li> <li>Supports and referrals as appropriate (NSW Ombudsman, 2004).</li> <li>In response to the notification, DoCS workers visited the grandmother's residence and they found the information provided by the police was accurate and recorded the following information (NSW Ombudsman, 2004, p. 7): <ul style="list-style-type: none"> <li>the house was in a filthy state</li> <li>Cluttered inside and out</li> <li>Dishes piled high in the sink</li> <li>Fluid on the floor</li> <li>Half eaten food laying around the house</li> <li>Children's bedroom cluttered</li> <li>Bathroom basin cluttered with stuff</li> <li>An unusual amount of flies in the house</li> <li>Foul smell throughout the house</li> <li>Floor coverings were filthy covered with dirt and half eaten food</li> <li>Outside of the house was cluttered with rubbish such as clothes, garbage, furniture and dog food (NSW Ombudsman, 2004).</li> </ul> </li> <li>The DoCS workers made a decision that "children were at risk and would not be able to reside at the house" (NSW Ombudsman, 2004, p. 7). As a consequence, Jack, Jane and Ellen were removed from the home and taken to a refuge for safety and they were to reside in the refuge: <p>"until alternative accommodation through private rental or DOH could be found. [They were] not to reside at [the grandmother's] house. District Officer to write a support letter to DOH for [the mother]" (p. 7)</p> </li> <li>The grandmother's children were taken to reside with the uncle and advised that the children were not to return to the house until it had improved (NSW Ombudsman, 2004).</li> </ul>
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<p><b>22 November, 2000</b></p>		<ul style="list-style-type: none"> <li>• A letter was provided to the DOH for Ellen by a DoCS worker</li> <li>• The 'matter' was closed on 18 July 2001. The risk assessment that had been requested had not been conducted.</li> <li>• The notification was recorded as "confirmed, referred, closed" (p. 7). The record stated:           "This record indicates that DoCS found evidence to confirm the concerns raised by the report of 31 October 2000 and had referred the matter for further action" (NSW Ombudsman, 2004, p. 7).</li> </ul> <p>Also:</p> <p>"There are no other records on the file of any other action having been taken by DoCS in relation to this matter or that provide information as to whether and/or when the mother found alternative accommodation. However, records relating to a later notification in July 2001 indicate that the mother and the children remained at the refuge until February 2001" (NSW Ombudsman, 2004,p. 7)</p>
<p><b>4 December 2000</b></p>	<ul style="list-style-type: none"> <li>• The grandmother's five-year-old daughter (Ellen's sister) presented at school with a bruise to the side of her waist</li> <li>• She disclosed to the teacher that her 29 years old sister (Ellen) had kicked her (NSW Ombudsman, 2004).</li> </ul>	<ul style="list-style-type: none"> <li>• According to the police files the injuries were considered to be minor.</li> <li>• The JIRT (Joint Investigation Response Team) did not investigate because it did not meet the criteria</li> <li>• The NSW Ombudsman (2004) makes comment:           "While this report did not specifically concern the welfare of the children [Jack and Jane] it did raise concerns about the mother's treatment of a child. This would be relevant to any consideration of her capacity to care for her own children" (NSW Ombudsman, 2004, p. 8)</li> </ul>
<p><b>12 July 2001</b></p>	<ul style="list-style-type: none"> <li>• The DoCS Helpline received a report from a hospital nurse stating that Jack had been physically abused and that his sister had been sexually abused.</li> </ul> <p>Key issues included (NSW Ombudsman, 2004, p. 8):</p>	

	<ul style="list-style-type: none"> <li>• Jack and Jane had been staying at the grandmother’s house for a few days as the grandmother was in hospital recovering from surgery. Other adults in the house included the grandmother’s husband, their two young children, and a male known to the grandmother.</li> <li>• When Ellen returned home with Jack and Jane, Ellen’s flatmate noticed the bruising on Jack’s face. The flatmates called an ambulance which transported Jack, Jane and Ellen to the hospital</li> <li>• According to DoCS information, the nurse reported that “there were bruises on the left side of the boy’s face around the jaw and upper neck and the right hand side around the jaw line which looked like ‘someone grabbed...the [boy’s] face” (p.8)</li> <li>• The treating doctor also informed DoCS that Jack had an additional ‘big dark black bruise’ on his right ear.