

**Parliament of New South Wales  
Legislative Council**

**STANDING COMMITTEE ON SOCIAL ISSUES**

**INQUIRY INTO  
CHILDREN'S ADVOCACY**

## CONTACT DETAILS

Members of the Standing Committee on Social Issues can be contacted through the Committee Secretariat. Written correspondence and telephone enquiries should be directed to:

The Director  
Standing Committee on Social Issues  
Legislative Council  
Parliament House, Macquarie Street  
Sydney, New South Wales, 2000  
Australia

Telephone: (02) 9230-3078

Facsimile: (02) 9230-2981

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Standing Committee on Social Issues

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## COMMITTEE MEMBERSHIP

### STANDING COMMITTEE ON SOCIAL ISSUES

The Hon. Ann Symonds, M.L.C., Chair, Australian Labor Party

The Hon. Dr. Marlene Goldsmith, M.L.C., Deputy Chairman, Liberal Party

The Hon. Dorothy Isaksen, M.L.C., Australian Labor Party

The Hon. James Kaldis, M.L.C., Australian Labor Party

The Hon. Elisabeth Kirkby, M.L.C., Australian Democrats

The Hon. Doug Moppett, M.L.C., National Party

The Hon. Janelle Saffin, M.L.C., Australian Labor Party

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## SECRETARIAT

Dr Jennifer Knight - Committee Director (until 25 April 1996)

Ms Alexandra Shehadie - Acting Director (from 26 April 1996)

Mr Glen Baird - Senior Project Officer

Ms Heather Crichton - Committee Officer (until 20 March 1996)

Ms Jane Millett - Committee Officer (from 6 May 1996)

Ms Julie Langsworth - Chair's Research Assistant (until 26 June 1996)

Ms Tanya van den Bosch - Chair's Research Assistant (from 5 August 1996)

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## TERMS OF REFERENCE

### INQUIRY INTO CHILDREN'S ADVOCACY

That the Standing Committee on Social Issues inquire into and report on:

1. the degree to which the needs of children throughout New South Wales are being effectively advocated for and promoted in the areas of health, education, law and justice and care and protection;
  2. The adequacy of the organisation and co-ordination of existing agencies responsible for children's advocacy such as the NSW Ombudsman, the NSW Child Protection Council, the Official Visitors program, the Community Services Commission, the Health Care Complaints Commission, and the National Children's and Youth Law Centre; and
  3. The adequacy of current mechanisms for redressing of children's grievances.
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## FUNCTIONS OF THE STANDING COMMITTEE ON SOCIAL ISSUES

The functions of the Standing Committee on Social Issues are to inquire into, consider, and report to the Legislative Council on:

- any proposal, matter or thing concerned with the social development of the people in all areas of New South Wales;
- the equality of access to the services and benefits including health, education, housing and disability services provided by the Government and non-Government sector to the people in all areas of New South Wales;
- recreation, gaming, racing and sporting matters; and
- the role of Government in promoting community services and the welfare of the people in all areas of New South Wales.

## OPERATIONS OF THE COMMITTEE

Matters for inquiry may be referred to the Committee by resolution of the Legislative Council, a Minister of the Crown, or by way of relevant annual reports and petitions. The Committee has the legislative power to:

- summons witnesses;
  - visits of inspection within Australia;
  - call upon the services of Government organisations and their staff, with the consent of the appropriate Minister;
  - accept written submissions concerning inquiries from any person or organisation; and
  - conduct hearings.
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## PUBLICATIONS BY THE STANDING COMMITTEE ON SOCIAL ISSUES

Report No. 1	Accessing Adoption Information October 1989
Report No. 2	Drug Abuse Among Youth, Volume One December 1990
Report No. 3	Medically Acquired H.I.V. October 1991
Report No. 4	Juvenile Justice in New South Wales May 1992
Report No. 5	Births, Deaths and Marriages: An Open Register? March 1993
Report No. 6	Sexual Violence: The Hidden Crime: Part 1 December 1993
Report No. 7	Suicide in Rural New South Wales November 1994
Report No. 8	A Report into Youth Violence in New South Wales September 1995
Report No. 9	Sexual Violence: Addressing the Crime: Part 2 April 1996
Issues Paper No. 1	Youth Violence September 1993
Issues Paper No. 2	Violence in Society November 1993

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## CHAIR'S FOREWORD

This Report represents the results of a lengthy Inquiry into aspects of Children's Advocacy in New South Wales. All of the submissions and witnesses who appeared before the Committee were unanimous in their view that children's advocacy in this state is inadequate. The advocacy that does exist is ad hoc, inconsistent and lacking in a coordinated approach. All seven members of this Committee concurred with this view.

Advocacy for children is about systems and individuals recognising the rights and needs of all children and young people and responding to those rights and needs. It also involves allowing children and young people to have a say in decisions that are likely to affect them.

Children's advocacy is **not** about undermining the role of parents and families, nor is it about denying children the fact of childhood and their need for protection. It is about taking a proactive approach to ensure that all children have the opportunity to reach their full potential as human beings. As the Committee found during the Inquiry, parents can often be a child's most powerful advocate. Improving advocacy for children then, allows both children and parents greater access to the processes of government which directly affect children's daily lives.

In the more narrow sense advocacy is also about providing children with quality individual advocates to ensure that they have the right of equal access to the law and the processes of government, which is demanded by adults.

During this Inquiry, the Committee identified certain groups of children and young people who are most in need of effective advocacy. These include children who have been neglected or abused, who are in the care and protection system, or who are from poor, minority or marginalised communities. These children, having been denied effective adult advocates and having been ignored by "the system", represent some of the most powerless and vulnerable members of the community.

This Report aims to address the situation of so many of these children. The recommendations, which include establishing an Office of the Status of Children and Young People, directly responsible to the Premier, and independent services to be known as the Children's Advocacy Network, aim to ensure that children's rights and needs are no longer overlooked or their voices ignored. It is hoped that once the recommendations are implemented, there will no longer be a need for further Inquiries dealing with this issue.


I am extremely grateful to my Parliamentary colleagues on the Committee for their patience and skill in dealing with what was sometimes a complex yet challenging Inquiry.

## FOREWORD

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My thanks are also due to the Committee Secretariat. Committee Director, Dr Jennifer Knight, contributed significant portions of the Report before taking maternity leave. Acting Director, Alexandra Shehadie took over the role of coordinating the Inquiry process and the production of the Report and was assisted greatly by Senior Project Officer, Glen Baird. Heather Crichton assisted in the early stages of the Inquiry. Committee Officer, Jane Millett, was invaluable in her thorough and meticulous collation of Committee documents and in the entire formatting of the Report. I would also like to thank my Research Assistants, firstly Julie Langsworth, and later, Tanya van den Bosch, whose research, writing and editorial assistance were fundamental to the final production of this Report.

I strongly commend this Report to the Government.

A handwritten signature in black ink, reading "Ann Symonds". The signature is written in a cursive, flowing style with a large initial 'A'.

**THE HON. ANN SYMONDS, MLC**  
**Committee Chair**

## EXECUTIVE SUMMARY

In August 1995, the Legislative Council Standing Committee on Social Issues received a reference from the Minister for Community Services to inquire into aspects of Children's Advocacy. In particular, the Committee was asked to examine the effectiveness of advocacy in relation to key policy areas, namely, health, education, law and justice and care and protection. It was also required to consider whether children's needs were being met and promoted adequately by existing organisations and agencies responsible for children's advocacy in New South Wales. This Report represents the results of that Inquiry.

Extensive research was undertaken during the course of the Inquiry. Submissions were received from 64 individuals and organisations, and 71 briefings were held. The Committee heard evidence from 72 witnesses, and travelled to Taree and Kempsey in order to ensure that issues relating specifically to rural and Aboriginal children were addressed. The Committee met with 55 children during visits made to schools and pre-schools. The Committee Chair and Acting Director undertook a study tour to England, Sweden, Denmark and the United States to examine international models of children's advocacy.

Submissions and evidence received by the Committee on the issues of health, education, law and justice and care and protection overwhelmingly demonstrated community concern about the inadequacy of advocacy for children in New South Wales. The information gathered also explored the adequacy and co-ordination of existing agencies responsible for children's advocacy. Based on all this information and research, the Committee formulated its recommendations for children's advocacy in New South Wales.

Chapter One of the Report provides an overview of the issue of children's advocacy, including defining the term and dispelling common misconceptions. The Committee emphasises that advocacy involves more than providing a complaints mechanism for individuals with grievances: it also promotes the special needs of children, both as individuals and as a group. This can include seeking to resolve problems for individuals, to influence policy decisions and legislation impacting on children, and to alter the framework in which such decisions are made to ensure that the needs and views of children are taken into consideration as a matter of course.

Among the community there is often the fear that improving children's advocacy and acknowledging the rights of children would have the effect of undermining the importance of the role of families and parents, and of driving a wedge between children and their parents. The Committee rejects this notion, and feels that ensuring that children's voices are heard does not cause discord, but rather airs opinions that are already held and can empower both children and their families. The Committee also recognises that the vast majority of children are raised in a nurturing environment conducive to satisfactory development and that their parents can be their most powerful and effective advocates.

## EXECUTIVE SUMMARY

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The Committee also looked at previous proposals for children's advocacy by various government agencies and community groups, and notes that, although there have been some recent moves acknowledging the needs of children, government responses to the recommendations of reports have so far been inadequate. In fact, Australia's obligations under the United Nations Convention on the Rights of the Child, which it ratified in 1990, have not been met.

Chapter Two presents international and Australian models of children's advocacy. The Report examines children's advocacy in Sweden, Norway, Denmark, England, the United States and New Zealand, as well as looking at the systems which currently exist in the Australian Capital Territory, Queensland and South Australia.

In Chapter Three, the situation of children in the care and protection system is examined. The Committee found that children in care are amongst the most vulnerable, powerless and silent members of the community. As a group, they are the most in need of improved advocacy. For many children, the process of being placed in care is very damaging, both physically and emotionally, with many children in care being abused, becoming homeless, dropping out of school, misusing drugs and alcohol, and entering the juvenile (and later adult) justice systems. Continued budget cuts have severely reduced the effectiveness of the care system and support services.

Recommendations made by the Committee to ensure that the needs and interests of children in the care and protection system are met include calling for the immediate implementation of provisions of the *Children (Care and Protection) Act 1987* relating to the establishment of Boards of Review, amending that Act to oblige the Boards to undertake annual reviews of ALL children in care, and ensuring that annual reports on the processes and outcomes of the Board's decisions are tabled in Parliament. Further recommendations are made seeking to improve services and support for disabled children and their involvement in decision making. The Committee also felt that the adequacy of support for young people leaving care provided by Leaving Care Centres needs to be assessed in three years time.

Chapter Four examines children's advocacy in relation to law and justice. Children's involvement in the juvenile justice system, as witnesses in prosecution cases involving assaults, and as parties to family law proceedings are discussed in this Chapter. The Committee found that in all these areas, advocacy for children continues to be inadequate and inferior to that provided for adults.

The Committee makes a number of recommendations, many of which are drawn from the earlier Committee report, *Juvenile Justice in New South Wales*. Among them are that within the New South Wales Legal Aid Commission an appropriately resourced and staffed special Children's Section be established, whose solicitors undertake matters in relation to juvenile justice and care and protection. It also recommends that the duty solicitor and social work scheme at Cobham Children's Court be expanded to other Children's Courts



throughout New South Wales. The Children's Section should also coordinate and monitor a scheme whereby children's solicitors travel on circuit to country areas where there are no specialist Children's Court or specialist children's solicitors.

The Committee would like to see a wide range of practitioners attracted to the Children's Court jurisdiction. There needs to be developed within that jurisdiction a wide body of case law. Accordingly, it recommends that the Children's Court jurisdiction be elevated to that of the District Court.

The Committee makes a number of observations in relation to the difficulties experienced by child witnesses in sexual or physical assault cases. It notes that the court structure and procedures are largely set up for adults. The Committee supports the introduction of the *Crimes Amendment (Children's Evidence) Bill 1996* which allows, among other things, children giving evidence in criminal or civil proceedings arising from a personal assault (including sexual and physical assault), or in proceedings involving the making of an apprehended violence order, to give that evidence by means of closed-circuit television facilities or similar technology.

The Committee strongly supports the separate representation of children in family law proceedings. However, as the Chapter notes, it is concerned that the current funding to the Legal Aid Commission may prevent this from occurring. The Committee therefore recommends that the Legal Aid Commission quarantine an appropriate percentage of available funds to ensure that children are provided with adequate legal representation in family law proceedings.

Chapter Five examines the effectiveness of advocating for and promoting the needs of children in the area of health, including mental health. The Committee found that traditionally, the health needs of many children and young people have been unmet. Inadequacies in children's health facilities include the limited numbers of children's specialists in various fields, low immunisation rates, the inferior health of children from lower socio-economic backgrounds and the appalling state of Aboriginal children's health. The Committee also found that Australia's obligation to consider the views of the child when making decisions about the child, as set out in the United Nations Convention, has not been adhered to in relation to health.

The Committee has made several recommendations to improve children's health and their status within the health system. The Committee notes that the Minister for Health has just announced the development of child health policy which it hopes will assist in overcoming many of the problems identified in this chapter.

Chapter Six looks at children's rights and advocacy in the education system. Schooling takes up a large part of an individual's childhood, and his or her experiences within the educational system have a significant impact on later life. A key issue that was raised by students themselves was their right to be involved in decision-making. The Committee

## EXECUTIVE SUMMARY

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feels that children should have input into their educational environment, as required under the United Nations Convention on the Rights of the Child, and heard that progress was being made on this front through Student Representative Councils and involvement in school discipline policies.

Children's access to counsellors is another issue that the Committee felt to be important. The Committee is concerned that there are still insufficient numbers of experienced and adequately resourced counsellors to allow students to receive effective and confidential counselling, particularly in rural areas.

Discipline within schools well illustrates the need for advocacy. Many of the submissions and evidence received by the Committee were critical of the current use of suspension, exclusion and expulsion policies in schools. The Committee believes that improved advocacy is required for students facing disciplinary action at school. The continued discrimination suffered by Aboriginal and non-English speaking background students in schools was of concern to the Committee, including their over-representation as subjects of disciplinary action. The Committee recommends that the Minister for Education take action to ensure that Aboriginal and non-English speaking background students are not unfairly discriminated against in disciplinary procedures, including ensuring access to counselling support and the involvement in disciplinary proceedings of a support person such as a youth or community worker.

Other issues which the Committee believes require urgent attention by the Minister for Education are: the informal exclusion of young homeless people from schools, the improvement and strengthening of complaints procedures, and a review of the Special Education Policy to consider increasing the inclusion of students with disabilities.

The Committee recognises that child care programs provide a unique opportunity to support families in their caring roles, and that it is imperative that governments provide continued support for high quality, affordable community based child care services.

In relation to Out of School Hours Care, the Committee believes that there are insufficient care programs for out of school hours care and is concerned that such care is not currently regulated. The Committee calls upon the Minister for Community Services to regulate OOSH care providers.

Chapter Seven assesses the adequacy and co-ordination of existing agencies responsible for children's advocacy in New South Wales. The agencies examined are: the New South Wales Ombudsman, the New South Wales Child Protection Council, the New South Wales Child Advocate, the Official Visitors program, the Community Services Commission, the Community Services Appeals Tribunal, the Health Care Complaints Commission, the Guardianship Board, the National Children's and Youth Law Centre, and the Youth Branch of the New South Wales Cabinet Office.

The Committee believes that the plethora of agencies working on behalf of children has led to a piecemeal and unco-ordinated approach to children's advocacy. The Committee is also concerned that the approach of agencies is reactive, and relies on complaints being made by children, their parents or community members before action is taken. It also found that a number of agencies do not have a child-oriented focus, limiting their access to children and young people. A number of recommendations are made in relation to the appointment of Youth and Children Liaison Officers to certain government agencies to develop a more child-oriented approach.

Alternative models of children's advocacy are presented in Chapter Eight. The Committee maintains that advocacy for children needs to be put in place at both the systemic and individual levels. Advocacy must be proactive, rather than simply reacting to immediate crises, and it must cover all policy sectors and portfolios.

The Committee has made a number of recommendations to improve the efficiency and effectiveness of children's advocacy. The key recommendations are:

- that the Premier urge the Prime Minister to create the position of Children's Commissioner within the Human Rights and Equal Opportunity Commission to ensure that governments meet their obligations arising from the United Nations Convention on the Rights of the Child;
- that an Office of the Status of Children and Young People be established within the Premier's Department, incorporating the existing New South Wales Child Protection Council, the New South Wales Child Death Review Team and the Youth Branch in the New South Wales Cabinet Office. The objectives and activities of this Office would include advising the government on relevant law reform and policy options, liaising with other relevant agencies, conducting research, and establishing and maintaining a database of information on the needs of children;
- that individual advocacy be improved through the establishment of a state-wide Children's Advocacy Network which would assist children and young people in the areas of law, housing, education, health and social security. The Committee recommends that there be initially twenty workers in the Network, and that each service be located in areas of need;
- that adequate peer advocacy be ensured through the establishment of a committee of children and young people, called the Article 12 Committee (as based on Article 12 of the United Nations Convention on the Rights of the Child). This committee would meet to discuss relevant issues and provide advice to agencies and departments on matters affecting children and young people.



## RECOMMENDATIONS

### RECOMMENDATION 1

That the Minister for Community Services ensure that case workers always conduct private discussions with children in foster care in addition to any discussions that they may have with foster carers.

### RECOMMENDATION 2

That the Premier augment the resources of the 24 hour advice and referral service provided by the Kids Help Line to ensure that children, particularly those in care, have an effective information agency.

### RECOMMENDATION 3

That the Premier instruct the Minister for Community Services to:

- establish Children's Boards of Review, as set out in Part 7 of the *Children (Care and Protection) Act 1987*, forthwith, by having that Part of the Act proclaimed immediately;
- amend Part 7 of the *Children (Care and Protection) Act 1987*, following the report of the Legislative Review Working Team, to oblige the Boards to undertake annual reviews of all children in care;
- ensure that annual reports on the processes and outcomes of the Boards' decisions and placement issues are tabled in Parliament, with due regard for confidentiality.

### RECOMMENDATION 4

That the Minister for Community Services, Minister for Aged Services and Minister for Disability Services ensure the needs of children with a disability and their families are met by a Children's Policy for:

- a range of support options for the care of these children, including adequate respite care;
- on-going family involvement with disability services;
- the development of forms of shared care to promote the interests of these children and reduce the incidence of children with a disability becoming state wards; and

## RECOMMENDATIONS

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- a recognition of the individual needs of children, and the need to involve them in decision-making.

### RECOMMENDATION 5

That the Minister for Community Services review in three years the operation of Leaving Care Centres and regional teams of leaving care workers to assess the adequacy of support for young people leaving care.

### RECOMMENDATION 6

That the Attorney General establish within the Legal Aid Commission a Children's Section, which is adequately resourced and staffed, to undertake matters in relation to juvenile criminal matters and care and protection matters throughout New South Wales. That Section shall be staffed with both solicitors and social workers.

### RECOMMENDATION 7

That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor a children's duty solicitor and social work scheme, as currently operates at Cobham Children's Court, for all specialist Children's Courts throughout New South Wales.

### RECOMMENDATION 8

That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor a scheme whereby children's solicitors and social workers travel on circuit to country areas where there are no specialist Children's Courts or specialist children's solicitors.

### RECOMMENDATION 9

That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor an expanded legal service for children in all detention centres throughout New South Wales.

### RECOMMENDATION 10

That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor a training and education program for all solicitors participating in the Children's Court duty solicitor scheme on issues relevant to the needs of the clients that they are to represent and that such training and education be ongoing throughout their time on the roster.

**RECOMMENDATION 11**

That the Attorney General extend funding to Community Legal Centres so that broad-based legal advocacy on a range of issues can be provided to children and young people throughout New South Wales.

**RECOMMENDATION 12**

That the Attorney General elevate the jurisdiction of the Children's Court to that of the District Court to increase the status of that jurisdiction.

**RECOMMENDATION 13**

That the Attorney General devise a system to expedite all cases where a child is the main prosecution witness in matters involving sexual or physical abuse.

**RECOMMENDATION 14**

That the Legal Aid Commission quarantine appropriate funds to ensure that children are provided with adequate legal representation in family law proceedings as laid down in *Re K*.

**RECOMMENDATION 15**

That the Minister for Health establish an outreach program for vulnerable families at the time of the mother's confinement. Workers of the outreach program would conduct regular home visits to such families until the child reaches five years of age. Among the tasks of the workers of the outreach program would be to provide advice about nutrition, child development and parenting skills.

**RECOMMENDATION 16**

That the Minister for Health and Aboriginal Affairs establish an Aboriginal Child Health Unit within the Department of Health as one means of addressing the unacceptable health status of Aboriginal children. (As a priority that Unit should examine and implement strategies to overcome the problems associated with poor nutrition and otitis media).

## RECOMMENDATIONS

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### RECOMMENDATION 17

That the Minister for Health review the *Mental Health Act 1990* to ensure that it is appropriate to the needs of children.

### RECOMMENDATION 18

That the Minister for Health investigate the most appropriate existing body which would provide mandatory education, training and professional development for:

- health and allied professionals;
- teachers and school counsellors;
- psychiatrists and general practitioners; and
- early childhood workers.

The focus of this training shall be detection of, and early intervention in, mental illness as it emerges in children and adolescents.

### RECOMMENDATION 19

That the Minister for Health introduce and implement legislation that is similar to the Victorian *Infertility Treatment Act 1995*, as soon as possible. As an interim measure the Minister for Health should provide guidelines regarding the standardised collection of relevant donor program information for use by public and private clinics.

### RECOMMENDATION 20

That the Minister for Health guarantee that all records relating to donor insemination procedures are safeguarded and preserved when the Royal Hospital for Women is transferred to the Prince of Wales Hospital and that the 10 year rule relating to records be stayed in relation to donor insemination.

### RECOMMENDATION 21

That the Minister for Education require the Department of School Education to report on:

- the adequacy of current numbers of school counsellors;



- the appropriateness of existing employment criteria which prevent the appointment of selected experienced psychologists without teaching diplomas to the position of school counsellor;
- the conflict between student confidentiality and access to guidance records;
- attitudes of students to school counsellors; and
- possible alternatives to school-based counselling, having regard to the particular needs of rural children and children who may be reluctant to seek assistance from counsellors within the school establishment.

**RECOMMENDATION 22**

That the Minister for Education ensure that Aboriginal students and students from a non-English speaking background are not unfairly targeted by disciplinary procedures in schools by:

- providing adequate resources to schools with large Aboriginal and non-English speaking background student populations to enable full investigation of incidents, and appropriate welfare and counselling support; and
- advising principals to contact a nominated student advocate, such as a youth or community worker, to assist in any procedures for suspension, exclusion or expulsion, including appeal procedures, for Aboriginal students or students from a non-English speaking background.

**RECOMMENDATION 23**

That the Minister for Education address as a matter of urgency the informal exclusion of young homeless people from schools in New South Wales due to their domestic circumstances.

**RECOMMENDATION 24**

That the Department of Education revise the Complaints Procedures document of 27 May, 1994 to ensure:

- the definitions of "formal" and "informal" complaints are clarified;

## RECOMMENDATIONS

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- those wishing to complain are made aware of the complaints procedure documents and the relevant mechanisms for complaint;
- those making complaints are consulted regarding any decisions made when the matter has not been satisfactorily resolved through conciliation;
- those making complaints receive a copy of the response from the staff member who is the subject of the complaint;
- a period is specified in which a decision should be made if conciliation fails, together with a period in which to notify the person making the complaint of the decision;
- a support person for a student under the age of 18 years making a complaint can assist that student in putting forward their views; and
- the policy and procedures reflect the 1995 restructuring of the Department of School Education.

### RECOMMENDATION 25

That the Minister for Education undertake a review of the Special Education Policy to:

- consider increasing the inclusion of students with disabilities in appropriately resourced mainstream classes; and
- review the internal appeals process undertaken when a child's application to attend regular classes is rejected.

In undertaking this review, the Minister for Education should ensure that community interest groups, education specialists and members of the school community, particularly children in mainstream classes and those with disabilities, are consulted.

### RECOMMENDATION 26

That the Government provide the Office of the Ombudsman with on-going funding for:

- education and publicity campaigns;

- liaison with peak groups providing advice and services to young people; and
- the selection of staff with particular skills and interest in these issues to deal with their complaints.

This would ensure that awareness of the Ombudsman's role in relation to complaints by young people continues to be developed.

**RECOMMENDATION 27**

That the position of the Child Advocate be deleted when the Office of the Status of Children and Young People is established (See Recommendation 31).

**RECOMMENDATION 28**

That the Minister for Community Services appoint a Children's Liaison Officer to the Community Services Appeals Tribunal for an initial period of two years to develop a publicity campaign to make children and young people aware of its functions and to advise the Tribunal in making its proceedings involving children more child-focussed.

**RECOMMENDATION 29**

That the Government provide additional funding over two years for the appointment of a Children's Liaison Officer in the Health Care Complaints Commission to:

- conduct education and publicity campaigns; and
- liaise with peak groups providing advice and services to young people.

This would ensure that an awareness of the Health Care Complaints Commission's role in relation to complaints by young people is developed.

**RECOMMENDATION 30**

That the Premier urge the Prime Minister to create the position of Children's Commissioner within the Human Rights and Equal Opportunity Commission to ensure that governments meet their obligations arising from the United Nations Convention on the Rights of the Child.

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### RECOMMENDATION 31

That:

- the Premier establish an Office of the Status of Children and Young People to be located within the Premier's Department and reporting directly to the Premier;
- the NSW Child Protection Council and the NSW Child Death Review Team be re-located to the Office of the Status of Children and Young People; and
- the Youth Branch of the New South Wales Cabinet Office be disbanded and/or incorporated into the Office of the Status of Children and Young People.

### RECOMMENDATION 32

That the Office of the Status of Children and Young People be charged with the responsibility of leading government efforts to ensure that government and community resources create positive outcomes for children.

### RECOMMENDATION 33

That the Office of the Status of Children and Young People be provided with adequate staff and resources to fulfil its role and functions independently.

### RECOMMENDATION 34

That the Office of the Status of Children and Young People also pursue specific objectives including:

- advising the government on relevant law reform and policy options and strategies for children and young people;
- participating in the budget development process;
- liaising regularly with, and gaining input from, government and non-government agencies and a broad cross-section of children and young people on issues and policies relevant to the needs and interests of children and young people;
- conducting ongoing research and inquiries into areas affecting children and young people; and

- establishing and maintaining a data-base of information regarding the needs of children throughout the State.

This should ensure a whole of government approach to the delivery of programs for children and young people.

**RECOMMENDATION 35**

That the Office of the Status of Children and Young People regularly meet and consult with the following independent bodies and agencies:

- the Children's Advocacy Network (see Recommendation 36);
- the State Network of Young People in Care;
- the Youth Justice Coalition;
- the Association of Children's Welfare Agencies;
- the Association for the Welfare of Child Health;
- the New South Wales Council for Intellectual Disability;
- the Juvenile Justice Advisory Council;
- Aboriginal groups and agencies;
- the Committee of Children and Young People (See Recommendation 37);
- the New South Wales Students Representative Council; and
- any other organisation that it deems appropriate.

**RECOMMENDATION 36**

That:

- the Premier establish a Children's Advocacy Network throughout New South Wales;
- the Children's Advocacy Network be based in non-government agencies throughout New South Wales in areas of disadvantage and where there is a high children and youth population;
- initially there be 20 workers attached to the Children's Advocacy Network, augmented by teleconferencing facilities;
- the Children's Advocacy Network be a source of independent policy advice to government; and
- the Office of the Status of Children and Young People convene conferences among the workers of the Children's Advocacy Network.

## RECOMMENDATIONS

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### RECOMMENDATION 37

**That the Office of the Status of Children and Young People establish a Committee of Children and Young People for the purpose of promoting peer advocacy in New South Wales (based on Article 12, UN Convention on the Rights of the Child).**

## CHILDREN IN NEW SOUTH WALES - A PROFILE

- There are 1,516,549 children aged under 18 years of age in New South Wales.
- There are 32,300 Aboriginal and Torres Islander children under 18 years.
- There are 91,356 children under 18 years from a non-English speaking birthplace.
- There are 195,900 children under 18 years who live in single parent families.
- There are approximately 10,000 homeless children and young people between 12 and 18 years.
- There are 180,469 children living in poverty (nationally).
- Over 1,500,000 children live in families dependent on social support of just above the poverty line.
- There are 6,000 children in substitute care in New South Wales.
- As at 30 June 1995 there were 2659 state wards in New South Wales.
- Girls attempt suicide at a greater rate than boys.
- Boys commit suicide at a greater rate than girls.
- The suicide rate of boys in rural areas has risen substantially over the last 20 years.
- Aboriginal infant mortality rates are almost double the rates for all Australian infants.
- As at 4 September 1996, there were 475 children in detention centres in NSW. [As at 12 September 1996, there were 88 children in detention centres in Victoria.]
- Thirteen per cent of 15 year olds in New South Wales have left school.
- There are 11,600 15 - 17 year olds in New South Wales seeking full-time employment.
- There are 5,600 15 - 17 year olds in New South Wales seeking part-time employment.





## INTRODUCTION

### THE INQUIRY PROCESS

In August, 1995, the Minister for Community Services referred an Inquiry into Children's Advocacy to the Standing Committee on Social Issues. The terms of reference of the Inquiry are:

*That the Standing Committee on Social Issues inquire into and report on:*

- 1. the degree to which the needs of children throughout New South Wales are being effectively advocated for and promoted in the areas of health, education, law and justice and care and protection;*
- 2. The adequacy of the organisation and co-ordination of existing agencies responsible for children's advocacy such as the NSW Ombudsman, the NSW Child Protection Council, the Official Visitors program, the Community Services Commission, the Health Care Complaints Commission, and the National Children's and Youth Law Centre; and*
- 3. The adequacy of current mechanisms for redressing of children's grievances.*

During the course of the Inquiry, the Committee received 64 submissions, heard formal evidence from 72 witnesses, held 71 briefings and met with 55 children during visits to pre-schools, public schools and secondary schools. In addition to hearing evidence at Parliament House, Committee Members travelled to Taree and Kempsey on the north coast of New South Wales. This allowed the Committee to consider issues of particular significance to Aboriginal and rural children. Committee Members also travelled to Adelaide to gain an understanding of South Australian models of children's advocacy, and a Committee representative and the Acting Director undertook a study tour of England, Sweden, Denmark and the United States to examine international models.

This Inquiry is unique in the sense that all submissions and evidence received by the Committee were overwhelmingly in favour of the need for improved advocacy for children. While the material differs in emphasis, there is undeniable community support for children to have the right to adequate care and protection, and for systems to be able to encourage the realisation of children's full potential as individuals. Based on all the material gathered for this Inquiry, the Committee considers children's advocacy to be a highly significant and valuable component of our society.

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In undertaking this Inquiry, the Committee has been acutely aware of the vital role parents already play in advocating on behalf of their child. The Committee does not see the concept of children's advocacy and children's rights being in conflict with the role and responsibilities of parents and the family. The Committee acknowledges that the vast majority of children are properly nurtured and develop within the family structure. These children may have little need for other means of support or assistance.

However, the Committee believes that communities should have a greater focus on the needs of all children, from all family, socio-economic and cultural backgrounds. The important place children have within the community should be recognised and respected. Apart from being nurtured and effectively parented, children may have special requirements in a range of areas that impact on their lives, such as education, transport and entertainment, and these requirements should be considered in decision-making processes.

The Committee has identified various groups of children who are suffering from a lack of recognition of their basic rights and needs. This report has a particular focus on these groups. Our research has revealed that advocacy is especially needed for society's most vulnerable, powerless and marginalised children - that is, children who are without effective adult advocates: whose parents may not have the skills or training to be articulate lobbyists, or may be themselves under stress, or whose needs may be greater than others. Advocacy is particularly required for children who are abused, neglected, poor, uneducated, sick or disabled. It is needed for those children who have no recognised place or role in society. The Committee heard that there need to be some mechanisms in place that ensure that children's issues are consistently on the agenda so that disadvantage, injustice and harm are identified and, as far as possible, prevented.

The Committee believes all children are entitled to be heard. To ensure the education and development of young people to be effective participants in a democratic society, they should be encouraged to recognise their responsibilities as citizens from an early age.

## THE NEED FOR CHILDREN'S ADVOCACY

Evidence to this Inquiry has indicated that possibly now, more than ever, effective advocacy for children is essential to protect their well-being in our community. The Committee notes, for instance, that there has been a 56% increase in the child abuse notification rate over the last three years and it now exceeds 34,000 annually (Grunseit Evidence - 29 November, 1996). Moreover, there has been a 40% increase in the number of children entering care over the past four years (O'Brien Evidence - 19 April, 1996). Currently, there are approximately 6,000 children and young people in formal substitute care (O'Brien Evidence - 19 April, 1996). Unemployment among young people remains high and there has been an increase in the number of children living in families where one

or both parents are unemployed. As numerous reports have found, children and young people are the section of the community most vulnerable to poverty.

The Human Rights and Equal Opportunity Commission Report, *Our Homeless Children* (1989:67), identified the tragic consequences of child poverty. In 1989, there were approximately 8,500 homeless 12-15 years olds in Australia over a twelve month period and 3,500 16 and 17 year olds at a given time, including 16 and 17 year olds at serious risk of becoming homeless.

The shocking reality of youth suicide was confirmed to the Committee during its 1994 Inquiry, *Suicide in Rural New South Wales* (Standing Committee on Social Issues, 1994). The findings of the Report of that Inquiry revealed that suicide among young males has increased at such an alarming rate as to elevate Australia to one of the highest positions for this type of death among industrialised nations. The Committee established that the failure of relevant authorities to enhance and encourage early detection is a contributing factor to the increased rate of suicide. The Committee recognises the need for improved advocacy for young people in rural areas, who may face bleak employment prospects and have limited opportunities to access higher education.

**Revelations from the Wood Royal Commission, detailing the consistent and systematic abuse of children whose victimisation was repeatedly silenced or ignored by authorities, highlight the urgent need for some system to be established to ensure that the needs of these children are constantly listened to and addressed.**

The Committee has heard that children themselves need to be involved and play a significant role in decision-making. This is fundamental to ensuring the effectiveness of any mechanism designed to guarantee that children's needs are being properly advocated and promoted.

Flekkoy (1991:224) has argued that:

*The right to participate, the right to free speech, and the right to express personal faith and opinions do belong to accepted, universal human rights .... But these rights are too often denied to children, which is one reason for believing that special rights for children are needed. There will be little discussion about the validity of the rights to survival, protection and development. These rights are somehow perceived as inherent. But participation rights seem to be perceived as rights that adults will more or less willingly give children as they grow, either reluctantly, because it may mean relinquishing adult authority, or as rewards for good behaviour.*

The right of the child to express his or her wishes is contained in the United Nations Convention on the Rights of the Child. However, the Committee also appreciates that this right must be balanced with the age and maturity of the child. The Committee also recognises that the United Nations Convention acknowledges the responsibilities and

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duties of parents or legal guardians to provide appropriate direction and guidance in the exercise by the child of the rights in the Convention in a manner consistent with the evolving capacities of the child.

The Committee was told on numerous occasions that children, because of their very powerlessness and vulnerability, require the establishment of formal mechanisms to assist in promoting their interests and needs and to offer them a voice in decisions that affect them. According to Eekelaar (1992:228, cited in Submission 45) for instance:

*No social organisation can hope to be built on the rights of its members unless there are mechanisms whereby those members may express themselves and wherein those expressions are taken seriously. Hearing what children say must therefore lie at the root of an elaboration of children's rights. No society will have begun to perceive its children as rightholders until adults' attitudes and social structures are seriously adjusted towards making it possible for children to express views, and towards addressing them with respect (emphasis supplied).*

Moreover, in his submission to the Committee, Dr Ferry Grunseit argues that:

*In 1992 there were 88,973 births in New South Wales. Children form a major group in our total population (about 27%), yet they are the last group whose rights are not well defined, even though we speak of them as "Our Future" and describe their importance in superlatives .... Children by themselves, even in the best democracies, are devoid of power and have no voice and no vote. Others must therefore speak for them or endeavour to uphold their rights in an adult world, where many powerful and vocal minorities and majorities engage the attention of the powers that be (Submission 35).*

## CRITICS OF CHILDREN'S ADVOCACY

It is argued by some that children do not need any separate acknowledgment of "rights" as such, or a separate system of advocacy because they are essentially dependent on their parents or guardians for guidance, judgement and care. Some critics of the concept of children's advocacy have argued that decisions affecting children should be primarily the domain of the family and that recognising the particular rights of children is to interfere in families in a destructive way. It has been argued, for instance, that empowering children will in some way allow them to "divorce their parents". Further, it has been suggested that children and young people lack the maturity and insight to play an active role in decision-making and do not often know or understand "what is best for them".

However, according to Lansdown, in recent times, these arguments have become less convincing. She maintains that with our growing awareness and acceptance of abuse and neglect within the home there has been a greater questioning of the rights of parents

(1995:8). Further, she argues that we have witnessed considerable changes in the nature of family life with many children expected to live through periods of marriage, divorce, single parenthood, and possible remarriage. It is Lansdown's view that:

*A model of parents as holders of all rights and responsibilities in respect of children is no longer accepted as either possible or desirable. Children are beginning to be acknowledged as individuals who are both separate from and part of the family unit. This shift in thinking has resulted in the reconsideration of traditional approaches to child care, legal protection and service provision. The effect of these changes, however, has largely been to transfer responsibility from the exclusive domain of the family into a wider public sphere. It is still other adults with positions of statutory responsibility - the police, the courts, teachers, social workers, doctors - who have the powers to contribute to, or impose decision making in children's lives, and not the children themselves. Despite some changes in the legislation affecting children, they remain largely locked into paternalistic structures in which adults, not children, are the actors. Public policy as well as family life continues to restrict the rights of children to effective participation.*

The Committee recognises the role of families to nurture children, but also the potential for abuse and neglect. As the community has become more and more exposed to this abuse and neglect, there has developed an increasing recognition that just as it is intolerable to regard women as the chattels of men (which was once the case) children have to be regarded as individual human beings within the family context.

## PARENTS AND FAMILIES

A number of submissions to the Inquiry and a number of witnesses who gave oral testimony commented that parents can often be the most effective advocates for their children. Hogan for instance, in his evidence, stated that:

*As a general statement, parents are usually the best advocates for their children. But they are let down by a lack of support, information, resources, opportunities and training to be good advocates for their children (Evidence - 9 November, 1995).*

Further, Ludbrook explained to the Committee in his testimony:

*Parents are the best and strongest advocates for children, and we receive more inquiries channelled through parents than those directly from kids. Adults are more confident and know how to find and access help (Evidence - 10 November, 1995).*

## INTRODUCTION

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The Committee heard that:

*advocacy is not about dealing with families in harmful ways ... [it] is not just about dealing with particular needs of particular individuals, it is about how we can change the system to better meet the needs of individuals and families and communities (Hogan Evidence - 10 November, 1995).*

The Committee acknowledges that parents can and should be the best advocates for their children, and initiatives strengthening the role of parents in nurturing children can be of benefit in this regard. When families are in crisis, providing support for these families may often be the best way of promoting the best interests of children.

However, much of the evidence presented to the Committee indicates that those children and young people who are most in need of effective advocacy are most often very vulnerable because they are estranged from their parents and families or because their parents and families, themselves, being disadvantaged and marginalised, do not have the resources or capacity to advocate on behalf of their children. In his evidence, Dr Victor Nossar told the Committee:

*the profile of children in New South Wales is changing. We are seeing greater numbers of children living in families of low socio-economic class, Aboriginal, Torres Strait Islander families and non-English speaking families. All of those are situations where there is a great likelihood of significant health and development disadvantages, and there is ample evidence of that ... [R]elatively more children are now living in poverty than ever before in our community, as we have economic shifts, the families that have the greatest number of children in the families are in the lowest socio-economic spectrum .... Given that kind of picture, you have to ask then: Where are the advocates that we have at the moment for children? .... Children ... have to bid for resources and are not a particularly powerful voice and the families that most need those resources, the children of the poor, children of Aboriginal families and children of migrants are the ones least likely to be heard. They are the ones least likely to be heard in any of the debates for resources (Evidence - 29 April, 1996).*

## CONCLUSION

The Committee recognises that the widespread concern in the community that children's needs are not being effectively advocated for has led to this current Inquiry. The Committee believes that greater recognition of the government and community obligation to ensure that children's needs are addressed is long overdue.

Chapter One of the Report provides a background to the Committee's report by exploring the definition of children's advocacy and concepts associated with it. It also provides a historical context by examining a variety of proposals for children's advocacy, government responses to date, and Australia's obligations under the United Nations Convention on the

Rights of the Child. Chapter Two reviews interstate and overseas models of children's advocacy. Chapters Three, Four, Five and Six examine the particular policy areas mentioned in the first part of the Inquiry's terms of reference: care and protection, law and justice, health and education. Chapter Seven looks at the adequacy and co-ordination of a range of agencies, including those listed in the second part of the terms of reference. Finally, Chapter Eight sets out the Committee's recommendations for the future directions of children's advocacy in New South Wales.





## CHAPTER ONE

### THE NATURE AND SCOPE OF CHILDREN'S ADVOCACY

Children comprise approximately 26.5% of the state's population and as such form a significant component of our total population. Yet, as will be discussed throughout this Report, it is a population group that lacks a number of provisions taken for granted by those in older age groups - one of which is effective advocacy.

This Chapter will examine the concept of children's advocacy. It will define the term and identify the importance of such advocacy. A number of features of effective advocacy will be identified, as will a range of different advocacy styles. Finally, the chapter will review past attempts to introduce or promote children's advocacy both across Australia and within New South Wales, discuss the response of governments to date, and examine their responsibilities and obligations under the United Nations Convention on the Rights of the Child.

#### 1.1 WHAT IS CHILDREN'S ADVOCACY?

To set the parameters for this study a number of key terms need to be defined from the outset.

##### 1.1.1 Defining "Children"

During the course of the Inquiry, it became evident that there is little consistency in the definition of "the child" with a wide range of ages attributed to this period of life. The Centacare submission to the Committee noted this discrepancy and stated that "there is illogicality and inadequacy in present legal definitions of childhood".

For the purpose of this study, the term "children" will be used to refer to persons from birth to 18 years. The terms children and young people will be used interchangeably.

##### 1.1.2 Defining "Advocacy"

According to the Macquarie Dictionary, advocacy is "an act of pleading for, supporting or recommending: active espousal" (Macquarie University, 1991:24).

##### 1.1.3 Defining "Children's Advocacy"

A number of definitions of the term "children's advocacy" were brought to the Committee's attention during the course of the Inquiry. The Committee was warned, however, that advocacy for children and young people is "complex in its definitions, scope and provisions" (Submission 34).

Cashmore's submission cited Herbert and Mould's definition of children's advocacy as:

*intervention when needed services are not accessible; are not available; are not appropriate; are not effectively provided; or when the voice of a child is not being heard (Submission 45).*

Hogan (1989:2) identified a number of definitions including:

- *giving a voice to children, speaking up/out;*
- *legitimising their needs, perspectives and concerns;*
- *facilitating access to services and programs;*
- *utilising opportunities and capacities to the fullest;*
- *enhancing equity in outcomes;*
- *equalising power-differentials between young people and the adults that deal with them;*
- *seeking enforcements of rights;*
- *ensuring protection against wrongs;*
- *obtaining redress for wrongs;*
- *making those who make decisions about children accountable;*
- *contributing to the efficiency and responsiveness of laws, policies and practices;*  
*and*
- *creating awareness of legal and service needs and issues.*

The Community Services Commission's submission defined children's advocacy as more than:

*redressing grievances after the event. Advocacy is to ensure that the needs and views of children are considered on an individual basis as well as systemically. Advocacy has a preventative role in trying to ensure that the interests and the wishes of children are considered in all decisions which affect them (Submission 37).*

In giving evidence before the Committee, the then Director of the National Children's and Youth Law Centre defined children's advocacy in terms of two approaches. The first approach is that the advocate acts for the child's best interest:

*in other words, the advocate is some omniscient adult who makes a judgement about what is best for the child and advocates strongly for that decision (Evidence - 9 November, 1995).*

The second approach towards advocacy is based on the child's wishes and preferences and argues for the outcome wanted by the child. Such an approach is taken by the National Children's and Youth Law Centre.

The Committee is fully aware that most people who are involved with children or issues affecting children will probably consider themselves to be children's advocates. However, it was pointed out to the Committee on several occasions that such a form of advocacy is not enough:

*it is ad hoc and dependent on the availability, capacity, resources, willingness of the adults; and it fails to recognise the limitations of often competing interests as parents, service providers, bureaucrats and politicians (Hogan Evidence - 9 November, 1995).*

Further:

*there will always be circumstances when such adults are unable to be sufficiently free from conflict of interest or other constraints which severely impair their ability to advocate for children (Submission 37).*

As Hogan concludes, "there remains a significant need for avenues of independent advocacy" (Evidence - 9 November, 1995).

There are many ways in which advocacy for children can and should be provided. The term is used throughout this Report to refer to a range of programs and processes designed to assist children to be heard and their needs to be considered in the environments and systems in which they and their parents or carers find themselves.

#### **1.1.4 Misconceptions Surrounding Children's Advocacy**

Given the nature and various functions of advocacy there are times when it may be confused with other activities which have features similar to advocacy.

Advocacy is not, for example, counselling. While the advocate often spends much time in consultation and discussion with those requiring advocacy, the advocate is not seeking to treat or cure the person. Remedy and redress is sought, but it is for a specific situation

rather than in response to an individual's pathology or emotional or psychological background.

Similarly, there is a distinction between the functions of advocacy and those of regulating and complaints-handling. As the Youth Justice Coalition submission notes:

*if advocacy is simply seen as a need to ensure that young people have access to administrative redress through complaints mechanisms then the very cause of young people's barriers to social and legal justice are overlooked (Submission 34).*

While many complaints handling or regulatory bodies have a consumer protection function, and can advocate for consumers in a limited way - particularly at a systemic level - they are also required to be impartial and objective in dealing with individual investigations and resolution of individual complaints. The submission from the Community Services Commission pointed out that such impartiality restricts the ability of these bodies to act as advocates for children (Submission 37)

The Committee recognises that effective access to complaints handling mechanisms may require an advocate, given that independent advocacy may greatly enhance the effectiveness of existing complaints and watchdog bodies for children by facilitating the access of children to such mechanisms and working collaboratively on systemic issues of concern to children. Additionally, the provision of independent advocacy to children can assist in the resolution of complaints at the local level and provide (in some cases) an ongoing protection in preventing problems from arising by ensuring that children's needs and views are responded to (Submission 37).

The Committee fully appreciates the need for complaints procedures. However, such mechanisms cannot be regarded as taking the place of effective and adequate advocacy structures and mechanisms.

There is an implicit assumption that children's advocacy merely means children speaking up. It is also about children's needs being addressed and parents and carers speaking up for children.

In appearing before the Committee, the then Director of the National Children's and Youth Law Centre identified three misconceptions often associated with children's advocacy. These were that:

- *children's advocacy drives a "wedge" between a child and his or her family;*
- *children's advocacy empowers children which is somehow dangerous and will destabilise society; and*

- *children's advocacy is confrontational and results in antagonism* (Evidence - 9 November, 1995).

In the experience of the National Children's and Youth Law Centre, 21% of inquiries come from parents. The Committee was informed that "the best and strongest advocates are parents acting on behalf of their children" (Evidence - 9 November, 1995). In commenting as the then National Children's and Youth Law Centre's Director, Ludbrook observed:

*child advocacy in no way damages or destroys family life or creates tension between parents and children. In the two and a half years that I have been in this job, I cannot recall any child wanting to divorce his or her parents, sue them for pocket money or take them to court. This misconception is fuelled and is trundled out to rubbish the concept of children's rights* (Evidence - 9 November, 1995).

The Director of the Public Interest Advocacy Centre suggested parents are sometimes let down by a lack of support, information, resources, opportunities and training to be good advocates for their children, and that "advocacy is not about intervening in families in harmful ways" (Evidence - 9 November, 1995).

The Committee supports this sentiment, but notes there is a history of inappropriate intervention by governments in families which has not been in the best interests of children.

The Committee also rejects the notion that advocacy for children has a destabilising effect on the broader society, and believes the view that children's advocacy is dangerous or subversive reveals a fundamental misunderstanding of the concept.

The Committee does not accept that providing children and young people with the opportunity to be heard (and their parents as advocates on their behalf) should provoke dissension:

*providing an avenue for children and young people to be heard does not prompt conflict but puts into the public arena views that already exist* (Submission 34).

The Committee also sees advocacy as a range of methods that may be used to resolve a matter, rather than a confrontational or antagonistic approach.

## 1.2 THE IMPORTANCE OF CHILDREN'S ADVOCACY

Children and young people are a distinct sector of society by virtue of their age. It is an age group which, however, brings with it limited skills and experience, different rates of maturity and levels of dependence. Children may at times find it hard to express

themselves, and may respond with anger and frustration. Complaints may not be sufficiently articulated to receive appropriate adult attention, and when children do assert their opinion they may be dismissed as being ungrateful or insolent.

Added to these characteristics of childhood is the general agreement of child development experts, educationalists and psychologists that the transition through the developmental stage of "growing-up" is, for many children, a complex and difficult process.

The problems experienced by children in general are accentuated for those children and young people who experience significant social changes, such as different patterns of familial arrangements; and economic changes resulting in falling living standards; and high levels of youth unemployment and under-employment (Hogan, 1989:3).

Then there are other children who are further disadvantaged or vulnerable due to:

- their **personal circumstances** such as experiencing sexual/physical/domestic violence, living in poverty, living in rural and remote areas, having parents with a mental illness, or who are drug and alcohol dependent, being separated from their families, including being in care or detention, homeless or itinerant or otherwise outside the formal "care" system; and/or
- their **personal characteristics** such as being very young (particularly under the age of one year), having a disability or a mental illness, being an Aboriginal or Torres Strait Islander or having a non-English speaking background.

These children and young people are considered by Hogan (1989:3) to be "doubly-disadvantaged" in terms of accessing appropriate advocacy. Such a range of factors led Hogan to consider children and young people to be "marginal groups" lacking direct access to the powers and benefits that exist in the economic, social and political spheres of society.

This notion of children and young people lacking access to power and having their needs addressed was frequently raised during all facets of the Inquiry process. For many of those appearing before the Committee and making written submissions, it was the *raison d'être* for providing advocacy services to children and young people.

Witnesses, including representatives from the Community Services Commission, asserted that this powerlessness extends to children and young people not having their needs, wishes and rights considered, either individually or collectively, because:

- *they cannot express their views and opinions through the normal democratic or political channels available to adults;*

- *they are often dependent for their physical, financial, social and emotional well-being on individuals, organisations or systems which may have conflicting or competing needs and interests;*
- *they often lack the skills, knowledge or confidence to express their views, assert their rights, negotiate for their needs to be met, or seek redress when their rights have been infringed; and*
- *their needs and views are often considered to be an appendage or sub-ordinate to those of more powerful (usually older) individuals such as parents, teachers, workers (Submission 37).*

Further, the submission continues, the notion of children's rights remains contentious in a society where children's rights are perceived (by some) as a threat to the rights of parents or other authorities, and where children in general occupy a low social status. This means there is a lack of community understanding and support for children's rights (Submission 37).