</li> <li>• Ellen had informed the doctor that:  “she did not know how these [bruises] occurred...while at [the grandmother’s] house she had left [the boy] unsupervised with [the grandmother’s daughter] ...there were times when she had ‘no idea’ who was with [the children] while at the...house” (p. 8)</li> <li>• A telephone discussion between DoCS and the hospital social worker indicated that the doctor suspected that Jack’s bruising was non-accidental. Hospital records for Jack:  “confirmed that he presented with the injuries recorded by DoCS as well as a laceration to his forehead and a small bruise to his back. Photographs were taken of the bruises and placed on the file” (NSW Ombudsman, 2004, p. 8).</li> <li>• When Jane asked why she was at the hospital:  “she pointed at her vulva and said “I have a sore wee wee”. [The nurse] was informed by the two flatmates that she has been making statements to them such</li> </ul>	
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	<p>as “[X] put his nuts on my wee wee” “I’ve sucked [X’s] nuts” (p. 8)</p> <ul style="list-style-type: none"> <li>• The flatmates also reported that the mother had been informed that Jane had disclosed information regarding [X] three weeks ago. The mother had informed the nurse that she had nothing about the information although “she did not want the children to be abused” (p. 8)</li> <li>• Jane’s medical records stated (NSW Ombudsman, 2004, p. 9) <ul style="list-style-type: none"> <li>○ Child promptly parted labia with her hands without requiring this specifically</li> <li>○ No evidence of injury</li> <li>○ Found a blonde-ish? pubic hair on labia minora</li> <li>○ No internal examination performed</li> </ul> </li> <li>• Ambulance records stated that Jane’s vaginal area red and she had pain on urination. Jane also had rash around her mouth</li> <li>• X was the Ellen’s boyfriend who lives with Ellen’s younger brother. X has also cared for the children at various times over a two-month period (NSW Ombudsman, 2004).</li> <li>• The DoCS report also documented information provided by the flatmates who had been living with Ellen, Jack and Jane for three weeks. They stated that: <ul style="list-style-type: none"> <li>○ The house was in upheaval, a filthy mess, dirty and untidy</li> <li>○ There was no refrigerator</li> <li>○ The flatmates have bought food for the children</li> <li>○ Ellen has been experiencing financial difficulties</li> <li>○ Jane cannot attend child care because Ellen owes money to them</li> <li>○ Children were sleeping in urine soaked sheets(NSW Ombudsman, 2004).</li> </ul> </li> </ul> <p>“The Social Worker believes that [the mother] is not capable of looking after the [c]hildren...The social worker has immense concerns regarding the mother’s] duty of care. She appears emotionally flat according to the social worker” (NSW Ombudsman, 2004, p. 9)</p>	<p><b>There was an immediate response by DoCS. Response by DoCS Helpline:</b></p> <ul style="list-style-type: none"> <li>• The DoCS Helpline made a referral to JIRT. JIRT accepted the referral in relation to Jane but not for Jack.</li> <li>• The DoCS Helpline also arranged for a call out team to attend the hospital in the early hours of the 13 July, 2001 to sight the children. During this visit the following occurred: <ul style="list-style-type: none"> <li>○ Interviews were conducted with Ellen, the flatmates and hospital social worker</li> <li>○ The DoCS social worker “repeated concerns about the care of the children and the mother’s ‘very flat, non-emotional disposition” (NSW Ombudsman, 2004, p. 9)</li> <li>○ Further comments:</li> </ul> </li> </ul> <p>“it was as though the mother was ‘simply shutting down in reaction to the allegations’ and that ‘it is highly likely that the mother is a victim of abuse herself, and it is highly</p>
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		<p>unlikely that she has never sought treatment/therapy for this abuse”(NSW Ombudsman, 2004, p. 9)</p> <ul style="list-style-type: none"> <li>○ Ellen agreed to make an undertaking with DoCS that she would not allow Jack and Jane to see or have contact with X</li> <li>○ The social workers considered the flatmates to be strong advocates for Jack and Jane and both women were prepared to support Ellen and prevent her from allowing X from having contact with the family. Furthermore:</li> </ul> <p>“The mother appears unable to react in a positive manner to the needs of children and if it were the case that [the flatmates] did not reside with the children a removal would have been recommended” (NSW Ombudsman, 2004, p. 9)</p> <p>The DoCS Helpline:</p> <p>“recommended that the matter be referred to JIRT, that the mother be contacted later that day, and that a risk assessment in relation to the children be undertaken, including further assessment of the home environment” (NSW Ombudsman, 2004, p. 9)</p>