The submission from the State Network of Young People in Care (SNYPIC) suggested that the powerlessness of children and young people has resulted in them traditionally having a very marginal role in shaping the laws and systems that regulate their lives. They claimed, for example, young people are:

- *disenfranchised until they are 18 years of age;*
- *not consulted or informed about the laws and systems that affect them;*
- *not actively sought to evaluate the impact of laws and systems in any review processes;*
- *rarely allowed the opportunity to participate in legal forums; and*
- *rarely able to enforce their rights or remedy abuses, including those of the system itself against them (Submission 41).*

The exclusionary policies listed by SNYPIC are not in accord with what the National Children's and Youth Law Centre considers to be "a fundamental principle of natural justice": that any person likely to be affected by an official decision should have the opportunity to "have a say" and put their views forward to decision-makers (Submission 3).

The Youth Justice Coalition contended:

*the need to establish an effective system of advocacy for children and young people is crucial in order to protect their rights and achieve social justice for a group in our society whose needs and rights tend to be overlooked (Submission 34).*

### 1.3 FEATURES OF EFFECTIVE CHILDREN'S ADVOCACY

A number of submissions received by the Committee outlined a range of key attributes of effective children's advocacy. The Community Services Commission identified:

- *separation from the key departments/agencies in which children find themselves and where their needs may not be being addressed, eg substitute care providers, families, schools, police, courts;*
- *having the power to pursue issues and achieve appropriate resolutions for the child/children;*
- *clear allegiance with the child or children in question;*
- *acting on behalf of, and in the interests of, the child or children in question;*
- *being aware of, and seeking to minimise any real or perceived conflicts of interest between [the] child/children and those providing the advocacy; and*
- *accountability and loyalty to children generally as well as specific individuals from whom the advocacy is being provided (Submission 37).*

The National Children's and Youth Law Centre added the following features:

- *a focus on the child and the child's individual needs and wishes;*
- *a clearly defined role and a clear understanding of whether one is advocating for the child's wishes or child's best interests;*
- *an ability to establish a rapport with [the] child and a willingness to listen to and heed the child's view;*
- *access to files and other relevant information;*
- *a knowledge of the system and an ability to work with legal, health and social work professionals;*



- *a willingness to use a variety of skills and approaches to obtain the best outcome for the child;*
- *a determination to respect the child's trust and confidentiality except where there are statutory mandatory reporting requirements; and*
- *a determination to follow matters through to review or appeal where necessary (Submission 3).*

#### 1.4 FORMS OF ADVOCACY

The Director of Public Interest Advocacy Centre, during the course of evidence before the Committee, noted that:

*we need to consider advocacy not only as legal advocacy in the courts or in other tribunals, but also as an individual endeavour and as a systemic or collective endeavour (Evidence - 9 November, 1995).*

Clearly there are a number of different forms of advocacy, many of which were brought to the attention of the Committee, including:

- systemic advocacy;
- individual/representative advocacy;
- parental advocacy;
- self/peer advocacy; and
- citizen/voluntary advocacy.

Each of these will be discussed in the following section.

##### 1.4.1 Systemic Advocacy

Systemic advocacy is the broadest form of advocacy available. It takes a "big picture" perspective, often at a national or state level; identifies underlying causes of problems; and works toward change or redress. This process often involves seeking changes to legislation, administrative procedure or policy to respond to the circumstances of children and young people.

As Hogan noted:

*advocacy is not just about dealing with particular needs of particular individuals, it is about how we can change the system to better meet the needs of individuals and families and communities (Evidence - 9 November, 1995).*

Systemic advocates should have the ability to look across a range of agencies providing services to children and identify duplication, gaps, conflicts and poor practice. These are then drawn to the attention of the responsible agencies or Ministers enabling measures to remedy the problems to be put in place.

The need for stronger systems advocacy was brought to the attention of the Committee. The submission from the State Network of Young People in Care recognised, for example, that:

*there needs to be a range of better systems advocacy for children in which decisions are made with children and young people actively participating in the process (Submission 41).*

### 1.4.2 Individual/Representative Advocacy

Individual or representative advocacy takes a much more focused and specific orientation than systemic advocacy. This form of advocacy stands by an individual child and represents the interests of that child unreservedly. It also provides a “stopgap” in a situation that needs a formal administrative reform to respond properly to the problem (Submission 34).

As the submission from the Youth Justice Coalition notes:

*the need for individual advocacy is often brought about by the failure of systemic advocacy; the failure to make legislation, administrative procedures or policy respond to the circumstances of young people (Submission 34).*

Individual advocates are able to “straddle” a range of government and non-government agencies involved with the child to ensure that the child receives the support needed and does not “fall between the cracks” (Submission 37).

As with systemic advocacy, the State Network of Young People in Care’s submission noted that:

*there needs to be a ... system of individual advocacy for those who need support or cannot express their views (Submission 41).*

### 1.4.3 Parental Advocacy

In most cases, as noted above, parents should be the most effective advocates for their children and their needs. It is the children in care, the powerless, abused and neglected children who do not have this most important form of advocacy, along with children from disadvantaged backgrounds, whose parents may not have the skills to advocate for them.

### 1.4.4 Self/peer Advocacy

As the name implies, this form of advocacy involves the one seeking advocacy, or his or her peers, actively pursuing advocacy. Clearly, given the limited skills and experience of infants and young children, self advocacy is not appropriate for those in this age group. There is, however, a growing interest in peer advocacy. The example of peer advocacy most frequently cited to the Committee was the State Network of Young People in Care and its national counterpart, the Australian Association of Young People in Care (AAYPIC).

However, as the Youth Justice Coalition observe:

*there are few organisations, government departments, working groups which include groups of young people or individuals as representatives in organised decision making (Submission 34).*

### 1.4.5 Citizen/Voluntary Advocacy

Hogan (1995) identifies a number of benefits of citizen advocacy. These include it:

- *contributing to effective decisions by ensuring that relevant information is taken into account;*
- *contributing to more efficient decision-making by providing a bridge between an applicant or client and the decision-maker or service provider;*
- *exposing the true extent of individual and collective need and leading to more equitable outcomes;*
- *revealing abuse, exploitation and injustice;*
- *contributing to good policy by identifying the interests at stake and the potential or actual impacts;*
- *helping to ensure that the objectives of legislation are realised and that there is compliance with regulatory regimes;*

- *contributing to the identification of shared social values and goals;*
- *delivering stakeholder ownership of and investment in successful outcomes;*
- *helping prevent regulatory capture, corruption and capriciousness;*
- *ensuring accountability of administrators and regulators;*
- *creating incentive to produce safe and effective products, to ensure safe work practices and to not discriminate;*
- *contributing to goods and services being responsive to user needs;*
- *ensuring that organisations that do not comply with the law or that cause damage of injury do not gain an unfair competitive advantage over law-abiding or conscientious organisations; and*
- *facilitating redress for those who have suffered damage or injury (Hogan, 1995:13-14).*

Hogan also identifies a number of weaknesses in citizen advocacy. These include the differential development of advocacy across sectors; the limited resources that are frequently available to meet huge demands; and the limited number of advocacy agencies with a brief to take up public interest issues (Hogan, 1995:14).

The Youth Justice Coalition does not see citizen or volunteer advocacy as an alternative to professional individual advocacy or to self or peer advocacy (Submission 34).

#### **1.4.6 Summary**

In summary, the Committee supports the view that advocacy is not simply about providing representatives to speak on a child's behalf, or about providing opportunities to incorporate a child's view. It also involves ensuring appropriate systems exist to recognise the rights and needs of all children and young people, and respond to them appropriately.

It is the Committee's view that these various forms of advocacy are not an either/or proposition, and that children and young people need access to advocacy at many different levels.

## 1.5 PAST PROPOSALS FOR CHILDREN'S ADVOCACY

Over the past 17 years a number of proposals have been forwarded seeking to introduce children's advocacy at both the federal and state level. The Youth Justice Coalition advised in its submission to the Committee that it has files going back as far as 1979 detailing a history of inquiries and reports documenting demands for advocacy for children and young people.

Within the specific domain of legal advocacy, proposals for children and young people's advocacy services at the state level have included:

- 1978: the Ad hoc Working Party on Legal Services to Children proposed to the New South Wales Legal Services Commission a broad-based, comprehensive children's legal service based on principles of accessibility, range of services, accountability and personnel and lawyer-client relationships;
- 1980: the Legal Aid Commission's Sub-Committee on Children's Legal Services proposed a service not limited to court representation, comprising six regionalised legal centres for children. The submission was indefinitely deferred by Cabinet owing to lack of funds;
- 1981: the Action for Children group made a submission to the Law Foundation of New South Wales for a Children's Advocacy Foundation. The submission was not approved owing to assurances from the Legal Services Commission that it would be moving to provide such a service;
- 1985: the Legal Services Commission applied to the Westpac Fund for a grant to set up a Children's Legal Unit made up of solicitors, social workers, community legal workers and administrative personnel. The submission was unsuccessful;
- 1987: the Marrickville Legal Centre applied to the Law Foundation to extend its children's legal service to employ one full-time co-ordinator to develop a youth legal advice and advocacy service. The application was unsuccessful;
- 1987 and 1988: the Illawarra Legal Resource Centre sought funding for an extra worker to concentrate on children's and youth law matters;
- 1988 and 1989: the Youth Justice Coalition submitted an Expression of Interest to the Legal Aid Commission for a Youth Advocacy and Legal Resource Centre under the Commission's Community Legal Centre Funding Program. The application was unsuccessful;

- 1988: the Public Interest Advocacy Centre applied for a Youth Advocacy Development and Co-ordination Project under the Youth Initiatives Grant Program to the Department of Employment, Education and Training to improve existing services and establish an independent Children's Law Centre. The application was unsuccessful;
- 1990: the Law Society of New South Wales and the Public Interest Advocacy Centre sought funding from the Law Foundation for a New South Wales Children's and Youth Advocacy Resource Centre;
- 1991: the Inner City Legal Centre sought funding from the Law Foundation for a Children's Legal Service. The application was unsuccessful;
- 1992: the Marrickville Legal Centre and Cellblock Youth Health Centre applied for Commonwealth funding under the Youth Strategy Action Grants to develop and evaluate a peer group advocacy project for young people in care. The application was not successful;
- 1993 and 1994: the Marrickville Legal Centre, through its work with the Youth Justice Coalition, submitted Expressions of Interest to the New South Wales Legal Aid Commission for funding under the Community Legal Centres program. These were unsuccessful;
- 1994: the National Children's and Youth Law Centre and the National Network of Children's and Young People's Legal and Advocacy Services submitted a justice strategy for children and young people for funding by the Commonwealth government. A number of youth advocacy positions were funded nationally; and
- 1995: Marrickville Legal Centre and the Children's Advocacy Working Group presented a submission to the Minister for Community Services for the establishment of a Children and Young People's Advocacy Centre (Hogan, 1989:15; Submission 34).

Notwithstanding the advances in the levels of children's court representation, Hogan observes that such proposals to extend and improve advocacy for children and young people have "come to little". In his opinion, this evidences "a continuing failure by government to address the legal needs of youth" (Hogan, 1989:14).

In addition to these various proposals are numerous reports and publications over many years calling for increased protection of the needs and interests of children and young people. These reports focus on target groups of children, and provide compelling evidence of needs that have not been met.

These documents include:

- *The Report to the Minister for Youth and Community Services on certain parts of the Child Welfare Act* (Muir, 1975), referred to as the Muir Report;
- *Girls at Risk - a Report of the Girls in Care Project* (NSW Women's Co-ordination Unit, 1986).
- *Our Homeless Children* (Human Rights and Equal Opportunity Commission, 1989);
- *The Kids in Justice Report* (Youth Justice Coalition, 1989);
- *The Report to Minister for Health and Community Services from the Committee established to Review Substitute Care* (Usher, 1992), referred to as the Usher report;
- *Improving Substitute Care in New South Wales: a Three Year Plan* (Alternative Accommodation and Care Committee, 1993);
- *Standards for the Substitute Care System in New South Wales* (Alternative Accommodation and Care Committee, 1994);
- *Juvenile Justice in New South Wales* (Legislative Council Standing Committee on Social Issues, 1992);
- *Future Directions for Juvenile Justice in New South Wales* (Juvenile Justice Advisory Council, 1993), referred to as the Juvenile Justice Green Paper;
- *New Directions for Juvenile Justice in New South Wales* (Department of Juvenile Justice, 1994), referred to as the Juvenile Justice White Paper;
- *Systems Abuse: Problems and Solutions* (Cashmore, Dolby and Brennan, 1994), prepared for the New South Wales Child Protection Council;
- *Nobody Listens* (Youth Justice Coalition, 1994); and
- *A Longitudinal Study of Wards Leaving Care* (Cashmore and Paxman, 1996), commissioned by the Department of Community Services.

As the Youth Justice Coalition notes, the recommendations from these reports have been "overlooked" and their contents "to a large extent ignored".

They suggest:

*this failure to act by successive governments seems to demonstrate a lack of commitment to the children and young people of New South Wales. It is hoped that the present Inquiry will reverse this trend and will cause a response at all levels to the advocacy needs of children and young people (Submission 34).*

The Committee shares this aspiration, and believes decisive, co-ordinated action is required to protect the interests of children that have been overlooked by successive governments.

## 1.6 CHILDREN'S ADVOCACY: GOVERNMENT RESPONSES

### 1.6.1 Commonwealth Responses

There have been a number of initiatives and proposals at the Commonwealth level suggesting the value of children's advocacy is becoming recognised. For example:

- the Commonwealth Government's Justice Statement released in May 1995 provided funding for five specialist youth advocates attached to Community Legal Centres throughout Australia. This is the first time that specialist youth advocacy has been recognised and funded;
- the joint Australian Law Reform Commission/Human Rights and Equal Opportunity Commission Inquiry into Children and the Legal Process announced in August 1995 and required to report no later than 30 June 1997. The Inquiry is to look at legal representation and advocacy for children before courts and tribunals. Its first Issues Paper, *Speaking for Ourselves: Children and the Legal Process*, was released in March 1996;
- the Australian Family Law Council is currently inquiring into involvement and representation of children in family proceedings;
- the Australian Institute of Family Studies in its December 1994 report to the Commonwealth Minister for Family Services expressed the view that a Commissioner for Children would have an important symbolic effect and would be a focus for public debate;
- the Australian Law Reform Commission in its August 1994 report *Child Care for Kids* recommended the establishment of a national agency to monitor the implementation of programs, policies and laws to ensure the rights of children are protected and promoted;



- the Australian Joint Committee on Foreign Affairs and Trade recommended that the Attorney-General investigate the feasibility of establishing a Children's Ombudsman within the Human Rights and Equal Opportunity Commission; and
- the Commonwealth Standing Committee on Community Affairs in its report on Youth Homelessness (May 1995) recommended that a Child and Youth Bureau be established within the Attorney-General's Department to monitor Australia's compliance with the United Nations Convention (Submission 3).

### 1.6.2 New South Wales' Responses

There are a wide range of alternative mechanisms for advocating or representing the views and interests of children currently available in the state, although they primarily have a legal orientation. A number were identified by the National Children's and Youth Law Centre in its submission to the Committee. They included:

- separate representatives of the Family Court model;
- duty solicitors drawn from a panel of private practitioners (New South Wales child protection and juvenile justice);
- guardians ad litem (New South Wales child protection);
- self advocacy groups (such as SNYPIC for children in care);
- specialist lawyers provided through Legal Aid (Cobham Children's Court, New South Wales);
- specialised legal services (Aboriginal Legal Services);
- specialist or generalist Community Legal Centres;
- a legal representative who acts on instructions from the child and seeks to achieve the outcomes the child wants;
- a lay advocate or befriender;
- an independent adult at police station; and

There are also many models of advocacy for people with disabilities. Agencies involved in this area include the Intellectual Disability Rights Service; Citizen Advocacy New South Wales; Self-Advocacy New South Wales; the Institute for Family Advocacy and Leadership

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Development; Action for Citizens with Disabilities; and the Mental Health Advocacy Service in the Legal Aid Commission. In addition, the Office of the Public Guardian provides legally appointed substitute decision-maker and advocates for individuals who are not able to make informed decisions on their own behalf, and undertakes systemic advocacy arising from their role as guardians.

In a broader sense, the Committee heard that general advocacy for all groups of children in New South Wales is often neglected. Hogan noted a number of specific ways in which children's interests at the state level are overlooked including:

- *Parliament (as with all Australian parliaments both state and federal) does not have a Standing Committee devoted to the needs and interests of children;*
- *there is no voice for children and families at the executive level of government and in Cabinet; and*
- *there is no specific budget statement for children (Hogan Evidence - 9 November, 1995).*

Further, the submission from the Community Services Commission pointed out several "obvious" functional gaps in the advocacy for children currently available in New South Wales, including:

- *there are no programs, apart from legal advocates, which provide individual advocacy for children on a crisis or an "as needed" basis, or on a long term relationship basis;*
- *there is no single agency responsible for systemic policy work relating to children, across all sectors and portfolios;*
- *there is no agency that can provide information, education and training about advocacy and children's rights, on a state-wide basis;*
- *there is no agency which collects and publishes comprehensive information about children in New South Wales on a regular basis (Submission 37, emphasis added).*

As both the submission from the Community Services Commission and evidence from the Director of the Public Interest Advocacy Centre noted, while the current state government is advised by a Department of Ageing and Disability, a Department of Aboriginal Affairs, an Ethnic Affairs Commission and a Department of Women, there is no comparable Office on Children. While the Child Protection Council has a role in advising government and coordinating activities across portfolios, this is only in relation to child protection matters.

Specific government and non-government agencies that have a role in advocating for children in New South Wales are discussed in further detail in Chapter Seven.

In 1989 Hogan noted that New South Wales is "well behind other states" in terms of the provision of advocacy services for children (Hogan, 1989:1). Evidence gathered by the Committee suggests that Hogan's statement is still relevant some seven years later. As he elaborated at the time:

*the lack of commitment to advocacy services for children has been a major obstacle to the protection and enforcement of the rights of children ... the lack of significant children's advocacy work in this country may be a major explanation why human rights violations against children are not reported here as often as overseas (Hogan, 1989:1-2).*

Despite the importance of advocacy for children, Hogan considered that:

*the state of children's advocacy in New South Wales can best be described as being an illustration of gross institutional neglect and abuse of children and families by the system (Evidence - 9 November, 1995).*

The New South Wales Child Advocate has also noted:

*there is an urgent need for review and reform because advocacy for children and young people in this State is fragmentary, sporadic and [is] general inadequate (Submission 35).*

He further concludes that:

*in this state and indeed in Australia, children in many groups and from different socio-economic backgrounds are poorly represented in everyday life matters .... Children ... are ignored, neglected and discarded by a harsh society with little time for children and youth and their unmet needs for human rights and justice. All governments show little interest and commitment to our children and young people (Submission 35).*

## 1.7 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

### 1.7.1 History and Provisions

The needs and rights of children have been considered in international forums for a considerable period of time. In 1924, the then League of Nations issued a Declaration which contained a prescription of what adults could do for children (Submission 35).

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In 1959, the United Nations issued a Declaration on the Rights of the Child, which superseded the previous statement by League of Nations.

In the early 1980s work commenced on a new set of principles which ultimately took nine years of preparation, discussion, debate and conflict. The United Nations adopted the new Convention on the Rights of the Child in 1989 and it came into force on 2 September 1990.

As of September 1995, the Convention had been ratified by 177 countries worldwide. It is estimated that 99% of the world's children live in countries that have made a commitment to the basic principles of children's rights as set out in the Convention. Some ratifying countries have gone a long way in terms of implementing the articles of the Convention. However, there are many ratifying countries who are still failing to address the needs of children. Despite the legal intent of ratification, the Committee notes that worldwide, there are substantial numbers of children who suffer various forms of abuse ranging from child labour to infanticide.

At the time of its adoption by the General Assembly, the then Secretary General, Javier Perez de Cueller, said:

*the Convention on the Rights of the Child is unique. It addresses the needs of those who are humanity's most vulnerable as well as its most cherished resource .... Besides incorporating the whole spectrum of human rights, the Convention stresses that respect for and protection of children's rights is the starting point for the full development of the individual's potential in an atmosphere of freedom, dignity and justice .... Above all the Convention attempts to provide a framework within which the child, in light of his or her evolved capacities, can make the difficult transition from infancy to adulthood (Submission 35).*

The Convention articulates universal values and principles in relation to how children should be perceived and treated. It sets out the rights of children and the responsibility governments have to protect them. It protects and promotes children's rights including economic, civil, social and cultural rights. It gives the child the right to voice opinions and to participate when decisions about the child's life or future are made. However the ability to take part is predicated by the child's maturity at the time. As the New South Wales Child Advocate noted in his submission, the Convention:

*puts together in one document the human rights of children as well as emphasizing their vulnerability and changing needs. It argues that children are individual human beings with their own special but equally important values as people. They deserve not only equality but also the respect, dignity and integrity accorded to adults. The Convention sets the standard for new laws which would make children the subject and not the object of such laws (Submission 35).*

There are a number of articles in the Convention which place obligations on governments to ensure there are adequate provisions for a voice and advocacy for children and young people. Specifically:

Article 3: the best interests of the child is to be a primary consideration in any legal or administrative decision affecting the child;

Article 4: states are obliged to take measures to give effect to the rights recognised in the Convention;

Article 9.2 and 16: the child shall have an opportunity to participate in any proceedings which may result in separation from his or her parents;

Article 12: a child capable of forming his or her views has the right to express those views freely and have them taken into account in all matters affecting the child. The views of the child are to be given due weight according to his or her age and maturity. The child has the right to be heard in administrative or judicial proceedings affecting him or her either directly or through a representative;

Article 13: the child has the right to freedom of expression and information, subject to any restrictions necessary to protect the rights of others, or public order, health or morals;

Article 16: the child has a right to protection of privacy, family, home and correspondence;

Articles 19, 34 and 39: the state shall undertake to take all appropriate measures to protect children from all forms of physical and mental violence, injury or abuse, neglect, maltreatment or exploitation, and to undertake prevention and support programs;

Article 20: children deprived of their family environment are entitled to special protection and assistance from the State; and

Article 25: the child has the right to periodic review of any placement for the purposes of care, protection or treatment.

In commenting on the role attributed to parents by the Convention, the former Director of the National Children's and Youth Law Centre stated that the Convention:

*strikes a very careful and nice balance between parental guidance and parental rights and children's freedom and rights ... it says parental guidance is very important and that the family and home are very important; but in the other context it is the child's*

*evolving capacity to make more and more important decisions for himself or herself. It is a balance* (Evidence - 9 November, 1995).

As Article 5 of the Convention states:

*States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*

The significance of the Convention will be discussed further throughout the Report. It is reproduced in its entirety in Appendix One.

### **1.7.2 Australia's Obligations under the Convention**

The United Nations Convention on the Rights of the Child is an agreement between nations to observe common standards for protecting the rights of children. Unlike the previous Declaration of the Rights of the Child, the Convention is a legal instrument. Australia signed the Convention in 1990, and in the following year it ratified the Convention.

The effect of this ratification is that Australia has agreed to be bound by the Articles of the Convention. This means Australian governments (both state and federal) are obliged to take action to respond to the rights of children and young people enshrined in the Convention, and revise and amend laws as appropriate.

The Convention has become a "declared instrument" by being added as a schedule to the *Human Rights and Equal Opportunity Commission Act 1986*. This enables the Human Rights and Equal Opportunity Commission to conciliate complaints regarding breaches of the rights set out in the Convention.

There has been widespread support at government, judicial and community levels for the federal government to more fully incorporate the Convention into domestic law. The Australian Law Reform Commission has proposed the formulation of a Children's Rights Act (Australian Law Reform Commission, 1994:11). Similarly, both the Human Rights Sub-committee of the Joint Standing Committee on Foreign Affairs Defence and Trade, and the Chief Justice of the Family Law Court, have called on the government to enshrine the Convention in national law (cited in National Children's and Youth Law Centre, 1995:6).

Despite the absence of a law of this nature, the submission from Burnside notes that the state's obligation to comply with the Convention:

*is beyond doubt. Any possibility of dispute was settled in 1994 with the decision by the UN Human Rights Committee that the sections of Tasmania's Criminal Code purporting to make homosexual activity between consenting adults unlawful were contrary to the United Nations Convention on Civil and Political Rights and thereby placed Australia in breach of its international obligations (Submission 23).*

The February 1995 High Court decision in the *Teoh* case further reinforced Australia's international obligations, and specifically dealt with the Convention on the Rights of the Child. Mr Teoh, the supporting parent of seven Australian children, was appealing a deportation order. The Court effectively held that government officers should give consideration to the Convention when making decisions which could affect children.

In response, the federal government introduced legislation to provide that international conventions do not give rise to a legitimate expectation that administrative decision-makers will act in conformity with their provisions. This Bill lapsed when Parliament was dissolved for the general election in March 1996. However, the then Minister for Foreign Affairs and Trade and the Attorney General also issued a statement in 1995 making an "executive indication to the contrary" to override the *Teoh* decision, the effect of which remains in dispute (Manning, 1996:9).

The Youth Justice Coalition's submission has suggested that New South Wales governments have also failed to protect the rights established under the Convention. According to its submission, the *Children (Parental Responsibility) Act 1994*, for example, curtails the rights of children to freedom of assembly by enhancing police powers to remove minors from public places and keep them in prescribed places on the basis that criminal activity may occur (Submission 34). One Member of the Committee has noted that the intent of the legislation was to protect children who were not adequately supervised by their parents.

The United Nations has established a committee for monitoring the progress made by countries in implementing the Convention. Under its provisions, countries which ratify the Convention are obliged to report to the United Nations Committee on the Rights of the Child within two years, and then every five years, on progress towards full implementation. The federal Attorney-General's Department has (belatedly) prepared Australia's response which was released in early 1996. The Convention also provides for organisations independent of government to report directly to the United Nations.

## 1.8 CONCLUSION

In discussing various definitions and forms of advocacy, its role and importance, the preceding discussion has sought to provide a foundation for the remainder of this Report.

The Committee acknowledges the considerable number of previous reports which have revealed the failure of governments to address the needs of children in New South Wales, especially those whose circumstances make them particularly vulnerable to neglect and abuse. Despite the abundance of this evidence, and the extensive range of agencies with responsibilities for children, the problems remain unresolved. The Committee is dissatisfied with the current status of children in New South Wales.

The review of previous attempts to introduce advocacy services for children and young people places the Inquiry as a whole into a historical perspective and highlights the urgency for decisive action to be taken. It is with this understanding of children's advocacy that the specific Terms of Reference issued to the Committee can now be examined.



## CHAPTER TWO

## INTERNATIONAL and INTERSTATE MODELS

## 2.1 INTRODUCTION

The issue of children's rights and advocacy has been the subject of extensive debate among nations in recent decades. Following the gains of the civil rights movement and the women's movement in the 1960s and 1970s, the interests and needs of children began to gain recognition. Throughout the 1970s and 1980s, public awareness grew about issues of child abuse, child labour, incest, child poverty and the marginalisation of vulnerable, disadvantaged and minority children. With this awareness there emerged a greater appreciation throughout many nations that the needs and interests of children should be recognised and protected. As Lansdown (1995:1) has observed:

*debates over the rights of children have had a high profile in recent years, with growing acceptance in both national and international law that children are people entitled to basic human rights.*

In a symbolic action which reflected this trend, the United Nations declared the year 1979 International Year of the Child and in that same year work began on the drafting of the United Nations Convention on the Rights of the Child. In 1989 the United Nations General Assembly adopted the United Nations Convention on the Rights of the Child and by September 1995, 177 Countries had ratified the Convention. That so many countries became signatories to the Convention represented:

*a level of support unprecedented in the history of the United Nations. No other international treaty has achieved a comparable level of commitment (Lansdown, 1995:1).*

As a result of the debate surrounding the issue of children's rights, and the completion of the United Nations Convention on the Rights of the Child, a number of countries began to examine their domestic laws and policies in relation to children. Many of these countries then developed formal mechanisms and structures to promote and protect children's interests.

However, some commentators have argued that other nations, including signatories to the United Nations Convention, have merely responded to the issues with rhetoric and lip service. Moreover, it is also argued that, in more recent times, a number of jurisdictions have developed a marked hostility and suspicion towards children and, in particular, young people. This, it is said, can be seen from the implementation of laws and policies relating to juvenile justice, welfare and income support, accommodation and education.

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As part of its research for this Inquiry the Chair of the Social Issues Committee and the Acting Director conducted a study tour to a number of overseas jurisdictions to investigate models of children's advocacy. The countries visited were England, Sweden, Denmark and the United States of America.

This chapter will examine the models of each jurisdiction, as well as providing an overview of the situation in Norway and New Zealand. It will be shown that whilst some countries have formalised structures in place at a government and parliamentary level that deal with children's advocacy, others, such as England and the United States, rely essentially on the work of non-government and community-based organisations. At a government and policy level, the approach in these countries to children's issues is largely ad hoc. Although a number of representatives of relevant non-government organisations considered the lack of government commitment unsatisfactory, others believed that independence from government is the key to successful advocacy - it enables greater scrutiny and criticism of government policy in the area of children's interests and needs. This chapter presents examples of children's advocacy models in the aforementioned countries.

### 2.2 SWEDEN

On 1 July, 1993 the Swedish Government, with the support of the Parliament established the position of Children's Ombudsman. The position was created following the 1989 recommendations of a Parliamentary Committee, set up after the proclamation by the United Nations General Assembly of the United Nations Convention on the Rights of the Child. The jurisdiction of the Children's Ombudsman embraces children and young people up to the age of 18 years. Section One of the Act establishing the Office of the Children's Ombudsman states that:

*The Children's Ombudsman has the task of observing matters affecting the rights and interests of children and young people. In particular, the Ombudsman shall verify that laws and statutory instruments, as well as their implementation, agree with Sweden's commitments under the UN Convention on the Rights of the Child.*

The philosophy and rationale behind the establishment of the Office of the Children's Ombudsman was to develop "child-oriented attitudes in society at large". It was recognised that:

*children and young people have difficulty in making themselves heard. Their interests in the community are often subordinated to those of adults. Their scope for participating in social debate and influencing their situation is very small. In order for juvenile rights and interests to be given attention, someone must speak on behalf of youth and look after their interests. Another requirement is for someone to enhance public awareness of young people's rights and to consider social development from their perspective (Swedish Institute, 1995:3).*

Thus, the aim of the work of the Children's Ombudsman has been to initiate and take part in public debate, develop opinion on priority issues and influence the community's attitudes towards children's and young people's lives.

Specifically, according to the Ombudsman herself, the role of the Children's Ombudsman is much broader than that, say, of the New South Wales Ombudsman, whose work is primarily complaints-based. It is the role of the Swedish Parliamentary Ombudsman to respond to individual complaints against decisions by public authorities. However, in Sweden the work of the Children's Ombudsman also involves:

- implementing the United Nations Convention on the Rights of the Child;
- reviewing and commenting on any legislation affecting children and proposing amendments that will bring Swedish law into line with Sweden's commitments under the United Nations Convention on the Rights of the Child;
- suggesting legislation that will affect children;
- commenting on economic and social policy affecting children;
- advising local governments, who administer children's and education services on the value and importance of the United Nations Convention on the Rights of the Child; and
- providing general telephone advice to members of the public.

The Children's Ombudsman may take on some individual cases to highlight particular deficiencies in government policy and practice.

Among the achievements of the Children's Ombudsman has been the successful lobbying for the incorporation of a number of articles of the United Nations Convention on the Rights of the Child into domestic legislation. However, in spite of this, she still believes that there is scope for even further improvement of children's status in Sweden. According to the Children's Ombudsman, Ms Louise Sylwander, there needs to be greater participation by children in decisions that affect them, as provided for in Article 12 of the United Nations Convention. As she has commented (Children's Ombudsman of Sweden, 1995:3):

*the children's perspective must be made a natural ingredient of all relevant new legislation.*

The Children's Ombudsman further considers that whilst Swedish law is generally "Convention friendly", actual practice and understanding of its articles and spirit remains limited. Thus, a major part of the Office's work is the dissemination of information about

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the Convention to the general public, professionals working with children, as well as legislators.

The Office of the Children's Ombudsman is administered through the Social Department, however, it is responsible to the whole of government. Once a year the Ombudsman must submit a report to the government which provides an account of how far she considers the United Nations Convention on the Rights of the Child has been complied with in Sweden during the year. The Report also contains views and proposals on which the Ombudsman considers the government should take an official line:

*All in all, the report can serve as a description of the status and development of the Child Convention in Sweden for one year to the next. At the same time, it forms the basis for the government's reports to the UN Committee on Children's Rights in Geneva, which has the task of monitoring how well the countries that have signed the Convention are living up to it (The Swedish Institute 1995:3).*

Apart from the Office of the Children's Ombudsman there are a number of other non-Government children's policy and advocacy based organisations in Sweden. The largest is the **Radda Barnen** or as it is known in English, Save the Children Sweden, which prior to 1993 carried out the work of the Children's Ombudsman. Davidson *et al* (1993:52) note that:

*Although Radda Barnen is a nongovernmental organisation, its role in providing a voice for children has been widely recognised and has been credited with providing inspiration for the Norwegian Commissioner for Children.*

Currently, Save the Children, Sweden, is undertaking advocacy, policy and legal work in relation to refugee children, children in conflict, abused children (physically, sexually, psychologically and emotionally) and children in the juvenile justice system. An officer is employed by Save the Children to specifically monitor the United Nations Convention on the Rights of the Child, to conduct public education on the Convention and to liaise with Members of Parliament and to monitor, review and suggest relevant legislation.

As the Committee Chair heard, in Sweden there is a special budget allocation for children. According to Save the Children, giving children such budgetary priority is very important for the proper recognition of children's rights.

Representatives of that organisation also considered that the position of Children's Ombudsman is significant as it gives children some voice in the "avenues of power". However, they also believed that the Ombudsman's power is ultimately limited because, as an agent of government, she is unable to question or openly criticise government policy.

### 2.3 DENMARK

Unlike Sweden and Norway, Denmark does not have a Children's Ombudsman. The idea was deliberated upon by the Government and subsequently rejected. Instead, a Children's Council was set up in 1987, comprising three Ministerial appointments and five members of non-Government organisations. The Children's Council has the same role as an Ombudsman in terms of advocacy and policy work for children.

An Inter-Ministerial Committee on Children, consisting of 15 Ministers, is also obliged to meet three-four times per year to discuss and deliberate on children's issues and the impact of their particular portfolios on children and families. It is chaired by the Ministry of Social Affairs, which also functions as the secretariat. The rationale for establishing the Council is explained by the Ministry of Social Affairs:

*The conditions for children and families are affected by many parts of social life without regard to borders between Statutes or between different disciplines. Denmark has chosen not to let only one ministry be the competent body for child and family affairs; instead several ministries are competent according to their respective fields of responsibility. Consequently, the Inter-Ministerial Committee on Children was set up in 1987 as an interdisciplinary body of cooperation counting 15 ministries which deal with matters directly relating to children and families. The main objective of the Committee is to create coherence and unity in areas relating to children and families, and to take initiatives across sectors to improve the living conditions for children and young persons while growing up (Ministry of Social Affairs, 1995:5).*

Of considerable significance is the government initiated children's census, which identifies spheres of need, and guides government in the allocation and resourcing of child-related areas. The census is conducted annually and counts the number of children in geographical areas in order to show where there is disadvantage and where children's services are most needed.

Ek and Olsson (1995:5) note that in Denmark there is a harmonisation of national law in accordance with the United Nations Convention on the Rights of the Child. Although the Convention is not incorporated in domestic law, they observe that it is used as a guide to the interpretation of domestic law and can be invoked in the National Courts.

### 2.4 NORWAY

Norway was the first country to create an Office of Children's Ombudsman or *Barneombud*. Established by an Act of Parliament in 1981, the duty of the Ombudsman is to:

*promote the interests of children vis a vis public and private authorities and to follow up the development of conditions under which children grow up (Torgersen, 1992).*

According to Davidson *et al* (1993:51):

*although the Ombudsman's office and budget are formally within the control of the Ministry for Children and Family Affairs, in reality, the office is completely autonomous and is free to undertake whatever action it thinks appropriate.*

The work of the Ombudsman is guided by an advisory panel of six persons with expertise in children's issues.

Davidson *et al* (1993:51-52) observe that:

*the personality of the individual Children's Ombudsman has played a major role in the operation of the office. The first Ombudsman, who was a psychologist, placed a strong emphasis on getting children to express their views and to be a part of the decision-making process. She also took great interest in using the Office for what she referred to as "bridge-building" among various organisations and administrative bodies on both national and local levels. Finally, she was especially influential on promoting legislative change, including laws to prohibit physical punishment of children, child-oriented safety regulations and laws supporting children's rights. The second Children's Ombudsman, a paediatrician, has placed his emphasis on outreach, including the establishment of a 24 hour toll-free telephone "hot line" for children. He has also increased the Ombudsman's contact with the media, often conducting television shows on issues relating to children and young people. While the Office responds to requests for assistance by individuals, the main interest of the current Ombudsman appears to be one of influencing public opinion about changes in public policy at all levels of government.*

The Office of the Ombudsman works by recommending legal or policy changes to central and local government and politicians; using the media; distributing information on children's rights; investigating and taking up individual cases; and raising issues of principle which arise from them. Rosenbaum and Newell (1991:45) argue:

*it has no power to take decisions itself or revoke or alter decisions taken by the authorities. In carrying out investigations it has a statutory right of access to children's institutions and otherwise confidential information and records. The only cases it cannot investigate are conflicts between children and their parents, and cases which have been taken to court.*

The authors further observe (1991:45) that the issues which have featured most prominently in the *Barneombud's* work can be divided into the following six areas:

- children in special circumstances - including child abuse, child protection, and children living in institutions such as hospitals and prisons;

- child care and leisure facilities - kindergartens and day nurseries, other kinds of pre-school care, youth clubs etc;
- schooling - use of school buildings, poor school transport, difficulties encountered by disabled children, exclusion procedures etc;
- cultural and consumer problems - including dangerous products, accident prevention at home and children's television;
- family circumstances - problems for children stemming from family financial, employment or housing circumstances, etc;
- urban and rural planning - planning of roads, housing developments, local facilities etc.

Olsson and Ek have observed that Norway has embraced the United Nations Convention into its domestic law and it can be invoked in the domestic courts. They argue (1995:5) that in terms of allocation of resources to children in Norway:

*there is a strong emphasis on the social sector, both nationally and internationally.  
There is also an annex to the national budget regarding children's expenditure.*

## 2.5 ENGLAND

England has a range of organisations that are involved in various aspects of children's advocacy. Among the non-Government organisations visited by the Committee Chair and Acting Director were:

- The National Children's Bureau;
- The Children's Rights Office; and
- The Children's Legal Centre.

Some Departments and Local Authorities are also engaged in some type of children's advocacy. Those visited by the Committee Chair and Acting Director were:

- The Department of Health, Children's Services; and
- Islington Local Council.

Within the British Parliament there is an **All Party Parliamentary Group for Children**. Comprising over 100 Members of Parliament and Peers, the aim of the All Party Group is to urge the Parliament to take up and debate children's issues. The All Party Group is serviced by the National Children's Bureau. Membership to the Committee is voluntary and anonymous. The Committee Chair and Acting Director who visited the Bureau heard

that whilst the establishment of the All Party Group is, ideologically, a significant step towards recognition of children's needs and interests at a Parliamentary level, in practice its powers are relatively limited. It is not a formal Standing Committee and therefore cannot make formal recommendations to Parliament about policy affecting children. It can merely raise issues and try to lobby or influence other Members of Parliament on children's matters. The Committee Chair was told that unlike All Party Groups in other countries, such as Sweden and Germany, it is not formally built into the Parliamentary system.

One of the most publicly active non-government child advocacy organisations is the **Children's Rights Office**. Established in 1992, under the title of the Children's Rights Development Unit, the Children's Rights Office was originally set up to promote awareness of the United Nations Convention on the Rights of the Child and to monitor the Convention in the United Kingdom. Funding for the Office is from the Calouste Gulbenkian Foundation. As one of its priorities, the Foundation has taken the United Nations Convention on the Rights of the Child 'protecting the dignity, equality and human rights' of children as a broad framework within which to initiate and support specific projects of benefit to children and young people.

In 1995 the Children's Rights Office's major tasks became to promote the United Nations Convention and to campaign for a Children's Commissioner. At the core of its philosophy is the notion that there be:

*a commitment to the basic human rights of the child (and a) recognition of the responsibility to promote the child's welfare (Lansdown, 1995:40).*

The **Children's Legal Centre** is another non-Government organisation that undertakes advocacy work for children and young people in England and Wales. Since 1995, the Centre has been based at the University of Essex, having been forced to move from London because of funding difficulties. It undertakes policy and educational work in relation to children's issues, as well as providing telephone advice to children and young people on a range of matters, including law and justice, education, health, care and protection and family law.

The **National Children's Bureau** was established in 1964 as an organisation concerned with advocacy and research relating to children. With a current staff of 90 it is the largest non-government organisation that deals with children's issues from a policy level. Sixty per cent of funding for the National Children's Bureau is from the government.

Many of the non-Government children's advocacy organisations in England rely on a combination of government or local government funding and foundation grants. The fact of government funding means that many of these organisations are not wholly autonomous.



Since there are no formal structures in place for children's advocacy, there is no established coordination between relevant agencies. Agencies that do advocate for children tend to do so in an individual, isolated way, which can make the task of influencing government policy on children's issues difficult and limited. At the same time however, these agencies, having no government ties, can actively scrutinise and publicly criticise government action or inaction.

## 2.6 UNITED STATES OF AMERICA

Few formal structures relating to children's advocacy exist at both a Federal and State level in the United States of America. Many commentators suggest that this can be attributed to the fact that the United States has not ratified the United Nations Convention on the Rights of the Child. It is further suggested that in recent times the United States, both federally and at a state level, has adopted a punitive or moralistic approach to children through, for example juvenile justice laws and welfare reform. For instance, in an open letter to President Clinton published in the *Washington Post* (November 3 1995), Children's Defense Fund President, Marion Wright Edelman wrote regarding the Welfare Reform Bill:

*As president, you have the opportunity and personal responsibility to protect children from unjust policies. It would be a moral and practical wrong for you to sign any welfare "reform" bill that will push millions of already poor children and families deeper into poverty, as both the Senate and House welfare bills will do .... It would be wrong to strip children of or weaken current ensured help for their daily survival and during economic recessions and natural disasters, as both the Senate and House bills will do. It would be wrong to exacerbate rather than alleviate the current shameful and epidemic child poverty that no decent, rich nation should tolerate for even one child.*

Although the Bill was eventually signed by President Clinton in August 1996, Edelman's letter had the effect of substantially delaying the process, thereby demonstrating a powerful form of advocacy.

Despite the lack of formal children's advocacy mechanisms at a government and congressional level, there are a wide range of non-government organisations in the United States that are concerned with children's issues and interests. Among those visited by the Committee Chair and Acting Director were the aforementioned Children's Defense Fund, the Child Welfare League of America, the American Bar Association Center on Children and the Law and Children's Rights Incorporated.

None of these organisations receive government funding. They rely on grants from foundations, the sale of publications, education and training fees and attorney fees. In the United States, the strong tradition of foundation grants has meant that such organisations

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can operate relatively successfully, without government funding. This has given them an independence to scrutinise government policy and law openly, and in the case of the Children's Rights Office, to take government welfare agencies to court and obtain declarations that require such agencies to perform their duties according to their legislative obligations.

The foremost child rights and advocacy organisation in the United States is the Children's Defense Fund. Established in 1973 the Children's Defense Fund:

*exists to provide a strong and effective voice for all the children of America, who cannot vote, lobby or speak out for themselves .... [Its] goal is to educate the nation about the needs of children and encourage preventative investment in children before they get sick, drop out of school, suffer family breakdown, or get into trouble. CDF is a private non-profit organisation supported by foundations, corporations, and individuals. CDF never has accepted government funds (Children's Defense Fund, undated:1).*

Over the years the Children's Defense Fund has established itself as a powerful lobbying force and has managed to influence Democrats and Republicans alike, on significant children's issues.

The American Bar Association Center on Children and the Law is also a strong children's advocacy organisation that works towards improving:

*the quality of life for children through advancements in law, justice and public policy (American Bar Association, undated:1).*

Founded in 1978 by the ABA Young Lawyers Division, the Center's areas of expertise include child abuse and neglect (including child sexual abuse and exploitation), child welfare, child protective services and related court system enhancement, foster care, family preservation, termination of parental rights, child support, child fatalities, parental substance abuse, child custody and visitation, and parental kidnapping. The Center also works with child welfare agencies to develop curricula and train attorneys and social workers and it also produces a wide range of publications for sale.

The Child Welfare League of America is a 75 year old association:

*devoted to improving life for abused, neglected, and otherwise vulnerable children and young people and their families. Member agencies provide a wide range of services, including kinship care and family foster care, adoption, residential group care, child day care, family preservation services, mental health services, and programs for pregnant and parenting teenagers. Other concerns of member agencies include cultural competency, housing and homelessness, pediatric AIDS and HIV, and the effects of alcohol and drug abuse on children and families (CWLA, 1994:6).*

Funding sources include foundations (Carnegie and Kaisse), membership, contracts for training and publications.

Although the Committee acknowledges the relative success and powerfulness of many of the non-government child advocacy organisations in the United States, it recognises that their funding sources and systems are significantly different from those in New South Wales, and have enormous impact on the independence of these organisations. Grants from foundations such as those provided for organisations in the United States do not exist at the same level in New South Wales. Non-government organisations here have tended to rely on some government funding, which can, for many, compromise their independent nature and limit their ability to speak out against any government action with which they disagree.

## 2.7 NEW ZEALAND

### 2.7.1 Commissioner for Children

A Commissioner for Children was established in New Zealand in 1989 under the *Children, Young Persons and Their Families Act 1989*. The Commissioner has a dual role: that of a traditional Ombudsman and as an advocate for the rights of children. Statutorily mandated, the duties of the Commissioner include:

- investigating, monitoring, reviewing and instituting initiatives relative to the *Children, Young Persons and Their Families Act 1989*;
- promoting and undertaking research;
- influencing policy development affecting children; and
- increasing public awareness of the needs of children and young people.

The powers of the Commissioner, according to the *Children, Young Persons and Their Families Act 1989*, are all “such powers as are reasonably necessary or expedient to enable the Commissioner to carry out the Commissioner’s functions”. Information provided to the Commissioner has the same legal privilege that applies to Court proceedings (Submission 55).

The Commissioner is specifically precluded from giving evidence in any Court or in any proceedings of a judicial nature in respect of anything coming to the Commissioner’s knowledge in the exercise of the Commissioner’s functions, and from investigating any decisions or actions of any Court. Other restrictions placed on the Commissioner include the requirement that the Commissioner must not “make any comment that is adverse to

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any person unless the person has been given an opportunity to be heard” (Section 414, cited in Submission 55).

The Act also sets up accountability mechanisms. The Commissioner must provide an Annual Report on his functions to the Minister of Social Welfare and a copy of the report is to be “laid before the House of Representatives”. The appointment of the Commissioner is by the Governor-General on the recommendation of the Minister, and the Commissioner may be removed from office by the Governor-General “for just cause or excuse” (Section 418, cited in Submission 55). Civil and criminal immunity does not exist in cases where the Commissioner acts in bad faith.

The Act makes the Minister of Social Welfare responsible to the Parliament for the financial management and reporting of the Office of the Commissioner. Funding for the Commissioner is from the Department of Social Welfare.

Davidson *et al* observe, (1993:50) that:

*although the Commissioner for Children is a separate office within the government, it has been criticised as being insufficiently autonomous and has been referred to as being a ‘toothless tiger’. In part, this allegation appears to be linked to the fact that the Commissioner’s office is funded by the Department of Social Welfare and reports to the Minister. Moreover, although the Commissioner can make recommendations to the Department of Social Welfare, he does not have the power to enforce those recommendations. Other alleged weaknesses are the lack of statutorily defined powers. For example, the Commissioner can only be present at a judicial hearing on a child-related matter at the judge’s discretion.*

The Commissioner himself acknowledged in his submission to the Inquiry that the funding process is unsatisfactory because he is dependent on the Department of Social Welfare for his funding, and yet is mandated to monitor and advise that Department. The Commissioner submitted to the Committee that the independence of the Office would be better served by being funded directly by Treasury, and reporting directly to Parliament rather than the Minister. In addition, he is concerned that the obligation that he enter into an annual agreement with the Minister on “outputs and performance standards” could enable the Minister to influence the Commissioner’s focus and priorities (Submission 55).

Indeed, the Committee notes that insufficient resourcing is an obstacle to the effective performance of the Commissioner’s duties. For instance, the current Commissioner suggests that his key function as a monitor of the *Children, Young Persons and Their Families Act 1989* could be compromised by the failure of the Government to adequately fund his evaluation (Evidence - 3 May, 1996). The budgetary problems of the Office of the Commissioner for Children are such that it operated at a deficit of close to NZ\$300,000 in 1995 (Office of the Commissioner for Children, 1995:40).

The Commissioner's Annual Reports reveal that the Office's role as a complaints service was important. There were some 350 complaints registered in the 1994/5 fiscal year, with the subject of complaints being, in order of frequency: the New Zealand Children and Young Persons Service; education related issues; custody and access related issues; police and courts related issues; and health related issues. In the same year there were 1264 inquiries, most of which concerned care and protection, education, children's rights and youth justice.

Other activities of the Office of the Commissioner for Children included promoting public awareness, such as through the *Student Rights at School Information Kit* and a *Report on Investigation into complaints of Bullying at St Andrew's College, Christchurch*. The latter report contained recommendations on anti-violence policies which were implemented and adopted by many schools. Reports have also been prepared on such issues as Children and Family Violence, Child Offenders, and Care and Protection Outcomes (Office of the Commissioner for Children, 1995).

The Commissioner makes submissions on proposed legislation on child-related issues, such as the *Domestic Violence Bill* and legislation on adoption policy reform. In the case of the *Domestic Violence Bill*, the Commissioner's input resulted in changes to the legislation. The Commissioner also has become involved in offering advice to other agencies. For instance, the Family and Youth Courts frequently request information and advice on various issues, and the Commissioner has a protocol with the New Zealand Children and Young Persons Service to review all deaths of children of families who have had involvement with the Department. His role according to the protocol is to approve the Review Team and the terms of reference of the review, and to review the resulting Report.

The functions of the Commissioner are carried out by a staff of nine: the Commissioner, three administrative staff (personal assistant, an office manager, a finance manager), two researchers, two advisory officers and a librarian (Office of the Commissioner for Children, 1995:50). The staff structure of the Office is currently under review.