<b>18 July 2001</b>		<p>A home-visit was conducted by DoCS to assess the care and protection of Jack and his sibling. Information collated:</p> <ul style="list-style-type: none"> <li>• The flatmates expressed concerns about Ellen’s ability to care for the children as she had not been feeding the children and leaving them in the care of the flatmates</li> <li>• The flatmates also informed the DoCS worker that they had received an eviction notice and therefore needed to find alternate accommodation (NSW Ombudsman, 2004).</li> </ul>
<b>19 July 2001</b>		<ul style="list-style-type: none"> <li>• JIRT had accepted the referral for Jane but not for Jack</li> <li>• The NSW Ombudsman again commented “there is some difficulty in determining precisely what actions JIRT carried out in relation to this matter” (p. 11)</li> <li>• Home visit conducted by JIRT to discuss sexual abuse allegations with Ellen and organise to interview Jane</li> </ul>



		<ul style="list-style-type: none"> <li>• According the records, it appeared the following had occurred: <ul style="list-style-type: none"> <li>○ Ellen indicated that X had not been to the house since the hospital visit</li> <li>○ Ellen alleged that she was unaware of Jane's previous disclosure, and allegedly unaware of how Jack sustained his injuries (NSW Ombudsman, 2004).</li> </ul> </li> </ul>
<b>20-24 July 2001</b>	<ul style="list-style-type: none"> <li>• A number of telephone conversations occurred between DoCS, Ellen and the flatmates.</li> <li>• The relationship between the flatmates and Ellen had deteriorated.</li> <li>• Ellen would be moving to a new location without the flatmates</li> <li>• Ellen was planning to go to a refuge (NSW Ombudsman, 2004).</li> </ul> <p>A paramedic from the Ambulance Service, a doctor and social worker from the hospital contacted DoCS. All expressed their concerns:</p> <ul style="list-style-type: none"> <li>• The paramedic was of the opinion that the injuries sustained by Jack were very unlikely to be inflicted by another child</li> <li>• The doctor and hospital social worker were critical of DoCS' decision to return Jack and Jane to Ellen's care</li> <li>• The doctor believed that the children were at risk of further harm (NSW Ombudsman, 2004).</li> </ul>	
<b>3-13 August 2001</b>	<ul style="list-style-type: none"> <li>• On the 10 and 13 August, JIRT contacted two child care centres which Jack and Jane had attended. Both these child care centres had raised concerns about the physical care of Jack and Jane. That they were both 'dirty unkempt smelly' and that the boy was 'blob' does nothing seems 'spaced out' (NSW Ombudsman, 2004, p. 11). Jack and Jane no longer attended the child care centre and there were outstanding fees.</li> <li>• "Due to insufficient evidence JIRT will [be] unable to proceed with criminal action" (p. 12) in relation to the sexual abuse of Jack's sibling.</li> </ul>	<ul style="list-style-type: none"> <li>• The DoCS worker made numerous attempts to contact Ellen by telephone however these attempts were unsuccessful</li> </ul>

	<ul style="list-style-type: none"> <li>As assessment completed by JIRT for Jane completed on the 13 August, 2001 raised concerns about Ellen's ability to care and protect Jack and Jane in the future</li> </ul> <p>"The previous concerns reported of financial difficulties, neglect and domestic violence appear to be unresolved. The concerns raised by child-care staff the hospital and the current house mates indicate concerns about [the mother] parenting skills" (NSW Ombudsman, 2004, p. 12)</p>	<ul style="list-style-type: none"> <li>Recommendations made by JIRT: <ul style="list-style-type: none"> <li>Need for a comprehensive home-based assessment to identify supports required to ensure continuity of care with Ellen and her children</li> <li>Jack requires a developmental assessment particularly in light of information provided by child care staff</li> <li>Handover meeting with CSC H for ongoing work (NSW Ombudsman, 2004).</li> </ul> </li> </ul>
<p><b>14 August 2001</b></p>		<ul style="list-style-type: none"> <li>JIRT closed the case noting that "it was 'confirmed, referred' and that CSC H is 'currently involved re notification on sibling'" (NSW Ombudsman, 2004, p. 13)</li> <li>Despite the recommendations of the Helpline and JIRT that a home-based assessment of the family should be undertaken, there are no records that a home-based assessment had been conducted by either CSC H or JIRT (NSW Ombudsman, 2004).</li> </ul>