- **Relationship with other Government Bodies**

The Commissioner's interaction with other Government agencies involved in children's and youth affairs is on an informal basis. In the past, the Office of the Commissioner has collaborated with staff in the Department of Social Welfare at conferences and departmental workshops, and meets regularly with Managers of the New Zealand Children and Young Persons Service, the Director General and the Minister. The Office of the Commissioner has been a major supporter for the statutory Care and Protection Resource Panels (Submission 55).

His work has also brought him into contact with the Education Department during his investigations into school related complaints, and the production of a *Students' Rights at School Kit*.

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- **Relationship with Non-Government Organisations**

Apart from inviting and accepting submissions, there is no obligation on the Commissioner to co-operate with other organisations which are interested in children's issues. However, the current Commissioner has emphasised the importance of maintaining links with interest groups and has presented papers at seminars and workshops, and received representations from more than 450 state and community agencies (Submission 55).

The Commissioner values highly the exchange of information on research, policy and practice, and collaboration on projects made possible through regular contact with NGOs, and notes that it adds to the quality of the Commissioner's advice (Submission 55).

## 2.8 AUSTRALIAN MODELS OF CHILDREN'S ADVOCACY

### 2.8.1 THE AUSTRALIAN CAPITAL TERRITORY

- **Office of the Community Advocate**

During its Inquiry, the Committee heard evidence from the Community Advocate of the Australian Capital Territory.

The ACT's Community Advocate, established under the *Community Advocate Act 1991*, serves as an Advocate both for children and for disabled people. The Community Advocate's functions are set out in the *Community Advocate Act*, the *Children's Services Act 1986*, the *Guardianship and Management of Property Act 1991* and the *Mental Health (Treatment and Care) Act 1994*. This report will deal solely with the Community Advocate's activities as they relate to children.

The duties of the Community Advocate include:

- promoting the interests and rights of children with courts and tribunals;
- promoting the protection of children from abuse and exploitation;
- encouraging the development of programs that benefit children and their families;
- undertaking community education to improve understanding of the rights and needs of children;
- advocating on behalf of children with government and other agencies providing services to children; and

- monitoring, reviewing and overseeing legislation and law reform where it relates to children.

One of the Advocate's key functions is in relation to care and protection orders. The Advocate takes part in the decision-making process before the matter is taken to the Children's Court. The Advocate has the power to access any relevant files, investigate any complaint, appear before magistrates and judges in the courts, and make separate applications if the Advocate is unhappy with the decision by the Director of the Family Services Branch. The Advocate is charged with reviewing the orders every year and making the application for the order to be continued or changed. The Office of the Community Advocate also reviews the annual departmental reports on children in care, and can raise questions in relation to the department's care of the child (Evidence - 19 April, 1996).

The Office of the Community Advocate has a staff of ten, three of which are solely involved with advocating for children. The current Community Advocate indicated to the Committee that she felt that the Office was insufficiently resourced but that this was a perennial problem in various budget areas (Evidence - 19 April, 1996).

The ACT's Community Advocate has statutory independence under the Community Advocate Act, so does not labour under the contradictions inherent where Advocates are part of the Departments they are monitoring. The Community Advocate informed the Committee that she has not at any time felt constrained when making public statements critical of government action, although she did always give the subject of criticism an opportunity to answer the criticism before it is made public. The only constraint was the ever-present risk that governments could cut the Office's budget in retaliation for critical public statements, but this has not occurred to date (Evidence - 19 April, 1996).

## 2.8.2 QUEENSLAND

- **The Youth Advocacy Centre**

The Committee received evidence from the Co-ordinator of the Youth Advocacy Centre in Queensland. The Youth Advocacy Centre was established in Brisbane in 1981. In the preceding years, Justice for Juveniles, a non-government organisation operating in Brisbane in the mid-1970s, became increasingly concerned that young people lacked adequate legal representation and that, to some extent as a result of this, large numbers of youths were being incarcerated in detention centres, sometimes without having committed a criminal offence.

In 1981, Justice for Juveniles applied for, and received, a seeding grant from the Legal Aid Office and with this was able to set up the Youth Advocacy Centre. From its beginnings as a Community Legal Centre, the Youth Advocacy Centre has broadened its objectives

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and activities over the last 15 years to include a range of social welfare services to children and young people.

The goals of the Centre were described by its Co-ordinator as:

- *to enhance the rights of young people in the juvenile justice system and to work for changes that will make the system more responsive to their needs;*
- *to assist families and communities to assist young people at risk;*
- *to educate the community about young people and the law; and*
- *to press for policy and law reforms (Evidence - 19 April, 1996).*

In working towards these objectives, the Centre seeks to:

*provide legal representation to children in Court and at tribunals, to give them a range of legal advice and legal information services, [and to] be involved in legal education policy and law reform (Evidence - 19 April, 1996).*

The Youth Advocacy Centre's approach is holistic. In recognition that a youth's legal problems usually do not exist in isolation, social workers and solicitors work together to assist with the youths' problems. Social workers at the Centre provide counselling, family mediation, and help find accommodation where necessary.

Solicitors at the Youth Advocacy Centre take their instructions from the child, whilst ensuring that the child is given advice on what the consequences of their decision will be. This is a strategy which the Centre acknowledges to be controversial, however it argues that this approach gives the children confidence and trust in the Centre and its staff (Evidence - 19 April, 1996).

Aside from assisting in individual cases, the Advocacy Centre also seeks involvement in policy and law reform in Queensland. This entails monitoring existing policy and laws regarding children, lobbying to amend or repeal unsatisfactory laws, analysing proposed legislation and making submissions.

The bulk of the Centre's funding is through the Commonwealth's Legal Aid Funding program. The Queensland Department of Families, Youth and Community Care provides funding for two full-time case work social workers. Other staff include two full-time solicitors and a community legal education officer. With a staff of eight, the Youth Advocacy Centre provided assistance to more than one thousand young people in the last year, and fielded inquiries from many more.



As an incorporated association under the *Queensland Incorporated Associations Act*, the Centre is obliged to have a Management Committee. The Committee is made up of professionals from the legal and social welfare sectors, as well as community representatives, and meets monthly and makes decisions on the running of the Centre. Whilst in the past there were young people on the Management Committee, it was felt that the young people were unable to contribute meaningfully due to lack of experience, lack of preparation and difficulties with the language of a professionally run committee. Subsequently, a Consumer Consultative Committee was set up, members of which were young people, to allow youth input into the operation of the Centre. This was also found to be unsuccessful as members of the committee moved, or were otherwise unable to attend meetings. Currently, young people's input into the Centre's services involves staff consulting with the Centre's service users prior to the annual strategic plan reviewing and evaluating the Centre's performance (Evidence - 19 April, 1996).

The Youth Advocacy Centre operates out of Brisbane, but offers phone advice to young people from all over Queensland. Callers from outside of Brisbane are put into contact with services in their area. The Centre has a good working relationship with other providers of service to young people in Queensland, including the Youth Legal Aid Unit of the Legal Aid Office, and the Youth Bureau of the Department of Families, Youth and Community Care. One of the Centre's social workers is funded by the Youth Bureau. The Youth Advocacy Centre is a member of the Youth Affairs Network of Queensland.

### 2.8.3 SOUTH AUSTRALIA

- Children's Interests Bureau

The idea of a Children's Interest Bureau was first suggested by Professor Leon Mann following his Inquiry into welfare services delivery in South Australia in 1978. The Children's Interests Bureau (CIB) was established in 1983 with bi-partisan support.

The CIB was set up as a separate unit within the Department for Family and Community Services and reported directly to the Minister. It initially had a staff of two: the executive officer and a secretary. A project officer joined the unit in 1987 and the Advocacy Unit, which had six staff, was added the following year. The Welfare Advisory Committee was established under the Act to provide the Bureau with consultative, supportive and advisory services. This Advisory Committee also reports to the Minister.

The functions of the Bureau, as specified in section 26 of the *Family and Community Services Act*, are:

- (a) *to increase public awareness of the rights of children, and of matters relating to the welfare of children, by the dissemination of information, or by any other means the Bureau thinks appropriate;*

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- (b) *to carry out research or conduct inquiries into such matters affecting the welfare of children as the Bureau thinks fit or the Minister directs;*
- (c) *to develop within the Department such services for the promotion of the welfare of children as the Minister directs;*
- (ca) *to provide the Minister, on request, with independent and objective advice on the rights and interests of any child who is, has been, or is likely to be, the subject of proceedings under any Act dealing with the care and protection of children; and*
- (d) *to monitor, review and evaluate the policies of the Department in relation to children.*

Between 1988 and 1994 an important role for the CIB was as an advocate for children within the state care system, an amendment to the functions set out in the original Act. Under this system, it was mandatory for the Bureau to provide advice on all care and protection cases. Until the role was removed by legislative changes in 1993, the CIB advocated for approximately 2500 children through involvement in the pre-court decision making processes.

The Committee was told that, in practice, the Bureau's activities have not been restricted to welfare issues as Section 26 would suggest, but that it has pursued all children's rights issues. As a result, the Bureau has been involved in a wide range of areas, including health, care and protection, family law, environmental planning and reproductive technology, with the CIB advocating both in general terms and for individuals (Briefing - 30 November, 1995).

The CIB's role in law reform has involved strong lobbying:

*in regard to family law, children's evidence, consent to medical and dental treatment, state child welfare law, and juvenile justice* (Briefing - 30 November, 1995).

It has also campaigned for policy changes, including the abolition of corporal punishment in schools, the rights of children in employment and the issue of female genital mutilation.

In raising public awareness of children's rights, the CIB has undertaken public speaking, hosting seminars, maintaining a specialist library, and publishing newsletters and issues papers. It has sought to keep children's interests and rights on the public agenda through media statements, submissions and seminars.

South Australia has a number of organisations, both Government and non-Government, providing services and advice to young people with which the CIB collaborates. The Bureau is represented on a large number of the boards and committees of these bodies,

including: the Children's Access Advisory Service, the Child Protection Council, the South Australian Children's and Young People Legal Network, Kids Helpline, and the Child Health Ethics Committee (Briefing - 30 November, 1995 and CIB, 1993-4:13 - 16).

The Committee understands that, while the Children's Interests Bureau is an effective children's advocacy body, it is not without problems. As a consequence of the structure within which the Bureau was established, the independence of the Bureau is questionable. Although it was created to *monitor* the Department for Family and Community Services, the CIB was established *within* that Department, and *relies* on the Department for funding to enable the monitoring to be carried out. In addition, it reports to the Minister, who is also responsible for the Department that is being monitored.

The Bureau itself admits that, though it has made every attempt to work independently in its oversight of the Department "any claim we might make to independence is completely illusory" (Castell-McGregor Briefing - 30 November, 1995). The CIB's former Director explained to the Committee that she felt that this lack of complete independence served as a constraint to the Bureau (Castell-McGregor Briefing - 30 November, 1995). Others have suggested, however, that the Bureau's direct access to the Minister has increased its impact on policy formation within the Department (Ramsey Briefing - 30 November, 1995).

A further problem that has arisen is that the legal powers of the Bureau are not defined in relation to investigating individual complaints about government departments. In practice, however, the Bureau has interpreted its function of "conducting inquiries" very broadly, and has largely found Government bodies to be cooperative.

Recent changes to the Bureau's position within the Department have further entrenched it as a division of the Department rather than a separate unit overseeing Departmental policy.

In 1993, changes were made to the *Family and Community Services Act*, which involved an alteration to the functions of the Children's Interest Bureau. Most importantly, the CIB's formal role as an advocate for children in care was removed. The Bureau still provides independent advice on individual cases when requested, as set out in the Act.

In July 1995, the Bureau was amalgamated with the Domestic Violence Unit and the Office for Families to form the Office for Families and Children, a division within the Department of Family and Community Services. The division has maintained its direct access to the Minister. The aim of amalgamating the units, according to the South Australian Government, was to improve co-ordination in policy advice affecting children and families in all areas of Government policy (Castell-McGregor, 1995:5).

Within this new structure, the Children's Interests Bureau has taken a "whole of government" approach, whereby the Bureau has sought to influence a range of government

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departments whose policies impact on children, including police, education, health and justice. In particular, the Bureau has been able to impact on policy making through its involvement in family impact statements. All Government Departments in South Australia are required to prepare family impact statements when developing policy, and the Children's Interests Bureau is routinely asked to comment on those that affect children.

There has been substantial criticism of the Government's decision to amalgamate the CIB into the Office for Children and Families. The Bureau's former Director, Ms Castell-McGregor, felt that the changes would serve to impede the Bureau's activities and to reduce its independence and effectiveness. In briefing the Committee, Ms Castell-McGregor stated that she felt that subsuming the Bureau into a welfare department structure would undermine its ability to act independently (Castell-McGregor Briefing - 30 November, 1995). She felt unable to continue in her position as Director under the new circumstances, and consequently resigned from the Bureau.

## CHAPTER THREE

## CARE AND PROTECTION

## 3.1 INTRODUCTION

Evidence to the Committee has revealed that children who have come into contact with the care and protection system are the most vulnerable and powerless members of the community. In her evidence to the Committee, Acting Executive Director of the Child Protection Council, Ms Julie Sinclair (Evidence - 9 November, 1995), stated that:

*research tells us that children who are likely to be in the system, particularly the care system and children with particular difficulties who may be in other systems, tend to be the most vulnerable and silent group. Their behaviour and attitudes are such that they are likely to try to hide their hurt from adults.*

The Committee's evidence suggests that child abuse has been increasing over the last few years. As indicated earlier, Child Advocate, Dr Ferry Grunseit commented in evidence to the Committee that the notification rate of child abuse and neglect has increased by 56% over the last three years and now exceeds 34,000 annually. Grunseit further told the Committee that the rate of re-notification is over 50%. This means that children are being re-abused, with some coming before the Department of Community Services several times within a short period.

In spite of this, the Committee heard repeatedly throughout the Inquiry of the systematic stripping of resources of the Department of Community Services by governments, to the point where critical services have been abolished and staff are considerably overworked and demoralised.

The circumstances that brought children into contact with the care and protection system and, for many, their experiences in that system, have left many both physically and emotionally damaged. The Committee is aware that whilst a number of children "survive" the process of being placed in care, a significant proportion of others do not complete their education, become homeless, engage in drug and alcohol abuse, develop serious emotional problems and may even become suicidal, or become involved in the juvenile justice and later, adult criminal justice systems. As the Committee was told during the course of its 1992 Inquiry into Juvenile Justice in New South Wales, this is especially the case for wards of the state. It appears that some four years later, this is still the case.

The submission from the Community Services Commission observes that:

*state wards and children in care appear to make up a significant proportion of the population of young people involved in the juvenile justice system. Information available to the Commission suggests that a lack of appropriate support and advocacy for children in the care of the Department of Community Services is contributing to their drift into juvenile justice (Submission 37).*

Significantly, the Community Services Commission (the functions of which will be discussed later) is currently undertaking a research project to look at the issue of children in care coming into contact with the juvenile justice system.

Over the years a number of reports and books have documented the situation of young people involved in the care system. Among those are the *Report of the New South Wales Child Sexual Assault Task Force* (1985), the *Girls at Risk Report*, prepared by the NSW Women's Coordination Unit (1986), the *Usher Report* (1992), report commissioned by the NSW Child Protection Council, *Systems Abuse: Problems and Solutions* (Cashmore *et al*, 1994), Cashmore and Paxman's report, *Longitudinal Studies of Wards Leaving Care* (1996) and Owen's book, *Every Childhood Lasts a Lifetime: Personal Stories From the Frontline of Family Breakdown* (1996). All paint a grim picture for many children involved in the care and protection system. The Committee anticipates that the findings of the Stolen Children Inquiry will also document many disturbing instances of abuse and deprivation of Aboriginal children in care.

The revelations of the Wood Royal Commission have dramatically highlighted the vulnerability of many children and young people involved in the care and protection system. Evidence to the Royal Commission has revealed that many children who were in the care of the Department of Community Services were subject to abuse. A number of these incidents occurred many years ago and that they are only now public confirms the evidence to this Committee regarding the vulnerability and silence of so many "damaged" children. Moreover, further evidence to the Royal Commission from senior members of other government departments has revealed a general ignorance by senior bureaucrats to issues relating to abused children.

Despite all of the reports dating back to the 1980s, the deaths of 19 children who had been notified to the Department of Community Services as being at risk of abuse or neglect provides what the Council for Intellectual Disability considers:

*a glaring example of the failure to provide appropriate and effective advocacy (Submission 14).*

Since the revelations of these deaths, a Child Death Review Team has been established by the Government. The team includes representatives from the Department of Community Services, the Child Protection Council, the Police Service, the Departments of Education,

Health and Attorney General, and the State Coroners Office. Experts in the fields of paediatrics, law and social work are also included. This review mechanism will ensure all deaths of children in New South Wales occurring in suspicious circumstances are examined to enable the identification of those deaths that are due to child abuse or neglect. A register of all child deaths is to be maintained, allowing an analysis of non-accidental child deaths. The Team will provide advice to government on ways to prevent or reduce child deaths. The Committee welcomes the establishment of this Team, particularly its proactive role in prevention. Recommendations concerning the Team are contained in Chapter Eight.

The Committee notes that the *Community Welfare Act 1987* and the *Children (Care and Protection) Act 1987* are currently being reviewed. A number of issues canvassed in this Inquiry will also be investigated in the review. The Committee hopes that the findings and recommendations in this Report will assist the review process and outcomes.

The following discussion will examine issues relevant to children's advocacy and the care and protection system. It will first outline the system of processing of a child through the care and protection system and then examine the substitute care system itself. The Chapter will also look at the issue of leaving care. Finally, the discussion will examine whether the rights and needs of children in the care and protection system are being effectively advocated for and how the system might be improved in this regard.

**At the outset the Committee strongly urges the New South Wales Government to ensure that child protection and the care and protection system are a budget priority and that adequate resources are provided to the care system and to family support services to ensure that each child is able to reach his/her full potential.**

### 3.2 CARE AND PROTECTION - THE PROCESS

The Department of Community Services is responsible for children who are involved in the care and protection system. Children and young people come to the attention of the Department if there has been a notification that a child is "in need of care". The governing legislation is the *Children (Care and Protection) Act 1987* which specifically provides that the protection of the child is of paramount concern. Consequently, any orders or action taken by the Court should be made with this as a major priority.

Section 10 of the *Children (Care and Protection) Act 1987* defines the circumstances of a child who is in need of care in the following way:

- (1) (a) *adequate provision is not being made, or is likely not to be made, for the child's care;*
- (b) *the child is being, or is likely to be, abused; or*

- (c) *there is a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.*
- (2) *Without limiting the generality of subsection (1), a child who is residing in a non-Government children's home is in need of care:*
  - (a) *if the child has been residing in the home for a period of 12 months or more; and*
  - (b) *if there has been no substantial contact during that period between the child and:*
    - (i) *any of the child's parents; or*
    - (ii) *any person in whose care the child was immediately before the child began residing in the home.*
- (3) *Without limiting the generality of subsection (1), a child is in need of care if:*
  - (a) *the child is under the age of 6 months; and*
  - (b) *the child is in the care of a person who is fostering the child in contravention of section 42; and*
  - (c) *it appears that the person may continue to foster the child in contravention of that section.*

The Act defines "abuse in relation to a child" as to:

- (a) *assault (including sexual assault) the child; or*
- (b) *ill-treat the child; or*
- (c) *expose or subject the child to behaviour that psychologically harms the child, whether or not, in any case with the consent of the child.*

The *Children (Care and Protection) Act* also provides that children under 16 years of age, who frequent a public place, and it is reasonably suspected that the child lives in, or frequents, the public place and is not under the supervision or control of a responsible adult, may be removed from that place by a police officer or district officer.

Section 22 (1) of the Act provides that any person who believes, on reasonable grounds, that a child who is under the age of 16 years has been, or is in danger of being, abused, or is in need of care, may notify the Department of that belief either orally or in writing. Certain categories of people, including doctors and teachers, have a mandatory obligation to report such a belief of abuse to the Department.



When the Department is notified of the suspected abuse or neglect of a child, the Director-General is required under the Act to promptly call an investigation into the matter. However, the Committee is aware that a lack of resources has resulted in the Department categorising these cases, and only treating the most serious as formal notifications requiring prompt investigation.

The Committee is concerned that declining resources and an increasing community awareness of and focus on child sexual abuse may have resulted in other groups of children in need of assistance being overlooked. These groups include both children at risk of physical abuse or neglect in the community, and children who are in substitute care but whose needs are not being adequately met within this system. The Committee notes that most children in care have been placed there because families have difficulties in providing adequate care for their children, and not as a result of sexual abuse.

If the child is believed to have been abused or is in danger of being abused, or is in need of care, the Department may make an application for the child to be removed from the home.

Section 59 of the *Children (Care and Protection) Act* allows a district or police officer to remove a child where there is a court order. If the child is in need of care (i.e. in immediate danger of abuse), the officers may remove a child without a warrant. If there are reasonable grounds that the child is in need of care, the child may be removed with a warrant. A warrant may also be issued to enter and search premises for any child suspected to be in need of care (Redfern Legal Centre, 1995:244).

Should a district officer or police officer believe that a child is in immediate danger of abuse they may remove the child from the home. The Department of Community Services then has three days in which to make a care application to the court in regard to such a child, failing which, the child is returned to the home.

Where the District officer or police officer removes a child from his/her home, that child cannot be placed in a juvenile remand or custodial centre. The child may be placed in a designated Department of Community Services home, with a friend or relative or with a foster family.

### 3.3 COURT PROCEEDINGS

Children who have been abused or neglected are often the subject of care and protection proceedings in the Children's Court. Since 1987 and the introduction of the package of community welfare legislation, care and protection proceedings have been separate from juvenile justice matters. Prior to this time, abused or neglected children were "charged" with being neglected or uncontrollable and the outcomes of proceedings could often be

punitive in nature. This was particularly the case when a young person absconded from a Departmental institution and was subsequently dealt with as a young offender.

With the introduction of the *Children (Care and Protection) Act* in 1987, there was an attempt to switch the approach from "punishing" abused or neglected children to improving their "care and protection". This new approach had as its overriding consideration the protection of the child.

Through a number of provisions the Act sought to recognise that children come into the care and protection system through no fault of their own, and that they should not be dealt with as if they had committed an offence. Part 5 of the Act sets out a number of objects in relation to children in need of care. Section 55 provides that:

*The objects of this Part are to ensure that children in need of care are provided with assistance and supportive services, the provision of that assistance and those services being based on the premises that:*

- (a) *the welfare and interests of children are to be given paramount consideration;*
- (b) *children are entitled to special protection and to opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;*
- (c) *children, for the full and harmonious development of their personalities, need love and understanding and, towards that end, should, wherever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral and material security and, in the case of children of tender years, should not, except in exceptional circumstances, be separated from their parents;*
- (d) *continuing contact between children and their parents should be encouraged in situations where, pursuant to legal proceedings, children have been separated from their parents;*
- (e) *children should be protected against all forms of neglect, cruelty and exploitation;*
- (f) *responsibility for the welfare of children belongs primarily to their parents, but if not fulfilled devolves upon the community; and*

- (g) *except in exceptional circumstances or pursuant to legal proceedings, there should be no interruption of relationships between children and their parents contrary to the wishes of children and their parents.*

Whilst this provision represented a considerable change in the way abused and neglected children were to be treated and considered, evidence to this Inquiry shows that its intentions are far from being fulfilled.

### 3.3.1 Conduct of Proceedings

The actual conduct of care and protection matters has been described to the Committee as "woefully inadequate". The submission from Burnside identified endemic delays and procedures which are not child-focussed. Issues relating to the conduct of proceedings in which children who have been abused are witnesses for the prosecution, and family court proceedings, will be discussed in Chapter Four.

In relation to care proceedings the Committee received considerable submissions and testimony regarding the issue of representation of children. The Committee understands that the role of a solicitor representing a child who is the subject of a care application, is to represent that child's wishes. Nevertheless, the majority of information received was critical of the current system of advocacy for children in the care system, seeing it as largely court-based, ad hoc, with children often represented by solicitors at court who may have little expertise in care matters, limited understanding of the broad range of other children's issues and limited ability and skills to communicate effectively with children.

Representation for children involved in care proceedings is usually provided by a duty solicitor. When a child is too young to give instructions the court may appoint a guardian ad litem (discussed further below) to instruct the solicitor on the child's behalf. Solicitors appearing for children in these proceedings are usually drawn from the Legal Aid Commission's duty solicitor scheme. Community Legal Centre solicitors tend to provide a more specialist ongoing advocacy role for children in care proceedings. Although solicitors from Aboriginal Legal Services may also act for children in care proceedings, those services have few solicitors with expertise in children's matters (Submission 37).

*The Systems Abuse Report (1994)* clearly identified the problems associated with the representation of children who are involved in care proceedings. That report found that one of the causes of systems abuse in care and protection (i.e. the harm done to children in the context of policies or programmes that are designed to provide care and protection) is the "lack of voice for children" (Cashmore *et al*, 1994:5).

According to the Report's findings (1994:98):

*there is no machinery to ensure that children's views are heard. Even if it is offered, few children take the opportunity to express their views in court and many do not even*

*understand what has happened. This is of particular concern because evidence shows that children's satisfaction with the outcome depends upon their belief that they had a say in the decision (Cashmore and Bussey 1992), just as the best predictor of whether foster care works or not, for example, whether children felt they had a say in who they went to (Melton, 1992).*

Among the problems of representation for children detailed in the *Systems Abuse Report* were:

- *No right to legal representation at court*
- *No out of court consultation*
- *Restricted time to consult children before court*
- *Lack of continuity*
- *Lack of legal services in institutions*
- *No specialist legal services in rural areas*
- *Court-based only - no advocacy services*
- *Limited accountability*

Specifically, that report found that there are no clear guidelines for solicitors as to the “role of a child’s representative in either the Children’s Court or Family Court”. The consequence is that:

*children’s wishes are sometimes not even solicited. If they are, the attention they receive depends upon the approach of the individual worker. For example, in care matters before the Children’s Court, it is up to the individual solicitor representing the child whether or not the child’s view are put before the court (Cashmore et al, 1994:59).*

The submission from Barnardos (Submission 31) also dealt at length with the issue of solicitors advocating for children coming before the Children’s Court. Among their concerns with the current system are that lawyers and advocates only see a “snapshot” view of the children and do not necessarily see the child in a social context. Moreover, they stated that often questions are asked of children who do not understand what they are asking and often the answers are not taken in context. The submission provides the following example to illustrate this:

*A solicitor phoned a 7 year old girl at 7.30 in the evening prior to a court hearing. The child had, at this stage, been asleep and the carers had to get her out of bed to take the phone call. The lawyer spoke to her approximately 2-3 minutes, asking her the question “Do you want to live with mummy?” The child replied “yes” but was referring to the foster mother, not the mother whom she calls by her first name .... In court, the lawyer therefore indicated that the child wanted to go to her birth family, which was incorrect (Submission 31).*

Barnardos explained to the Committee that:

*As can be seen by the previous case study sometimes children are talked to on the phone, rather than interviewed, which is very inappropriate for children, particularly those in the younger age group who find talking on the phone a trial, often they do not know what has been said, often saying yes to any questions asked whether appropriate or not. Children are also seen at courts often in front of or nearby their birth family which can be intimidating. Many of the courts do not have any interview facilities and everybody is in one space which can be very distressing. Courts tend not to be user friendly (Submission 31).*

The Youth Justice Coalition identified the need for a more broad-based advocacy system for children in care and not merely one that is court-based. According to their submission:

*there is a need for independent advocacy for young people in care. Advocacy ... not only provides an avenue for action being taken to improve the individual situation of a client but acts as an important accountability mechanism to ensure that the government is fulfilling its responsibilities (Submission 34).*

The Committee understands that even if the child has a solicitor representing his or her wishes, that relationship may not satisfy all the needs of a child involved in care proceedings. A social worker is employed as part of the Legal Aid Commission's Children's Legal Service at Cobham Children's Court and meets every child who comes through the court on a care and protection matter. In some cases, the social worker is able to provide follow-up support and ensure that a placement is found that is suitable to the child (Robinson Evidence - 22 April 1996). However, the Committee understands that the social worker sees a considerable number of children and young people which may compromise the level of service a child receives. Being based at Cobham Children's Court only blatantly disadvantages those children appearing at other Children's Courts who may require the assistance of the social worker.

The Manager of the Family and Children section of the Legal Aid Commission recommended to the Committee that a system of advocates or youth support workers be established to enable a person other than the Department of Community Services' District Officer to maintain a nexus between the child and the child's lawyer (Evidence - 22 April, 1996). In their submission to the Committee, Burnside also recommended the creation of a Court Support Scheme, with youth workers assisting young people to liaise with Duty Solicitors. They also supported the appointment of appropriately trained Aboriginal support personnel to all Children's Courts where Aboriginal juveniles appear (Submission 23).

In Chapter Four, the Committee recommends the establishment of a Children's Section within the Legal Aid Commission. This Section should:

- include specialist solicitors for care and protection matters;
- establish, coordinate and monitor a children's duty solicitor and social work scheme, as currently operates at Cobham Children's Court, for all Children's Courts throughout New South Wales; and
- establish, coordinate and monitor a scheme whereby children's solicitors and social workers travel on circuit to country areas where there is no specialist Children's Court or specialist children's solicitor.

The Committee believes that the implementation of these recommendations would substantially improve the experience of children in care and protection proceedings throughout New South Wales.

The Committee also recognises that if the Department of Community Services' network of District Officers was appropriately resourced to provide sufficient numbers of officers in both rural and urban areas, these Officers could assist children in care and protection proceedings. The Committee recognises that solicitors are often performing a social work role for children they represent, and greater support could be provided by the Department of Community Services. This particularly applies to rural areas, where there are no specialist Children's Courts. Practical difficulties exist in providing additional social work resources for a court which sits as a Children's Court only intermittently.

### 3.3.2 Guardians Ad Litem

As one possible means of assisting a child in instructing his or her solicitor, the Committee received testimony regarding guardians ad litem. Section 66 (1) of the New South Wales *Children (Care and Protection) Act 1987* makes provision for the Children's Court to appoint a guardian ad litem to represent the interests and views of any child who appears before the court. A guardian ad litem puts matters to a solicitor that he or she considers is in the best interests of the child. According to the submission of the Community Services Commission:

*Despite a campaign by the Association of Child Welfare Agencies (ACWA) some years ago, no organisation or department has allocated responsibility for the establishment or program for guardian ad litem. As a result it is a rarely used provision (Submission 37).*

A number of witnesses before the Committee and a range of submissions were not supportive of the guardian ad litem concept. For instance, the National Children's and Youth Law Centre does not support this best interests model, believing the role of the child's advocate or representative should be to put to the decision maker the child's wishes and preferences (Submission 3). SNYPIC were also critical of the guardian ad litem concept.

In his evidence Andrew O'Brien commented:

*we see there is a need for [guardians ad litem] in extreme circumstances where a child or young person does not want to or cannot articulate any decision or view, but we would say for them not to be generally used .... the guardian also has to decide what is in my best interests and that may be contrary to what my view is and that is just continuing the disempowerment (Evidence - 19 April, 1996).*

SNYPIC contended that in any care proceedings, it is for the court to decide what is in the best interests of the child, not a guardian ad litem.

Barnados also rejects the guardian ad litem proposal, suggesting the possible role they would play is unclear as there are currently a number of people in Court working towards the best interests of the child. They recommend improved casework standards rather than duplication (Submission 31). Child specialist solicitor Ms Leonie Miller concurred with this view and agreed that if the relationship between the solicitor and the child is effective for the child, then there is no need to add another layer, like a guardian ad litem (Evidence - 22 April, 1996).

The National Children's and Youth Law Centre notes it is possible to have one person giving the decision-maker an independent view as to the child's best interests and have an advocate arguing for the child's wishes and preferences. In child protection matters in England and Wales, an independent social worker is appointed as a guardian ad litem, and if the guardian ad litem's view does not coincide with the child's wishes a solicitor is appointed to represent the child's wishes (Submission 3).

The Committee believes that the solicitor's duty to convey the child's wishes, and assist in the court determining the child's best interests, should not be in conflict. Ms Miller suggested that in difficult cases, where the child's wish, as expressed by their solicitor, may appear to conflict with their best interests, open and effective communication from both sides is vital:

*If [the magistrate] has gone through the process of thinking carefully and explaining it to the child and allowing her to return to the court if she wishes to place her views further before the court, I find that most children can live with that [decision] (Evidence - 22 April, 1996).*

### **3.3.3 Shared Guardianship and Alternatives to Court Proceedings**

The Community Services Commission believes a more fundamental question should be asked regarding the desirability of a major shift from a court process to a panel/tribunal system determining the care of children, similar to the Guardianship Board (Submission

37). Burnside also supports the establishment of specialist child protection tribunals (Submission 23).

The Guardianship Board, discussed further in Chapter Seven, functions as an independent tribunal, established under the *Guardianship Act 1989*. Under that Act, the Board has a range of powers of guardianship, as follows:

- limited guardianship (with defined powers and scope for specific directions to a guardian);
- plenary guardianship; or
- temporary, interim, short or long term orders, with mandatory reviews.

The Board is able to set out a plan for each person for whom a guardianship order is made, with time frames for action, and adopts a multi-disciplinary approach.

The Committee recognises the benefit of a shared form of guardianship for children at risk. Parents may still be able to play a valuable role in the life of a child who has been taken into care. The Committee believes the current provisions for care orders made through the court lack the flexibility required to recognise the various needs of the child, and provide a clear plan for their future.

However, the Committee appreciates that, in any form of proceedings, the voice of the child must be heard. The Community Services Commission contended that in any alternative system of hearings for children in care

*there still needs to be a strong legal/advocacy input to ensure the principles of natural justice apply, and that the rights of children are not sacrificed in the name of their "best interests" as determined by service providers with potential conflicts of interest (Submission 37).*

The Committee supports this view.

The Committee also believes that a greater focus on preventing the neglect and abuse of children is required. In some situations, intervening through court processes may be counter-productive. This has particularly been the case for Aboriginal families, where the history of welfare intervention has been characterised by oppressive policies which have destroyed families.

In recognition of this history, the Department of Community Services in Bourke has been attempting to empower families and the Aboriginal community in decisions affecting the care of children. When child protection matters come to the Department's attention, family meetings are called to encourage the identification of solutions in accordance with



the need to protect the child. The Department has found these meetings have been successful in identifying solutions which are sensitive to the child's needs and appropriate to the circumstances, making a court appearance unnecessary.

The Committee recognises that not every care matter needs to be contested through court or tribunal processes. The nature of some matters may allow for resolution through negotiation. However, the Committee believes that in establishing informal arrangements to deal with children at risk, the principles of care and justice must apply to notifications received.

The Committee supports further consideration of alternatives to court processes in this area.

### 3.4 CHILDREN IN CARE

As noted above, where a child is deemed in need of care, officers of the Department of Community Services may:

- place the child in a Department of Community Services establishment - not a detention centre;
- take the child to stay with a relative or friend; or
- place the child in foster care.

Representatives of the State Network of Young People in Care, further explained to the Committee that:

*the definition of care is anyone who cannot live with their biological parents in any circumstance (thus including those in detention) (Poulsen Evidence - 19 April, 1996).*

Andrew O'Brien, Co-ordinator of the State Network of Young People in Care, further told the Committee in his evidence:

*In New South Wales we estimate there are six thousand children and young people in care .... [Moreover] the Department of Community Services' figures say there has been a forty percent increase in numbers [of young people and children] entering care over the past four years (Evidence - 19 April, 1996).*

In response to a question from the Committee about the possible reason for this increase Mr O'Brien replied:

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*the ever increasing awareness that is growing out there in the community about child abuse (Evidence - 19 April, 1996).*

Nevertheless, as the Committee heard on numerous occasions, greater community awareness has not been translated into "a better deal" for children and young people in need of care and protection or involved in the care and protection system.

Dr Judy Cashmore, co-author of the *Systems Abuse* and *Longitudinal Study of Wards Leaving Care* reports, presented detailed evidence to the Committee regarding the on-going disadvantages suffered by those who have had involvement in the care system. According to Dr Cashmore (Evidence - 19 April, 1996), whose reports gave shocking and disturbing examples of various abuse and neglect suffered by children who were living in substitute care (including children being pushed into walls, having heads thumped into stairwells, being beaten, starved, sexually abused, emotionally abused, denied contact with families and having to listen to parents spoken about in very negative ways):

*there are issues of abuse in care and they happen because there is little monitoring or review going on for these children ... what these kids are saying right throughout is what they want is someone to listen to them. They need someone to listen to them and act on their behalf and they really did not think they had it.*

One of the major problems facing children and young people in care is that many experience multiple placements during the course of their time in care. Cashmore explained to the Committee (Evidence - 19 April, 1996) that in both her studies:

*we certainly found that children who had been in one long term placement they remained in for 75% of their time in care, attended fewer schools, were more likely to complete more years of schooling, they were less likely to have thought about or committed suicide, they were happier after they were discharged and they had more resources about who to go to for help, both financial and informational support.*

Moreover, in her evidence to the Committee, Chief Executive Officer at Barnardo's, Ms Louise Voigt, stated that:

*a lot of young people who are taken into the care of the Department, often when they are quite young, find such appalling experiences within the care system they are repeatedly moved. I mean twenty-two moves are not unusual in the care system from perhaps a child's admission from eight years old. They are then in such a troubled, damaged state at fourteen or fifteen, that residential establishments are unable to handle them, refuges, etc, and foster care programmes within the State government departments, being poorly supported by district officers, are unable to hold them and so for many of those young people, apparently in the care of the State, they are in fact prostituting on the streets.*

Both statements from Cashmore and Voigt confirmed similar findings of the *Girls at Risk* report (New South Wales Women's Co-ordinator Unit, 1986) and the *Human Rights and Equal Opportunity Commission Report into Homeless Children* which in 1989 reported (1989: 109-110):

*Coming into care, or attempting to have a child committed to care, provides a clear path to homelessness .... A period of time spent in a child welfare or juvenile justice institution, or otherwise detached by the welfare system from the natural family, seems to increase significantly a child's chances of becoming homeless. A New South Wales survey of 100 girls, 64 of whom had been in the care of the State and all of whom were 'at risk', found that most of the girls had experienced significant instability of accommodation, including while they were in 'care'. The 100 girls had experienced between them 802 independent moves (that is without their parents).*

As well as multiple placements, children in substitute care face other problems such as lack of contact with natural parents and siblings, multiple social workers and, as noted earlier, failure to achieve academically (Submission 34). According to the President of the Community Services Appeals Tribunal (a forum that reviews administrative decisions that affect the rights of people in the community services and welfare area such as wards):

*the turnover in departmental offices and foster parents in the history of the child before he or she arrives before the Tribunal is extraordinary. One can see 15 placements made in half as many years or less; that is routine, not extraordinary, which says something about the need for child advocacy. The moment that these children go into care, somebody must take responsibility for following their progress. The system simply does not work (Evidence - 29 November, 1995).*

The Usher Report further highlighted the fact that children in the care system are generally voiceless and powerless in decisions that affect them. That report stated that (1992:86):

*it is not uncommon that young people are excluded from case conferences and case decision-making processes, and while this appears to occur where it is deemed to be in their best interests, there is no requirement to justify such exclusion or show cause. Ironically, while the child is the focus of the decision-making process, they are generally not a party to it.*

Cashmore and Paxman's report, *Longitudinal Study of Wards Leaving Care* (1996) provides graphic insight into the voicelessness of children in the care system. Two examples from their report clearly illustrate this (1996:26):

- *they sort of explained why I was in care but they keep you in the dark a lot - what was happening and they plan your future without listening to you (Aged 15 when admitted to wardship).*

- *It all happened so quickly that I had no say in it whatsoever, they just took me to the court, put me in some room, I sat there and was told this is what is going on and the next thing I know I'm sitting in this weird place [Minali assessment centre] ... I was really frightened because I didn't know what was going to happen, and bang, I'm in this house full of kids and there is a mother and a father, a roster ... how long will I be staying here? They said about two weeks to get me away from my Dad (Aged 12).*

The Committee believes that formal mechanisms are required to ensure that all decisions affecting a child or young person in the care and protection system are properly explained to that child or young person and that he or she has appropriate input into those decisions.

### 3.4.1 Foster Care

In relation to the issue of children in foster care, Ms Jan Shier, Director of Care and Protection, Department of Community Services stated in evidence:

*I think foster care can pose particular challenges for monitoring the needs of children, given that children sometimes have difficulty in having a voice or expressing themselves within any family context (Evidence - 3 May, 1996).*

The Committee recognises that many foster carers undertake enormous responsibilities at considerable personal sacrifice when fostering a child or a number of children, particularly when the child has experienced abuse or neglect. It acknowledges that many are wonderful and caring substitute parents, without whom the child in their care might have experienced further disadvantage and turmoil.

However, the Committee heard considerable evidence in relation to children in foster care and the problems associated with ensuring that their particular wishes and needs are listened to and met. This can be the case despite home visits by Departmental caseworkers. Former foster child and Committee member of the State Network of Young People in Care, Ms Katrina Poulsen told the Committee:

*the main problem with foster care (is that) you feel so isolated and unable to access services ... you can only find out what your foster parents want you to find out (Evidence - 19 April, 1996).*

Evidence from Dr Judy Cashmore detailed the disturbing case of a young woman and her siblings who were systematically starved for a period of approximately eight years by their foster carers. The children were stealing food from rubbish bins and other children. Although the Department of Community Services had received a number of notifications regarding the children from the time they started school, the responses from the foster parents that the children had come into their care with junk food habits were accepted. After refusing to return to the house and seeking assistance from a teacher for alternative

accommodation, the children were medically examined and found to be three years delayed in their bone development because they were not being fed. Dr Cashmore commented to the Committee that:

*they had not had anyone who had asked them in private what was really going on during that time*(Evidence - 19 April, 1996).

As was the case with these children, Dr Cashmore explained that case workers may regularly ask about their situation in front of their foster parents. In evidence she stated that:

*it is a pretty brave kid who will say "things are terrible" in front of the foster parents. The accountability mechanisms are very limited* (Evidence - 19 April, 1996).

Mr Morri Young, of the Association of Child Welfare Agencies also addressed the issue of advocacy for children in care, particularly foster care. He told the Committee in evidence that while the Community Visitors Scheme provides some form of monitoring of the circumstances of children in residential facilities, only 5 per cent of children in care live in such facilities, with most in foster care. Ensuring that the interests of these children are protected poses particular challenges. According to Young:

*it is a significant problem for the young child in foster care who may have a disability, live in the country and be rarely visited by his district officer or caseworker and who is not getting a review or does not know about the State Network of Young People in Care. How are that young person's views brought to the fore? How are they heard?* (Evidence - 9 November, 1995).

The Committee was pleased to learn from Ms Jan Shier, that the Department of Community Services and the Foster Care Association recently conducted a workshop which identified the need to focus planning and training of carers on what is in the best interests of children in care (Evidence - 3 May, 1996). Moreover, the Committee notes that the draft document of the Department's review of the Standards of Substitute Care Services supports opportunities for children in foster care placements to have private discussions on an ongoing basis with their case workers (Hudson Evidence - 3 May 1996).

The Committee strongly recommends that case workers always conduct private discussions with children in foster care. It also notes that reducing the case load of workers will help to ensure that this will occur.

The Committee recognises that children in care may experience crisis situations and require special assistance beyond that available through regular contact with case-workers, or Community Visitors for children in institutional care. The Committee believes this need should be addressed by a service providing 24-hour advice, information and help for all children in care.

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Since opening in May 1993, Kids Help Line counsellors have responded to 42,858 calls from young people who named New South Wales as their location (Submission 10). The Committee recognises Kids Help Line as a strong advocacy service for children and supports its further promotion by agencies working with children.

The Committee considers arrangements for independent advocates in Chapter Eight, and recognises their potential to develop out of hours support services for children in care.

### RECOMMENDATION 1

**That the Minister for Community Services ensure that case workers always conduct private discussions with children in foster care in addition to any discussions that they may have with foster carers.**

### RECOMMENDATION 2

**That the Premier augment the resources of the 24 hour advice and referral service provided by the Kids Help Line to ensure that children, particularly those in care, have an effective information agency.**

#### 3.4.2 Boards of Review

A number of agencies believe the failure to implement the Boards of Review outlined in the *Children (Care and Protection) Act 1987* creates a gap in provisions for addressing the grievances of children in care. These Boards were to undertake periodic examinations of the welfare of children in care. The provisions in the *Children (Care and Protection) Act* were to oblige the board to review every child in care after the first six months. Reviews could also be requested at any other time and for any reason. These provisions were never proclaimed.

In 1993 an Interim Review Committee was established as a sub-committee of the Alternative Accommodation and Care Committee to monitor the cases of children moving from government institutions into the care of the non-government sector, but the Committee does not function in the systematic manner intended for the Boards of Review (Usher Evidence - 3 May, 1996). The Youth Justice Coalition contends:

*the provision of periodic review would be a single measure which would lead to significant improvements in the circumstances of children in care and is urgently needed (Submission 34).*

It believes reviews of children should be conducted three months after coming into care and each twelve months thereafter by an independent body with decision making powers; assured funding; and an appropriate accountability mechanism to require compliance with determinations. The powers of the Community Services Commission could be changed and resources provided for it to carry out such periodic reviews (Submission 34).

The Premier's Child Abuse Package, announced in April, indicated a review and monitoring mechanism would be created for children in substitute care. An amount of \$4.08 million has been allocated over the next three years for this purpose.

As noted above, the Committee was informed that the *Children (Care and Protection) Act* is currently being reviewed. A Legislative Review Working Party has been formed as an initiative of the Department of Community Services. The terms of reference for the review include an assessment of whether the legislation should be left in its present form; be amended; or be repealed and replaced with new legislation (Lannoy Evidence - 3 May, 1996). The Committee was assured that extensive consultation will take place on these issues, and the interests of children in care will be paramount (Lannoy Evidence - 3 May, 1996).

The Committee recommends the immediate implementation of the Boards of Review provisions in the *Children (Care and Protection) Act 1987*. The Committee believes this course of action would produce significant improvements in protecting the interests of children in care, and is one of the strongest means of arresting the declining status of these children in our community. The Committee is alarmed regarding evidence of the experiences of children in care, and believes Boards of Review have the potential to reduce the number of placements experienced by these children.

The Committee recommends these Boards should review the circumstances of each child coming into care six months after they enter care; and annually thereafter. Following the immediate establishment of the Boards through proclamation of the relevant provisions of the *Children (Care and Protection) Act*, the Committee believes these provisions should be considered by the Legislative Review Working Team. The Committee supports a strengthening of these provisions to ensure that children in care are reviewed annually, and calls for the Act to be amended when the Review Team reports to the Minister.

In association with the establishment of the Boards, the Committee calls for improved management of information on children in care, with appropriate consideration of privacy needs and confidentiality.

The Committee also believes scrutiny of the operations of the Boards of Review by independent, community-based advocates for children could further increase accountability and improve conditions for children in care.

The Committee believes the statutory obligation of the Minister and the Department to provide adequate and appropriate care would be further enhanced by requiring annual reports to be tabled in Parliament on the processes and outcomes of decisions of the Boards.

### RECOMMENDATION 3

That the Premier instruct the Minister for Community Services to:

- establish Children's Boards of Review, as set out in Part 7 of the *Children (Care and Protection) Act 1987*, forthwith, by having that Part of the Act proclaimed immediately;
- amend Part 7 of the *Children (Care and Protection) Act 1987*, following the report of the Legislative Review Working Team, to oblige the Boards to undertake annual reviews of all children in care;
- ensure that annual reports on the processes and outcomes of the Boards' decisions and placement issues are tabled in Parliament, with due regard for confidentiality.

#### 3.4.3 State Wards and the Role of the Minister

As Minister for Community Services, the Minister is the legal guardian of all state wards. As legal guardian he is responsible for the care and education of all children who are state wards and has authority to make decisions about those children's lives. Wardship orders can be made for a fixed period of time or until the child reaches 18 years of age. Such orders cannot be made in respect of a child over 16 years of age.

A number of submissions and testimony identified the issue of the Minister's role in respect of state wards. Many were critical of this role in light of evidence that many state wards, "get lost in the system", are homeless, end up in the juvenile justice system or die at their own, or someone else's hands. As the Committee was told in evidence, the tragic murder of state ward Jasmine Lodge, "was an indication of the system severely failing a young girl" (Loughman Evidence - 29 April, 1996). In her evidence to the Committee, solicitor Ms Janet Loughman explained:

*(State wards) are entitled to a safe place to live and we can find that it takes a dozen letters to different people in the department, to the Minister, phone calls that go week by week, an extraordinary amount of advocacy is sometimes required just to produce for a young ward of the State the rights that they have while they are in care.*  
(Evidence - 29 April, 1996)



The submission of the State Network of Young People In Care addressed in detail the issue of state wards and the role of the Minister as guardian. That submission stated (Submission 41):

*as guardian, the Minister has a role in advocating for the children in his care to ensure that they receive the care and support that they need. This role could be seen to be in conflict with the other functions that the Minister and the department must fulfill, such as investigating abuse or neglect, supporting families, removing children from their families and providing care for these children and young people.*

This issue was similarly discussed in the submission of the Community Services Commission. In acknowledging that the Minister, in his role as guardian, delegates to officers of the Department of Community Services, the submission observed (Submission 37):

*can District Officers support a family, advocate on behalf of a child, as well as investigate notification? Should investigation, family support and advocacy be separated? Should other agencies be contracted to do family support work? Should guardianship be devolved from the Minister to, say, a Children's Advocate/Guardian?*

The Youth Justice Coalition further addressed this issue in relation to departmental resources. The submission stated:

*the conflict of roles is also evident in decision making where District Officers must choose between meeting needs of children and departmental imperatives to run tight budgets.*

SNYPIC clearly supports an independent guardian being responsible for state wards. According to their submission (Submission 41):

*this conflict of roles may make it difficult for the Minister to fulfil his role as guardian, especially when a ward is in conflict with the Department of Community Services. A comparison that can be made is that when there are situations of abuse or neglect for a child with his or her family, an outside body (the Department of Community Services) steps in to look at what can be done to help the child. For a child under the Minister's guardianship, there is no such body. Because of this SNYPIC is proposing that a model for a separate children's guardian be developed.*

The Committee recognises the circumstances leading to support for the creation of a separate children's guardian. State wards have not been adequately cared for by successive state governments, and there has been a lack of appreciation for the statutory responsibility of Ministers in this regard. **The Committee considers that ultimate responsibility and accountability for all children in care must remain with the Minister.**

The Committee recognises the statutory responsibility, and community demand, for the Department of Community Services to meet the needs of all children in care. The adequate resourcing of the Department of Community Services is critical to the successful delivery of a range of services to wards and children in care, and the establishment of a meaningful partnership with the non-government sector in delivering these services.

The Committee believes the establishment of Boards of Review will provide a significantly improved means of monitoring the Minister's statutory responsibility in relation to state wards.