<p><b>9 September 2001</b></p>	<p>The NSW police contacted the DoCS Helpline with the following information:</p> <ul style="list-style-type: none"> <li>The neighbour reported that Jack and Jane had been left alone with a 14-year-old boy all day on the 8<sup>th</sup> September in Ellen's newly rented flat</li> </ul>	

	<ul style="list-style-type: none"> <li>• The neighbour had seen the 14-year-old boy leave the flat and the children at 1 am on the morning of 9<sup>th</sup> September. Ellen was not at home</li> <li>• The neighbour checked the flat and saw Jack and Jane locked inside</li> <li>• Police entered the flat and found the following: <ul style="list-style-type: none"> <li>○ Apartment was in a total state of filth and disarray</li> <li>○ Garbage all over the floor including dirty nappies and food</li> <li>○ No refrigerator and only tins of spaghetti in the cupboard</li> <li>○ Clothes all over flat and strong smell of urine</li> <li>○ Jane was fully clothed lying on a mattress</li> <li>○ Jack was lying on the floor fully clothed and his clothing was saturated</li> <li>○ Jane stated that she is often left alone with Jack and they put themselves to bed (However this not included in notification) (NSW Ombudsman, 2004).</li> </ul> </li> <li>• On the way to the hospital, Jane made further disclosures of sexual abuse (NSW Ombudsman, 2004).</li> </ul>	<ul style="list-style-type: none"> <li>• The Police transported Jack and Jane to the hospital for assessment and DoCS was notified</li> <li>• Jack and Jane reported to be in good health</li> <li>• There was no recording in the police files of the further disclosure of sexual abuse by Jane in the police records</li> <li>• There are no records indicating that further allegations made by Jane were ever referred to JIRT and were considered to be historical in nature (NSW Ombudsman, 2004).</li> </ul> <p><b>Initial action by DoCS Helpline</b></p> <ul style="list-style-type: none"> <li>• Jack and Jane placed in alternative care on a temporary basis</li> <li>• Ellen made contact with DoCS on the morning of 9 September 2001.</li> <li>• Ellen claimed that she had been working for a “Call Centre” for the evening however not able to provide employers name</li> <li>• Ellen did not see any problems in leaving Jack and Jane in the care of the 14-year-old boy for 2 days</li> <li>• DoCS records also indicated that the 14 yr old boy “had a history of reports to DoCS including for unmedicated ‘ADHD’ and</li> </ul>
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		<p>'[b]ehaviours at school and violence towards other peers' (NSW Ombudsman, 2004, p. 13)</p> <ul style="list-style-type: none"> <li>• Ellen informed "that, due to concerns about the risks of harm to the children, DoCS had temporarily assumed the care of them" (NSW Ombudsman, 2004, p. 13)</li> <li>• Matter referred to CSC to continue with "assessing safety/risks/parenting/and child minding arrangements for s/children", to consider 'other action and/or services as deemed appropriate' and to 'contact [the mother] Monday 10/09/2001" (NSW Ombudsman, 2004, p. 13)</li> </ul>
<p><b>10 September 2001</b></p>		<ul style="list-style-type: none"> <li>• Ellen attended DoCS CSC H and was interviewed by a case worker who worked with the family following the notification in July 2001</li> <li>• Ellen explained that after she left the flat in August 2001 she stayed in the YWCA for a week and other places for short periods of time.</li> <li>• Ellen claimed that prior to the 14 yr old male came to care for Jack and Jane, the flat was spotless. She was unable to provide an explanation as to why the flat was in such a bad state</li> <li>• Ellen was informed that another centre, CSC J would now be looking after the "case" (NSW Ombudsman, 2004).</li> </ul> <p>According to the NSW Ombudsman (2004), the DoCS file contains a letter dated 10 September, 2001 from the Manager of CSC J to the local court outlining the following:</p> <ul style="list-style-type: none"> <li>• Ellen had been interviewed</li> <li>• Inspection of the home conducted</li> <li>• The document further stated that "from the investigation of the matter' no further court action would be undertaken and the children were to be returned to the mother's care on the following grounds: <ul style="list-style-type: none"> <li>○ "[The mother] acknowledging the inappropriateness of placing children in the care of a youth.</li> <li>○ [The mother] agreeing to exercise better judgement wen arranging care for her children</li> <li>○ [The mother] locating appropriate bedding and resources for the home</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ [The mother] placing the children into Temporary Care for 7 days, to enable her to locate bedding and resources for the children</li> <li>○ Further assistance will be afforded to the family where necessary” (p. 14)</li> </ul> <p>The case was closed on 22<sup>nd</sup> November under the “Priority One’ policy ‘on the basis that the matter was unallocated for four weeks and ‘no additional or further concerns [were] notified within the month’ (NSW Ombudsman, 2004, p. 14)</p> <p>Assessment of risks/safety/parenting and child minding arrangements had not been conducted as recommended by DoCS Helpline on 9<sup>th</sup> September 2001(NSW Ombudsman, 2004).</p>
<b>7 May 2003</b>	<ul style="list-style-type: none"> <li>• The DoCS Helpline received three further reports in relation to Jane and Jack.</li> <li>• The first two reports followed an incident on 7<sup>th</sup> May 2003 between Ellen and her then flatmate “S” while driving to pick up Jane and Jack from school and child care respectively</li> <li>• Ellen had rung the police the same evening, alleging that S had been verbally and physically abusive toward her and that she sustained minor injuries</li> <li>• The police attended the home, arrested S and later interviewed him.</li> <li>• S alleged that the incident occurred for the following reasons: <ul style="list-style-type: none"> <li>○ S was trying to prevent Ellen from damaging the car, and</li> <li>○ They were arguing because of Ellen’s continual failure to care for her children. Ellen had gone out the previous evening without feeding Jack and Jane</li> <li>○ Ellen had neglected to care Jack and Jane for the most part of the previous year</li> <li>○ Ellen was rarely at home</li> <li>○ S stated that he had been looking after Jack and Jane (NSW Ombudsman, 2004).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• S was initially charged with assault by the police however later withdrawn</li> <li>• An application was lodged for an interim ADVO order to protect Ellen however the magistrate declined the application (NSW Ombudsman, 2004).</li> </ul>
<b>8 May 2003</b>	<ul style="list-style-type: none"> <li>• Ellen contacted DoCS Helpline in relation to the safety of Jack and Jane</li> </ul>	

	<ul style="list-style-type: none"> <li>• Ellen reported the incident that had occurred on the previous day</li> <li>• Ellen also alleged that S had kicked Jack in the leg on the 6<sup>th</sup> May</li> <li>• S allegedly had drug and alcohol issues</li> <li>• Ellen requested that S be provided with alternate accommodation (NSW Ombudsman, 2004).</li>   <li>• Police contacted DoCS Helpline to <ul style="list-style-type: none"> <li>○ Outline the incident of the alleged assault, and</li> <li>○ Concerns about the state of the home</li> </ul> </li> <li>• When police attended the home the previous day to arrest S they noted the following: <ul style="list-style-type: none"> <li>○ “floors had things all them (dirt, plastic)</li> <li>○ Clothes piled waiste [sic] high in the one room police could see. [S] said that was mums room</li> <li>○ Bags &amp; boxes all piled up</li> <li>○ House filthy” (NSW Ombudsman, 2004, p. 15).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• DoCS explained their role to the mother. Following the explanation, she stated that she no longer required assistance as S had been charged and removed from her residence” (NSW Ombudsman, 2004, p. 14)</li>   <li>• Information recorded on the DoCS system because “there are similar concerns raised where the Mother is alleged to leave the children in other people’s care” (NSW Ombudsman, 2004, p. 15)</li> <li>• The DoCS Helpline assessed the information as requiring a Level 2 response which requires a response within 72 hours once referred to the relevant Community Service Centre or JIRT indicating serious safety concerns</li> <li>• The information was referred to CSC H recommending the need for a “secondary risk assessment, supports and/or referrals to support the children” (NSW Ombudsman, 2004, p. 15).</li> </ul>