### 3.5 CHILDREN WITH A DISABILITY

A number of witnesses and submissions have identified the numerous problems faced by children and young people in need of care or in the care system, who have a disability. Chairperson of the Child Protection Council, Mr Adrian Ford, told the Committee in evidence:

*children with a disability ... are at a higher risk of child abuse and neglect than children in the community generally. Although Council has done a good deal to educate people, and we have special courses that focus on them, this group is still overlooked and we want more work done on that sector. (Evidence - 9 November, 1995).*

In its submission, the New South Wales Council for Intellectual Disabilities expressed concern at the large number of young people with an intellectual disability who are homeless and on the streets, many of whom had been in care.

The Committee understands that children with disabilities in the care system are particularly vulnerable to abuse and neglect. In her submission, Jane Woodruff, Director-General of the Department of Ageing and Disability stated:

*the abuse of adults with a disability uncovered at Peat Island and the Lachlan Centre recently has disturbing implications for the welfare of even more vulnerable children (Submission 58).*

Woodruff further indicated that children within the substitute care system who have a significant level of disability constitute approximately 25% of the total number of children in substitute care (Evidence - 3 May, 1996). Children in care who have a disability often present behavioural difficulties, and may "drop out" of both the care and disability systems. According to Ms Woodruff:

*I am aware, for instance, of two children who dropped out of both the disability system and the foster care system and ended up in Minali, both with very significant*

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*disabilities and nobody was paying any attention to the fact that they were there. Nobody was speaking for them (Evidence - 3 May, 1996).*

The Committee heard that a scarcity of support services for children with intellectual disabilities and their families means that many families reach a crisis point and agree to their child being made a ward as a basis for getting the required support (French Evidence - 3 May 1996). However, the Committee understands that the Department for Ageing and Disability is currently developing a children's policy to address a range of issues, including family involvement with disability services and the development of forms of shared care (Woodruff Evidence - 3 May 1996).

The *Homeless and 15* report, based on a questionnaire sent to the 34 service providers who are members of the Kings Cross Youth Interagency Forum, suggests a lack of information on rights and how to assert them contributes to the powerlessness of people with intellectual disability. Mainstream service providers have limited experience and knowledge of issues relating to intellectual disability, limiting their advocacy role in assisting with alternative long term support services. Access to individual advocacy outside these mainstream services may be limited since this requires well developed negotiation skills, which are not consistent with the experience of homelessness, nor in many instances intellectual disability (NSW Council for Intellectual Disability, 1995:12).

Despite a significant proportion of service providers indicating they had contacted the Department of Community Services in relation to clients with intellectual disability presenting to their services, very few of these young people moved on to long term support services:

*even with intervention from service providers and advocates who are committed to seeking change for these young people, it is extremely difficult to access support services. This is evidence of the extreme lack of appropriate support services available to people with intellectual disability in New South Wales and the inability of the existing system to be flexible in its delivery of services (NSW Council for Intellectual Disability, 1995:18).*

Among the *Homeless and 15* report's recommendations was that the Minister for Ageing and Disability establish a Crisis Intervention and Support Agency to support young people with intellectual disability who are homeless; to support agencies working with these young people; and to support families of young people with intellectual disability (NSW Council for Intellectual Disability, 1995:23).

The submission from the Council for Intellectual Disability states:

*People with disabilities also need advocates to overcome neglect, abuse and exploitation, segregation and lack of economic and social representation. The need for advocacy is paramount during childhood (Submission 14).*

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The Director-General of the Department of Ageing and Disability informed the Committee of the critical need for a whole-of-government approach in the area of care and protection of children with a disability. Approximately 550 children with a disability currently reside in specialist residential care, but "almost none" of those children come under the child care and protection system, as a result of a lack of co-ordination between substitute care, child care and protection and disability systems (Evidence - 3 May, 1996).

A third group, children with a disability who are inappropriately placed in nursing homes, is also of concern. These children remain outside the care and protection system, and are not covered by the Disability Services Act since nursing homes come within the responsibilities of the Commonwealth government (Woodruff Evidence - 3 May, 1996). The Committee recognises new aged care agreements are being developed under which states will have responsibility for managing aged care programs, including nursing homes. These agreements are intended to have a greater focus on outcomes for consumers. The Committee calls for strategies to be developed to provide disabled children in nursing homes with alternative forms of care.

The Disability Service Standards (Department of Community Services, undated) currently include a recognition of individual needs, and the requirement for every person within a funded service to have an individual service plan. The standards also refer to involving consumers in decision-making; the need for complaints mechanisms; and the maintenance of family relationships.

The Committee heard, however, that there is no specific emphasis on children, since the historical development of the standards was associated with Commonwealth-funded services for adults. In New South Wales, all disability services have been required to have an approved transition plan to move towards conformity with the standards, which has involved a cultural change and a realisation of the need to talk to those using the service.

However, the Committee was told that the difficulty for children is that the services only talk to parents. While the rights of adults with a disability to speak for themselves have long been recognised in disability services, the rights of children have often been overlooked. The Department of Ageing and Disability is preparing a discussion paper to support its children's policy, which will include an emphasis on the rights of children.

An amount of \$3.5 million will be allocated in 1996-97 to improve services to children with a disability. This funding will provide 1,020 placements for children requiring respite care, early intervention, out of school hours care and therapy services.

## RECOMMENDATION 4

**That the Minister for Community Services, Minister for Aged Services and Minister for Disability Services ensure the needs of children with a disability and their families are met by a Children's Policy for:**

- a range of support options for the care of these children, including adequate respite care;
- on-going family involvement with disability services;
- the development of forms of shared care to promote the interests of these children and reduce the incidence of children with a disability becoming state wards; and
- a recognition of the individual needs of children, and the need to involve them in decision-making.

The Director-General supported advocates from outside the disability services as being vital to ensuring an appropriate focus on children's rights is achieved (Woodruff Evidence - 3 May, 1996).

The Committee notes that there are services providing individual advocacy for people with intellectual disability. The Citizen Advocacy movement aims to recognise, promote and defend the rights and interests of people with intellectual disability through independent, non-profit community programs. The Citizen Advocacy Office recruits and supports volunteers matched with a "protégé" to provide friendship, new experiences, and in some cases, spokespersonship and protection from abuse. **The Committee supports initiatives providing support for people with disabilities in the community, and calls on governments to provide sufficient funding for such services to be further developed and the specific needs of children to be met.**

The Committee heard of the need for a more systemic form of advocacy. Both the Council for Intellectual Disability and the Northcott Society recommended the creation of a separate independent children's advocacy service promoting the rights of disabled children to access the same opportunities as other children. The Director-General of the Department of Disability and Ageing supported the establishment of such a service for children with a disability to:

- review the placement of children with disabilities in care in New South Wales;
- advocate on behalf of children with disabilities in care who have no parental involvement;

- advocate and support targeted parents of children in care to maintain and strengthen family/child relationships;
- ensure that no child with disabilities is placed in substitute care without a process of permanency planning being undertaken. Also to ensure that all such placements are provided with ongoing support and are subject to a clearly identified monitoring process;
- advocate for support services needed to enable children with disabilities to live within a family (Submission 58).

The Committee has examined forms of systemic advocacy in Chapter One.

### 3.6 LEAVING CARE

Many submissions and witnesses to the Committee examined the issue of when a child or young person leaves care. When a young person in care reaches the age of 18 years he or she is discharged from care; children may, however, be discharged at an earlier age. The Committee understands that upon discharge young people are offered little support or assistance in living independently.

The issue of young people leaving care has been comprehensively dealt with in Cashmore and Paxman's report, *Longitudinal Study of Wards Leaving Care (1996)*, which focussed on the experiences of young people leaving wardship in New South Wales. The study was funded by the New South Wales Department of Community Services and the objectives of the study were:

- *to examine the circumstances, experiences and difficulties of young people leaving wardship at the time of leaving care and subsequently;*
- *to document their perceptions of the events and experiences of being in care;*
- *to evaluate the service needs of young people leaving care and the extent to which these needs are being met by Departmental and non-Departmental services;*
- *to examine any relationships between outcomes and young people's individual characteristics, family histories and experiences in care.*

Among the findings of that study (1996: ii - iii) were that:

- *nearly half the young people who were leaving care, at some stage, felt unsure and vulnerable about doing so, although they maintained indifference or enthusiasm at other times;*
- *within 12 months of leaving wardship, only one in four former wards were still living where they were just before they were discharged from wardship. On average they had moved three times. The more placements they had been in while they were in care, the more places they lived in after leaving care;*
- *just under half the former wards were unemployed 12 months after being discharged from wardship. Nearly half said they were having problems 'making ends meet' financially;*
- *nearly one in three of the young women had been pregnant or had a child soon after leaving wardship;*
- *just over half had completed only Year 10 or less of schooling, consistent with the findings of other studies of poor educational attainment of young people in care;*
- *over half the former wards and two-thirds of the young people living away from home have thought about or attempted suicide.*

In their submission the Youth Justice Coalition addressed the issue of young people leaving care and were particularly concerned with the lack of information and support provided to these young people. According to the submission (Submission 34):

*young people in care lack information about their rights to financial and other support from the Department after discharge from wardship. Wards leaving care are asked to do so abruptly and their ongoing support may depend on their knowledge and ability to advocate for entitlements. At 18 young people are automatically discharged from care and some are discharged at a younger age. These young people are expected to set themselves up with little preparation and assistance. A number of reports have established a strong relationship between homelessness and those children and young people in state care.*

Section 92 of the *Children (Care and Protection) Act* provides for former wards to receive assistance at the discretion of the Director-General, yet many ex-wards are unaware they may receive help (Submission 41).

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The Council for Intellectual Disability also raised in evidence to the Committee that:

*for wards leaving the care of the State with intellectual disability the problem is exponentially worse than it would be for a regular kid who is leaving care (French Evidence - 3 May 1996).*

While some people with a disability may receive support in finding accommodation upon leaving care, this usually results in them being placed in a boarding house. The Committee heard of one young woman with a history of abuse and self-mutilating behaviour being placed in a large residential group home for mentally ill men in their forties:

*I am sure the case worker agonised at some point before putting forward the only option available but that was clearly totally unacceptable (French Evidence - 3 May, 1996).*

The Committee heard that:

*Non-government agencies and the department that provides substitute care should plan after-care from the day the child commences care, whether it is intended that the child be restored to the family or be moved to independent living as an adolescent. It is part of a process of care. But regrettably it is not necessarily acknowledged in funding or even in programs by all agencies (Young Evidence - 9 November, 1995).*

The Committee notes that the Government has recently announced an allocation of \$3.6 million over three years for the establishment of a Leaving Care Centre and the provision of additional specialist workers within the substitute care sector to provide advice and follow-up support.

Tenders have been called for the following services:

- a Leaving Care Centre in Parramatta, which will function as a resource centre, and contain a team of 3 workers;
- a team of 3 workers in the Macarthur region; and
- a team of 1.5 workers in the South Eastern Sydney region.

It is expected that contracts with successful tenderers will be finalised in November 1996.

The Department has also proposed the establishment of Leaving Care Centres in western and northern New South Wales and for a service to be developed to meet the specific needs of Aboriginal children leaving care.



The Committee commends the Government on this initiative and hopes that it will begin to address the enormous problems, identified above, confronted by young people leaving care. However, it believes that a review to assess the success of this initiative should be conducted in three years.

#### RECOMMENDATION 5

**That the Minister for Community Services review in three years the operation of Leaving Care Centres and regional teams of leaving care workers to assess the adequacy of support for young people leaving care.**

### 3.7 CONCLUSION

The preceding discussion has highlighted that action for children in, and at risk of being in, care requires urgent attention. Overwhelmingly, the evidence has shown that children, although the focus of care and protection matters, have such little say in issues affecting their lives that this is not only unjust but, for many, proves detrimental and damaging. The Committee anticipates that the implementation of its recommendations in this and Chapter Eight, Future Directions, will go some way to improving the status of these vulnerable children.



## CHAPTER FOUR

# LAW AND JUSTICE

### 4.1 INTRODUCTION

The overwhelming majority of submissions and testimony that examined the issue of children and the law indicated that advocacy for children in the area of law and justice is inadequate. The Committee was informed that this inadequacy, in the context of children as defendants, as victims or witnesses for prosecution matters, and as participants in family law matters, has meant that children can be effectively denied a right to be heard and their access to justice can be seriously compromised.

It was submitted to the Committee throughout the Inquiry that a lack of specialist children's lawyers, a general insensitivity or ignorance by members of the legal profession and the judiciary to children's issues and needs, and the whole adult-oriented structure and process of justice in this state, has contributed to the failure of effective legal advocacy for children and young people in New South Wales. In his evidence, Hogan told the Committee:

*the legal profession has neglected its responsibility to children and families. Probably there are only a handful of specialist children's lawyers of the 12,000 lawyers we have in New South Wales, and that is a matter of concern. Clearly, as matters involving children often do not involve substantial commercial interests, the incentive is not there for lawyers to provide those services ... the Law Society, the Legal Aid Commission or bodies such as the Law Foundation have not done enough in this regard (Evidence - 9 November, 1995).*

The Committee has dealt extensively with issues relating to the adequacy of legal advocacy to children in the juvenile justice system in its 1992 report, *Juvenile Justice in New South Wales*. Where appropriate it will refer to the findings in that report throughout this Chapter. The Chapter will also discuss the issue of children as witnesses and children in family law proceedings.

The Committee notes that the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission are currently conducting a national inquiry into children and the legal process. Among the areas being considered by that Inquiry are children and the criminal law, children as witnesses and victims of crime, children in the care and protection system and children and the Family Court. To date, the Law Reform Commission and the Human Rights Commission (1996) have released an Issues Paper and called for submissions to the Inquiry.

### 4.2 JUVENILE JUSTICE

Since completing its report into Juvenile Justice, the Committee is aware of some changes that have been made in the area of legal advocacy for children. Changes to the Legal Aid Commission include the establishment of the position of detention centre solicitor, the requirement that solicitors in metropolitan areas must apply to be placed on a special children's duty solicitor roster, agree to certain performance standards and attend specialist accreditation or specialist legal education (Humphrey Evidence - 22 April, 1996). Mechanisms now exist for solicitors who do not "perform" on the roster, to be removed (Humphrey Evidence - 22 April, 1996).

At a community level a number of legal advocacy services have been established since 1992. These include: the National Children's and Youth Law Centre (NCYLC), where one solicitor provides case-work; the expansion of Burnside Adolescent Legal Service to three solicitors and one welfare worker; and the establishment of Shopfront Legal Centre, which has one and a half solicitors engaged in case-work. Although the NCYLC aims to service children and young people throughout New South Wales, all other community based legal centres are Sydney-based. The Committee notes that funding has recently been approved for the establishment of five new Community Legal Centres located in Mt Druitt, Wyong, Lismore, Armidale and Dubbo. The Committee has been told that these centres, when fully operating, will be generalist centres - there will not be any specialist children's services.

Since 1987 the Legal Aid Commission has had a Children's Legal Service based at Cobham Children's Court in Sydney's west. That service consists of one Children's Court solicitor who undertakes criminal and care matters at Cobham, a social worker and a detention centre solicitor. Other Children's Courts are serviced by duty solicitors, who are private solicitors on a roster whose fees are paid by the Legal Aid Commission. Commenting on this situation Hogan stated in evidence:

*The Legal Aid Commission has a scheme in one children's court in which it provides a salaried solicitor, together with private solicitors on a rostered basis. That scheme was evaluated close to 10 years ago and the recommendation was made to extend that model to all specialist children's courts in this State. A number of subsequent reviews were conducted, but that recommendation still has not been acted upon notwithstanding the fact that the report found the process to be cost efficient and improved the quality of the representation (Evidence - 9 November, 1995).*

Despite the changes over the last three years, most of the information received by the Committee revealed that legal advocacy services for children and young people in the Juvenile Justice process remain unsatisfactory. For Aboriginal young people and those living in rural or remote communities, the problems are further compounded. There are no specialist Children's Legal Services in rural areas and very few solicitors in rural communities specialise in children's law. This presents an immediate disadvantage to rural

young people by potentially compromising the quality of representation and advocacy they might receive.

Commenting on the situation for young people who are represented at the Children's Court by solicitors on the Legal Aid Commission Duty Roster, then Public Defender and currently District Court Judge, His Honour, Robert Bellear argued before the Committee:

*Their time is short and sometimes, it might be a Monday, they might have six or seven kids who front up and it does not give them time to go and talk with the parents and talk with the kids and gather the necessary evidence and information. That is really not done. It is not like an adult case (Evidence - 22 April, 1996).*

Moreover, Theresa O'Sullivan of Marrickville Legal Centre and convener of the Youth Justice Coalition explained to the Committee:

*(Law and justice) is one of the areas where there are major concerns for the lack of advocacy for young people, as ... their very liberty comes into question, which is an important right. The major problems for children involved with the criminal system is the inadequacy of the representation, which is really only the Duty Solicitor Scheme, which provides for a solicitor for the young person when they attend court .... On average young people would only see their duty solicitor for five, ten if they were lucky, minutes before they go into court. It would seem that this would be one of the reasons why there are so few defended hearings (Evidence - 22 April, 1996).*

The Committee notes that inadequate legal advocacy can impact upon bail and sentencing outcomes. Indeed, as O'Sullivan (Evidence - 22 April, 1996) further explained to the Committee:

*The statistics I have heard, I think up to ninety percent of children plead guilty in the Children's Court. In other jurisdictions the rate is much higher for pleas of not guilty or defended hearings, such as in Victoria where there seems to be a much more comprehensive system of advocacy for children in the criminal system.*

The Committee understands that advocacy, in the context of law and justice, is generally considered to refer only to advocacy at the court level. However, as a number of witnesses told the Committee, legal advocacy for young people involved in the juvenile justice system should be available when a young person is at the police station. The duty solicitor scheme does not fulfil this role and since most young people are arrested at night or on weekends, it is difficult for Community Legal Centre solicitors to assist a young person at a police station.

Section 13 of the *Children (Criminal Proceedings) Act 1987* provides that no statement made by a young person to the police is admissible in evidence unless it was made in the presence of a responsible adult. If an adult is not present a magistrate or judge must be

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satisfied that there was a proper and sufficient reason for the absence of such an adult from the place where, or throughout the period of time during which, the statement was made before allowing it into evidence.

However, the Committee has been told:

*Where children are detained in custody in New South Wales there is no statutory obligation for the police to notify the parents or guardians of a child who has been arrested .... In New South Wales police often deny access to lawyers and other third parties before an interview. It is clear that access to a third party depends very much on police discretion and children and young people have no right to an advocate in these situations (Submission 34).*

Where a young person is interviewed in the presence of a parent, guardian or other independent adult, it is often the case that these adults have little knowledge of the young person's rights. According to the Youth Justice Coalition:

*Where third parties were used (in a national review of the policing of children and young people) police were selective about whom they considered to be appropriate. In New South Wales, for example, a particular officer from the Salvation Army would be chosen who would tell the child to cooperate, to "tell the truth" and "own up" (Submission 34).*

The Committee is extremely concerned about the lack of effective specialised legal advocacy for children and young people in rural New South Wales. Whilst undertaking the Juvenile Justice Inquiry, the Committee was told that significant numbers of young offenders are from rural areas yet there is a dearth of expertise in children's matters both from solicitors and magistrates. It would appear from the evidence received for this Inquiry that this situation remains substantially unchanged. According to Judith Ryan of the NSW Legal Aid Commission:

*our statistics show us that, of the 24,000-26,000 children that are likely to be represented directly or funded by the Legal Aid Commission, 65 percent of them will be non-Sydney metropolitan based, so it is in fact a very, very significant number of children whose needs and issues arise in the non-metropolitan context (Evidence - 22 April, 1996).*

Nevertheless, as Doug Humphreys of the Legal Aid Commission (Evidence - 22 April, 1996) also told the Committee:

*there are some non-metropolitan practitioners who do an excellent service and provide very, very, very good representation to all of the people they see, including children. However, in some cases it may be a person who has had very little experience in the criminal area and particularly in any children's work at all. Within the country, in*

*addition, there is a lack of appropriate referral services and support services to back the solicitors up in being able to refer them off for reports easily and to get other specialist intervention that might be required to assist the child.*

The Committee understands that successful legal advocacy requires a sensitivity to the level of understanding of the young client. As the Committee heard throughout this and the Juvenile Justice Inquiry, many young people who appear in the Children's, or other higher criminal, Court have difficulty in understanding the technical legal jargon and exchanges between the lawyers and the bench. The Committee has also heard that contrary to section 12 of the *Children (Criminal Proceedings) Act*, Children's Court proceedings do not always involve young people. That section provides, *inter alia*, that:

*12(1) If criminal proceedings are brought against a child, the following matters shall be explained to the child:*

- (a) the nature of any allegations made against the child; and*
- (b) the facts that must be established before the child can be found guilty of the offence with which the child is charged.*

*(2) Until those matters have been explained to the child, the court before which the proceedings are brought shall not proceed further.*

In addition, because of time constraints or even a disregard, many solicitors often failed to explain fully to their young client the process or outcome of a matter (Standing Committee on Social Issues, 1992:194).

The Committee's Juvenile Justice Report (1992) made a number of recommendations that dealt with the issue of legal advocacy for children and young people charged with a criminal offence. These were:

*Recommendation No. 126:*

*That the Attorney General's Department, the Department of Courts Administration, the Legal Aid Commission and the Law Society review the option of the expansion of the children's duty solicitor scheme and provision of a social worker, to other Children's Courts, using the scheme at Cobham Children's Court as a model. As part of the review, consideration be given as to whether more than one salaried solicitor would be required to service Children's Courts.*

*Recommendation No. 127:*

*That the duty solicitor scheme be expanded to include a legal service for young people in Juvenile Justice Centres that could assist detainees with bail applications, appeals, complaints and any other relevant legal matter.*

*Recommendation No. 128:*

*That a special Children's Section be established in Head Office of the Legal Aid Commission that would be responsible for the coordination and monitoring of the duty solicitor scheme, including an expanded duty solicitor scheme.*

*Recommendation No. 129:*

*That a scheme be established by the Legal Aid Commission whereby a children's solicitor travels on circuit to country areas where there is no specialist Children's Court or specialist children's solicitor to assist in children's criminal proceedings.*

*Recommendation No. 130:*

*That all solicitors participating in the Children's Court duty solicitor scheme be provided with training and education on issues relevant to the needs of the clients that they are to represent and that such training and education be ongoing throughout their time on the roster.*

*Recommendation No. 131:*

*That the Attorney General's Department, the Department of Courts Administration, the Legal Aid Commission and the Law Society examine the option of setting up a 24 hour telephone advice line for young people at police stations, who are charged with a criminal offence.*

*Recommendation No. 132:*

*That Children's Court proceedings be conducted in language that is simple and able to be understood by young people appearing at court and that young people and their families or other support people, be encouraged to participate in the proceedings.*

To date only one of those recommendations has been acted upon namely, number 127. That recommendation called for the expansion of the duty solicitor scheme to include a legal service for young people in Juvenile Justice Centres (detention centres). The Committee notes that the Legal Aid Commission has appointed one solicitor to fulfil this role, and she is part of the Commission's Children's Legal Service. Whilst the Committee



commends this initiative it is concerned that one solicitor for all New South Wales' detention centres is inadequate.

The Committee considers that legal advocacy for children and the juvenile justice system would be substantially improved if all the recommendations made on this issue in its Juvenile Justice Report were implemented. Building on those recommendations the Committee makes the following further recommendations and calls on the government to implement them as soon as possible.

Further, the Committee considers that the Children's Court jurisdiction should be changed to that of the District Court. By enhancing the status of the Children's Court the Committee believes that a significant body of case law would be established and more practitioners would be attracted to practice in the area of children's law.

#### RECOMMENDATION 6

**That the Attorney General establish within the Legal Aid Commission a Children's Section, which is adequately resourced and staffed, to undertake matters in relation to juvenile criminal matters and care and protection matters throughout New South Wales. That Section shall be staffed with both solicitors and social workers.**

#### RECOMMENDATION 7

**That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor a children's duty solicitor and social work scheme, as currently operates at Cobham Children's Court, for all specialist Children's Courts throughout New South Wales.**

#### RECOMMENDATION 8

**That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor a scheme whereby children's solicitors and social workers travel on circuit to country areas where there are no specialist Children's Courts or specialist children's solicitors.**

#### RECOMMENDATION 9

**That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor an expanded legal service for children in all detention centres throughout New South Wales.**

RECOMMENDATION 10

**That the Children's Section proposed in Recommendation 6 establish, coordinate and monitor a training and education program for all solicitors participating in the Children's Court duty solicitor scheme on issues relevant to the needs of the clients that they are to represent and that such training and education be ongoing throughout their time on the roster.**

RECOMMENDATION 11

**That the Attorney General extend funding to Community Legal Centres so that broad-based legal advocacy on a range of issues can be provided to children and young people throughout New South Wales.**

RECOMMENDATION 12

**That the Attorney General elevate the jurisdiction of the Children's Court to that of the District Court to increase the status of that jurisdiction.**

The Committee recognises that there are groups of young people who are particularly vulnerable to entry in the juvenile justice system. Among them are Aborigines, young people from non-English speaking backgrounds, young people with an intellectual disability, state wards, and young people from rural and remote areas. These groups were referred to extensively in the Committee's reports, *Juvenile Justice in New South Wales* and *Youth Violence in New South Wales*.

Regrettably many of the findings from those reports remain pertinent to the situation for a number of young people in the juvenile justice system today. Aboriginal young people are still over-represented at all stages of the juvenile justice system and represent at any one time 25-30% of all young people in detention. They remain under-represented in cautioning rates and court diversion schemes. Moreover, as Cain found (1995:41-42)

*the Indo-Chinese, Lebanese, Pacific Islanders and Maoris, have disproportionately large numbers of their youth in custody on remand and in control. Such over-representation also raises the possibility of discrimination operating in relation to these groups.*

Whilst girls represent only a small minority of offenders in the juvenile justice system they have very specific needs. As this Inquiry has confirmed, most young female offenders have a background of sexual and/or physical and emotional abuse leading to serious substance abuse and a lack of stable accommodation. For these reasons these young women have

specific and often complex needs that should be appropriately responded to in order to prevent both further abuse and further offending.