<p><b>17 May 2003</b></p>	<p>The DoCS Helpline was contacted by an anonymous neighbour. The following information was recorded:</p> <ul style="list-style-type: none"> <li>• On 13<sup>th</sup> April, Jane was playing at the notifier’s house with the notifier’s four-year-old niece</li> <li>• On the 14<sup>th</sup> May, the notifier’s niece spontaneously disclosed to her mother “[The girl] was really rude mummy, she said let’s go and kiss [S’s] penis”</li> <li>• Jane had told the notifier about an incident where, before moving to their home, Jack had been held by the neck and held against the wall by Ellen’s ex-partner</li> <li>• The notifier expressed an opinion that Jane appears very mature for her age and sounds like” does a lot of caring of [the boy]” (p. 15)</li> <li>• S appears to be the primary carer of Jack and Jane for extended periods of time</li> <li>• The notifier said that many of the neighbours suspected that Ellen was a prostitute and that S was her pimp</li> <li>• Jack appears to be delayed</li> </ul>	

	<ul style="list-style-type: none"> <li>• Jack and Jane are often wearing dirty clothing and both appear neglected</li> <li>• The notifier also recounted some violent incidents between the mother's ex-partner, Jane and the mother. The ex-partner had tried to force Jane and Ellen into his car. Physical altercation resulted between S and the ex-partner (a similar incident is recorded in police records) (NSW Ombudsman, 2004)</li> </ul>	<ul style="list-style-type: none"> <li>• DoCS recorded the information in a notification.</li> <li>• The information provided by the anonymous notifier was considered credible and indicated that Jack and Jane are at 'extreme risk'</li> </ul> <p>"...the alleged perpetrator has the primary care of the children for extended periods, despite the mother alleging his is physical abusing them. There is a need for urgent intervention to ensure the safety of these children, with a need to consider action in the Children's Court" (NSW Ombudsman, 2004, p. 16)</p> <ul style="list-style-type: none"> <li>• Notification referred to CSC H for follow up</li> </ul> <p>"Again, despite initial assessments of these matters indicated that the children were at 'extreme risk of harm' and that a secondary risk assessment was required, on 13 September 2003, the day before the boy's death, DoCS closed the file relating to the reports in May 2003. The closure occurred under the 'Priority One' policy, on the basis that the matters were unable to be allocated due to staff shortages and other cases having higher priority" (NSW Ombudsman, 2004, p. 16)</p>
<p><b>August 2003</b></p>	<ul style="list-style-type: none"> <li>• Ellen met B and C near a railway station</li> <li>• B told Ellen that she looked like she needed a break</li> <li>• Ellen explained that she was experiencing difficulties finding an affordable baby sitter</li> <li>• B offered to care for the children for a small payment</li> <li>• B started looking after Jack and Jane the same evening</li> <li>• Three days after B started looking after Jack and Jane, Jane was sent home from school due to head lice.</li> <li>• From that day, Jack no longer attended his day provider and Jane did not attend school</li> </ul>	<ul style="list-style-type: none"> <li>• During Jane's three-week absence from school, the school attempted to contact Ellen on a number of occasions</li> <li>• The school</li> </ul> <p>"attempted to speak to the mother on a number of occasions during the girl's three-week absence. They say</p>

	<ul style="list-style-type: none"> <li>• Following Jack's death, Ellen said that Jack and Jane had been sleeping at B's residence so that she could clear the house of lice (NSW Ombudsman, 2004).</li> </ul>	<p>they had difficulty contacting the mother, but were successful during the second week of absence, when the mother advised that the girl was not ready to return to school because of head lice" (p. 4)</p>
<p><b>14 September 2003</b></p>	<ul style="list-style-type: none"> <li>• Jack was found dead at the residence of B and C</li> <li>• B had called the ambulance because Jack had been vomiting and had difficulty breathing</li> <li>• B had attempted to resuscitate Jack prior to the arrival of the ambulance</li> <li>• Autopsy report stated that Jack's cause of death was unknown however he sustained injuries to the anus and rectum 'consistent with penetration' (NSW Ombudsman, 2004, p. 4)</li> <li>• B and C were known to the police in relation to sex offences</li> <li>• During the course of the investigation, the police found a recording at B and C's residence of B sexually assaulting Jane (NSW Ombudsman, 2004).</li> <li>• "B has been charged and convicted with various offences in relation to sexual assaults on the girls and the video footage" (NSW Ombudsman, 2004, p. 4).</li> </ul>	<ul style="list-style-type: none"> <li>• At the time the review report was published by the NSW Ombudsman in 2004, the investigation into Jack's death was ongoing</li> <li>• The DoCS Helpline removed Jane from her mother's care and placed Jane into foster care.</li> </ul>