For this Inquiry, the Committee received a number of submissions in relation to young people with an intellectual disability who are involved in the juvenile justice system. The Council for Intellectual Disability stated in its submission that:

*if an adolescent with intellectual disability becomes involved in the juvenile justice system, he or she is likely to progress to the adult criminal justice system. Statistics illustrate that a high percentage of adult offenders have spent time in detention as children. There are numerous factors which contribute to children entering the juvenile/criminal justice system. These include vulnerability, impulsiveness and the need for immediate gratification. People with intellectual disability are also easily exploitable and less able to conceal their crime (Submission 14).*

That same submission notes that as a result of:

*disempowerment and limited access to advocacy, people with an intellectual disability are not regarded as reliable witnesses in the criminal justice system. People with intellectual disabilities, particularly children, are not perceived as credible witnesses and the authority of their evidence is frequently questione (Submission 14).*

The Committee is very concerned that such a situation may impact upon a young intellectually disabled defendant having to plead guilty when he or she may be innocent.

#### 4.3 CHILDREN AS WITNESSES FOR THE PROSECUTION

The issue of children as witnesses in prosecution cases is a matter of serious concern for the Committee. The Committee considers that this is an issue that goes to the very heart of a child's right to be heard and to their access to justice.

As the Committee has been told, many children who are victims of abuse and violence do not proceed to the prosecution stage because of their age, the perceived impact a trial would have on them, and their perceived competence as witnesses for the prosecution. This can be especially the case for children with an intellectual disability who, according to the Council for Intellectual Disability, are not adequately represented in the criminal justice system:

*advocacy is crucial to people who possess only a limited knowledge of their rights, lack knowledge about the procedures which they need to go through and how to articulate their needs (Submission 14).*

Consequently, these children are effectively denied an opportunity for justice.

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Those who do choose to proceed with the prosecution can face considerable difficulties. Lengthy and prolonged court delays and the fact that trial dates are not given until shortly before they commence, often can cause enormous problems for the child witness. As Megan Latham, Crown Advocate and former Director of the Criminal Law Review Division, told the Committee:

*You are still looking at something like two to three years between the time when the child discloses and makes a statement and the time that the matter comes to trial, and that is unacceptable for children, unacceptable for most adults, but for children it represents a most appalling disruption to their lives. It means that they cannot reconcile a whole host of problems that they have, socially, educationally, within family relationships, in terms of their own maturation, particularly when these offences are occurring by and large on prepubescent children, who when they appear before the court, might be two years, three years older and look a lot different and behave a lot more differently than they did at the time of the alleged abuse (Evidence - 22 April, 1996).*

Latham (Evidence - 22 April, 1996) further commented that although cases involving children take some priority they do not take the "best priority in the system". The Committee is very concerned about the potential injustices for child victims and witnesses who are compelled to wait for extremely long periods before their case proceeds to trial. It therefore urges the Attorney General to expedite **all** cases where a child is the main prosecution witness in matters involving sexual or physical abuse.

### RECOMMENDATION 13

**That the Attorney General devise a system to expedite all cases where a child is the main prosecution witness in matters involving sexual or physical abuse.**

The Report of the Children's Evidence Taskforce, *Taking Evidence in Court* (1994:42) found that:

*Problems faced by child witnesses when giving evidence in the courtroom include the fear of having to testify often about events usually of an explicit and embarrassing nature, in front of the accused, who is often well-known or closely related to them, together with a number of people they do not know, in intimidating formal courtrooms in which unfamiliar language and procedures are used.*

These comments were reiterated by a number of witnesses and in a range of submissions.

For many people and especially children, the language used in court rooms can be inaccessible and overwhelming. Megan Latham stated before the Committee:

*We (lawyers) speak in terms which most adults do not understand and it is a very difficult thing to do to change a language but I think we could be doing a lot more than we are presently doing to change our language with children (Evidence - 22 April, 1996).*

The Report of the Children's Evidence Taskforce, *Taking Evidence in Court* (1994) made a number of recommendations relating to children's evidence. These included the following.

That:

- *closed circuit television ("CCTV") be adopted as the preferred technical solution to assist child witnesses give testimony (recommendation 3);*
- *screens and other alternative arrangements continue to be an available option where CCTV is not used or not available and that a protocol be developed providing guidance to courts in the application of screens in the courtroom (recommendation 6);*
- *the presumption against children giving evidence by CCTV be replaced with a general rule that children should give evidence by CCTV (recommendation 15);*
- *the child witness should be able to elect not to give evidence by CCTV or by alternative arrangements if he or she does not wish to (recommendation 16);*
- *while screens and other alternative arrangements should be retained as an alternative to the use of CCTV, there be no general rule in favour of using these alternative arrangements for children giving evidence (recommendation 17);*
- *an application for use of an alternative arrangement should be made pre-trial by the party calling the child witness (recommendation 18);*
- *the use of CCTV and alternative arrangements be extended to child witnesses as well as child victims of crime (recommendation 19);*
- *the use of CCTV and alternative arrangements be extended to accused children appearing in the higher courts (recommendation 20);*
- *"child" in relation to provisions for the use of CCTV and alternative arrangements be defined to mean a child under the age of 16 years at the time*

- at which he or she commences to give evidence in the proceedings (recommendation 21);*
- *the use of CCTV be extended to include any criminal proceedings in which it is alleged that the accused person has committed “personal assault offence” (recommendation 22);*
  - *“personal assault offence” be defined as:*
    - (a) *an offence under Part 3 or sections 562AB and 562I of the Crimes Act 1900 or an offence under section 25 of the Children (Care and Protection) Act, 1987; or*
    - (b) *an offence (such as an offence under sections 37 or 112 of the Crimes Act 1900) which includes the commission, or an intention to commit an offence referred to in paragraph (a); or*
    - (c) *an offence of attempting, or of conspiracy or incitement, to commit such an offence referred to in paragraph (a) or (b) (recommendation 23);*
  - *the provisions for CCTV and alternative arrangements apply to any court in which a “personal assault offence” is being heard (recommendation 24);*
  - *CCTV and alternative arrangements be available in hearings of applications for apprehended violence orders (recommendation 25);*
  - *where CCTV is to be used the trial judge issue a warning to the jury that this is a usual procedure and that no adverse inference is to be drawn against the accused as a result of the use of the procedure and that the child’s evidence should not be given any greater or lesser weight simply because it is being given by CCTV (recommendation 26);*
  - *where a child witness is called to give evidence, the party not calling that witness has a right to make an application prior to the trial that in the circumstances of the case it is not in the interests of justice that CCTV or an alternative arrangement be used (recommendation 27);*
  - *where the accused is unrepresented:*
    - (a) *and CCTV is available, the accused be allowed to cross examine the child witness directly;*

- (b) *and CCTV is not available or not used, questions to the child witness be directed through a third party, preferably the trial judge, and*
  - (c) *where the interests of justice require, the judge may intervene in either of the above situations to either allow or disallow direct cross-examination of the child witness, as appropriate (recommendation 28);*
- *where the evidence of a child is given under the CCTV provisions and the identification of the accused is an issue; the child is not to be required to be in the presence of the accused:*
  - (a) *for any longer than is necessary for that purpose; and*
  - (b) *before the child's evidence (including cross-examination and re-examination) is completed (recommendation 29);*
- *any application that CCTV or alternative arrangements not be used be made in advance of the trial (recommendation 30);*

Additional recommendations included that:

- *the Attorney General establish a Taskforce to consider issues relating to the use in evidence of videotapes of out-of-court statements made by children (recommendation 1);*
- *the Attorney establish a Taskforce to consider issues relating to the giving of evidence by persons who may be disadvantaged or vulnerable within the court system, and to consider the relevant recommendations of the Law Reform Commission emanating from its reference on People with an Intellectual Disability and the Criminal Justice System (recommendation 2);*
- *the level of existing CCTV installations be reviewed with a view to increasing the availability of those facilities State-wide (recommendation 4);*
- *where CCTV facilities are not available a power be retained to permit the adjournment of proceedings to another court where CCTV facilities are available (recommendation 5);*
- *the use of screens be evaluated to assess their efficacy as a solution to the problems experienced by child witnesses in court (recommendation 7).*

The Committee strongly endorses all of these recommendations.

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Commenting on the outcomes of some of these recommendations and, whilst welcoming the recent announcement to increase the availability of CCTV, Latham told the Committee:

*We still do not have a standard form of screen which is approved and used and available in New South Wales courts. So when I have a child who wants to go into a court room but does not want to be confronted with a line of sight to the accused, then I turn to the sheriff's officer and say, 'Can you get me a screen?' ... they do not have one, [or] they do not have one which is appropriate for that use [or] that can be brought into the court room straight away. It is not part of their equipment in the same way that they have microphones, tape recorders, or whatever. The same goes for things like gas lift chairs, so the height of the witness box. Lapel microphones, because what happens is the microphone sticks out from the box, and what children do is they drop their head and talk down there, so you cannot hear what they are saying (Evidence - 22 April 1996).*

The Committee notes that in the recent State budget the Government announced that it will install closed circuit television systems over the next 3 years, at a cost of \$2.5 million, in courts in all major locations across New South Wales and in the Children's Courts. The Government has stated that:

*this will ensure that country children have the same support while giving evidence as city children (NSW Government, 1996:6).*

The Committee commends this initiative.

The Committee notes also that a Bill entitled the *Crimes Amendment (Children's Evidence) Bill 1996* is currently before the New South Wales Parliament. The Committee understands that the Bill will recognise many of the recommendations of the Children's Evidence Taskforce.

The object of the Bill is to reform the law relating to children's evidence in criminal and other proceedings by:

- making it possible for all children who give evidence as witnesses in certain proceedings to be accompanied by a parent, relative, friend or other supportive person;
- allowing children giving evidence in criminal or civil proceedings arising from a personal assault offence (including sexual and physical assault), or in proceedings involving the making of an apprehended violence order, to give that evidence by means of closed-circuit television facilities or similar technology;



- allowing a child who gives his or her own defence in proceedings in the Children's Court the limited right to give evidence by means of closed-circuit television facilities.<sup>1</sup>

The Bill creates a presumption that the evidence of any child witness will be given by means of closed-circuit television facilities or similar technology, regardless of whether or not the child is the victim. Further, it creates an absolute right for all children who give evidence in specified proceedings to have a person of their choice with them. That person may be there to give support, assistance with language problems, or assistance with any difficulty associated with a disability.

The Committee notes that the *Crimes Amendment (Children's Evidence) Bill 1996* provides that a judge must warn the jury about the weight to be given to the evidence of a child who uses closed circuit television or other similar technology. Section 405H provides:

- (1) *In any criminal proceedings in which the evidence of a child is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 405D), the Judge must:*
  - (a) *inform the jury that it is standard procedure for children's evidence in such cases to be given by those means and*
  - (b) *warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology.*

The Committee supports the *Crimes Amendment (Children's Evidence) Bill 1996*. It anticipates that once the Bill is passed, many of the problems faced by child witnesses will be overcome. However, the Committee considers that the effect of the warnings as set out in Section 405H on a jury's perception of a child's evidence should be strictly monitored.

The Committee is concerned about the trauma that might be incurred by a child victim who is required to give his or her statement and repeat the story of the offence(s) to a range of people and on numerous occasions during the prosecution process. The police, counsellors, officers of the Department of Community Services, solicitors and barristers, may all require a statement from the child.

This issue was given extensive consideration by the Child Sexual Assault Taskforce. According to the Report of the Taskforce (1986:106):

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<sup>1</sup>As this Report went to press, the Bill was passed, with amendments, in the Legislative Council. The amendments, if accepted by the Legislative Assembly, would exclude children who are accused of personal assault from provisions that give a presumption that evidence will be given by CCTV.

*each worker who seeks to interview the child, comes to the interview with different aims in mind. This in itself should not however prevent joint interviewing .... It is important that no more than two workers attempt this exercise. The Task Force received many submissions drawing attention to the danger of overwhelming the child with too many "interrogators".*

Linked to this matter is the issue of a child giving his or her statement by way of audio-visual recordings. Submissions to the Child Sexual Assault Task Force were mixed on this issue. Marrickville Women's Refuge, Delvena and Rape Crisis Centres argued in a submission to the Task Force (1986:110):

*We in the collectives could not come to a consensus. Some of us agreed that the use of audio and video tapes was to be considered if they could be used in lieu of the child in court. This would dramatically lessen the trauma of court proceedings for the child. Others thought that the audio tape should be sufficient for the entire reporting and court proceedings and used in lieu of the child in court. The video taping process could be more traumatic to an already stressed child and we don't see the necessity of video as well as audio.*

The Task Force also received submissions stating that a tape of the child's statement must be destroyed once the statement is typed. The Task Force itself found (1986:111) that:

*there may be some value in recording the child's statement audio-visually provided the child is made aware of the procedure and is happy to comply, and provided the recording is made by personnel with some expertise ... the Task Force favours audio-recording of the child's statement as less intrusive and having substantially the same advantages over present methods of recording. This is not to say that this method does not require a certain level of expertise and that personnel do not need to be sensitive to the aims of other workers wanting access to the recording.*

The Report of the Children's Evidence Taskforce, *Taking Evidence in Court*, did not consider at length the issue of the admissibility of video tapes of out of court statements but stated (1994:16) that:

*the Attorney agreed with the view of the Taskforce that the issues raised by this topic were too complex to be capable of resolution within the given time frame and that the Taskforce's original terms of reference should be amended accordingly. The Taskforce considers that the potential benefits of using videotapes of out-of-court statements should be amended accordingly.*

The Committee notes that a Videotaping of Children's Evidence Taskforce has been established in line with the recommendation of the Children's Evidence Taskforce. It understands that a report will be prepared shortly that will address many of the issues associated with the taping and admissibility of children's evidence.

In recent times there has been considerable discussion about possible changes to the structure of the whole legal and court process in relation to cases of child sexual abuse. Debate concerning such cases was heightened following revelations of Wood Royal Commission that many children do not report cases of sexual abuse because of the intimidatory nature of court proceedings. In her evidence to the Committee, Megan Latham addressed this point:

*I think you have got to take the position that if you want to expose an accused person to the full rigours of the criminal law for an assault which is, in the criminal calendar, in my view one of the most dire assaults with such dire long-term consequences on the health and wellbeing of a person, an offence against a person which warrants the maximum penalty that we give them under the criminal law, then you cannot simply say: Well the process is too intimidating let's do it another way, because if you do it another way you cannot then visit the accused [re-try or re-sentence], if he is convicted, with those penalties. What you do is, in effect decriminalise the whole thing. The protections that are afforded to an accused person are there because the potential consequences are so extreme, and they should be extreme, and if we start saying let's do it in a tribunal, there will not be any terms of imprisonment, there will not be any consequential gravity attaching to the offence and the community over time will see it as they once saw it, it is a matter for the family. I do not accept that position. I think it is inherently unsound .... I really think (that you should) modify your procedures as much as you can within the confines of that discipline to allow for children to be heard (emphasis added)(Evidence - 22 April, 1996).*

The Committee concurs with these views. It considers that the implementation of the recommendations of the Children's Evidence Taskforce Report, *Taking Evidence in Court* and the enactment of the *Crimes Amendment (Children's Evidence) Bill* will go a long way in assisting children and young people who are victims of abuse to give evidence in court.

#### 4.4 FAMILY LAW MATTERS

The Committee recognises that family law matters fall within the Federal jurisdiction. Nevertheless, a number of issues relating to the involvement of children in such matters fall directly with the concerns of this Inquiry.

The Committee understands that the vast majority of children involved in family law matters are not represented. A recent decision of the Full Court of the Family Court, *Re K* (1994) established parameters for the representation of children in family law proceedings. The Court identified thirteen categories of cases where the trial judge or registrar of the court determines when children should be given separate representation. Judith Ryan, Manager of the Family Law Programme at the NSW Legal Aid Commission told the Committee in evidence that as a result of *Re K*:

*the court should enquire whether the family comes within one of these thirteen categories, and although they are not proscriptive and they would not excuse other factual circumstances, there will be cases, for example, where there are particular cultural issues which are relevant to the welfare of the child, special medical procedures, for example, where a child is proposed to be sterilised, cases where there are allegations that the child has been sexually abused or physically abused, where there is a history of domestic violence, where neither of the parents are represented. They are the sorts of cases .... The court makes the order (and), the order is remitted to the Legal Aid Commission (Evidence, 22 April, 1996).*

The Committee welcomes the approach of the Court in *Re K*. However, it is aware that in spite of that decision, there have not been any additional resources provided to the Legal Aid Commission to implement fully the Court's order. As Ryan further explained to the Committee, once an order is remitted to the Legal Aid Commission:

*it is then a matter for the Legal Aid Commission whether they implement those orders or not. The court does not have the power to order us to provide the representation. You will see that there is a difference developing nationally in the approaches taken by the Legal Aid Commissions. For example, the Legal Aid Commission in Western Australia, because of the budgetary pressures, funds only two of the thirteen categories of cases that are mentioned in *Re K*. We have continued to fund them all but we are in a position now of extreme financial distress.*

**The Committee strongly supports the separate representation of children in family law proceedings.** It considers that such representation is vital given that children can be the most vulnerable parties to any family law matter. The Committee is extremely concerned that a lack of resources is potentially undermining this process. The Committee is aware that legal aid funding generally, is stressed but considers that children should not suffer from budget constraints and cuts. It therefore calls on the Legal Aid Commission to quarantine an amount of money to ensure that children are provided with adequate legal representation in family law proceedings, as laid down in *Re K*.

### RECOMMENDATION 14

**That the Legal Aid Commission quarantine appropriate funds to ensure that children are provided with adequate legal representation in family law proceedings as laid down in *Re K*.**

## CHAPTER FIVE

### HEALTH

#### 5.1 INTRODUCTION

The Terms of Reference of this Inquiry require the Committee to examine the degree to which the needs of children throughout New South Wales are being effectively advocated for and promoted in the area of health. All the submissions and witnesses who addressed the issue of health agreed that, in certain areas and among certain groups, there needs to be more effective advocacy for children and young people.

Due to their special needs and vulnerabilities, a holistic approach to advocacy and the health of children and young people needs to be adopted. As the submission from the Youth Action and Policy Association stated (Submission 40):

*the health needs of young people are affected among other things by their social context: class, gender, ethnicity, ability, sexuality, education, employment, income, housing, family relations. All have an impact on young people's health, and must be taken into account in the development of strategies and services for improving and maintaining the health of all young people. A purely 'medical model' of health care can only provide a limited understanding of young people's health needs. It is also important to particularly acknowledge both the immediate and long term effects of violence, and domestic violence on the health of young people.*

The Committee is aware that in recent times particular health needs of children have been given increased consideration. For instance, the tragic reality of youth suicide has resulted in a greater acknowledgement of the mental health needs of children and young people and of the need for a "whole of community" response to the problem.

Moreover, over the last 5-10 years there has been a greater awareness of the risk of injury many young children can face in the home and there have been a number of education campaigns designed to minimise the potential for such injury.

Children and young people have recently been targeted in education strategies to highlight the health risks associated with smoking and alcohol abuse.

Further, the tragedy of Sudden Infant Death Syndrome (SIDS) has resulted in a public information campaign designed to inform parents and carers how to minimise the risks associated with SIDS.

Nevertheless, despite these and other health campaigns and strategies, the health needs of many children and young people throughout New South Wales have, to date, remained unmet.

The Committee heard that our current health system has traditionally been geared towards adult patients and consumers - children are subsumed into the general system and not accorded a particular status which their age requires. Children, according to the submission of the Australian College of Paediatricians, "are not promoted in mainstream provision of health care" (Submission 28).

The Committee recognises that this is particularly the case for Aboriginal children whose health status has been described as being akin to Third World standards. Child Advocate Dr Ferry Grunseit, in a document tabled in evidence (29 November, 1995) stated that:

*Aboriginal children still suffer from poor health and have a sickness pattern reminiscent of the last century. For example, 40% of Aboriginal toddlers are admitted to hospital with chest infections and the incidence of pneumonia is 80 times that in non-Aborigines. Two hundred Aboriginal communities do not have a local health service, over 300 lack a clean water supply and 250 do not have electricity .... Family disruption, domestic violence, lack of care and supervision by young unskilled and poorly adjusted parents contribute to the stressful life faced by many of these children since their birth. The rate of child abuse and neglect notifications is high amongst Aboriginal children in this state compared with the rest of the population.*

The Committee also acknowledges that children of lower socio-economic status generally have lower standards of health in a number of areas, often due to poor nutrition, housing and environment. Children with a disability have special health needs that are often not adequately met by the health system - their disability being frequently identified as the major reason for accessing health services.

The Committee was told that limited services and facilities in rural and remote areas place children from these regions at a marked disadvantage in terms of detecting health disorders and receiving adequate health care. The Committee is also aware that children as carers, that is, those who are responsible for the care of an ill or disabled parent, are a group whose needs have not been fully recognised. The Committee anticipates examining all of these issues throughout this Chapter.

The Committee understands that the Minister for Health has recently launched a Discussion Paper on the development of the NSW Child Health Policy (Department of Health, 1996). The paper is open to community consultation and the responses will form part of the final report on the NSW Child Health policy. Among the issues canvassed in the Discussion Paper are immunisation, injury, asthma, dental health, nutrition, mental health, child protection and gender issues. Some groups are identified as having special needs and requiring priority attention, including Aboriginal children, children from non-

English speaking backgrounds, children from poor families, those with a mental illness, and children who are abused.

The Committee welcomes the development of a Child Health Policy and hopes that the material presented in this Chapter will assist in the development of that policy. When the policy is fully developed the Committee trusts that it will be implemented without delay so as to address the manifold health needs of all children in the state.

## 5.2 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The health needs and rights of children make up a number of articles in the United Nations Convention on the Rights of the Child. Article 24 provides:

1. *State parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation to health. State parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*
2. *State parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*
  - (a) *to diminish infant and child mortality;*
  - (b) *to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*
  - (c) *to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;*
  - (d) *to ensure appropriate pre-natal and post-natal health care for mothers;*
  - (e) *to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;*
  - (f) *to develop preventative health care, guidance for parents and family planning education and services;*
3. *State parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*

4. *State parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.*

In spite of its international obligations under the United Nations Convention, the Committee was told during the Inquiry that both the nation as a whole and the state of New South Wales are failing to properly maintain the standards required by the Convention.

Examples provided to the Committee that illustrate this situation included:

- the lack of facilities and medical aids for children;
- limited child mental health specialists and services;
- limited child and adolescent drug and alcohol specialists and services;
- the low immunisation rates in Australia and New South Wales compared to other OECD countries (although the Committee received a submission questioning current vaccination policy); and
- the appalling state of Aboriginal child health and the fact that, today, Australian children from disadvantaged backgrounds have worse health than the rest of the community, as measured by a wide range of indicators including perinatal outcome, infant mortality, illness and accident rates and health service use.

It must be recognised that Article 24 of the United Nations Convention should also be read in conjunction with Article 12, which provides for the views of the child to be taken into account where that child is capable of forming his or her own views. As the Committee has learnt from a document tabled by the Health Care Complaints Commissioner, Ms Meryl Walton (Tabled Document: 29 November, 1995), this Article in the context of health means:

*informing children, listening to them, and actively involving children who have views in making decisions about their care. It means listening to mothers who pick up clues from their baby about how the treatment is benefitting or harming them, and how it might be improved .... It also means overcoming age-assumptions, such as that children aged under 3 years cannot understand explanations (they can) ... or do not mind their privacy and dignity being disregarded (they do), or that children aged 5 to 6 years can never take part in making complex, serious decisions about their treatment (some do), or that older adolescents do not need or want close mothering care (many do during the early days after major surgery).*

Evidence to this Inquiry has revealed that in many instances the principles of Article 12 are not being adhered to in relation to children's health. The Committee believes that this can be addressed by professional education and policy guidelines for use throughout the health system.



### 5.3 GOVERNMENT RESPONSES

The Committee was told that one of the factors contributing to children's health problems, and one which highlights the need for effective advocacy in the area of health, is the traditional lack of a discrete child-specific health policy.

At a federal level, the National Health priorities are largely oriented to adult health. The Australian College of Paediatrics commented in its submission to the Committee:

*The current National Health priorities are Heart Disease, Cancer, Injury, Aboriginal [health] and Mental health. As children do not necessarily "fit" into these prescribed conditions a separate set of goals [needs] to be developed so that some consideration could be given to the health needs of children (Submission 28).*

At a state level, and as noted above, the Government has recently announced that it is developing a child health policy. The Committee is pleased with this initiative as children's health should finally be accorded a priority in terms of the state's health goals.

In his submission to this Inquiry the Minister for Health outlined child health priorities as including increasing rates of childhood immunisation, developing strategies to minimise blood lead levels in children, developing antenatal and postnatal parenting education programs and introducing a dental assessment and prioritisation scheme for school children (Submission 32).

The Committee notes that in recent times there has been a positive move, at both a state and federal level towards developing mental health strategies for children and young people following alarming revelations about Australia's unacceptably high youth suicide rate. At the state level, a suicide prevention strategy has been established which will be completed in 1996 (New South Wales Government, 1996:6). At the federal level a Youth Suicide Prevention Advisory Group was established in 1995 which is examining strategies to prevent young people committing suicide.

During the Inquiry the Committee heard that within the Child and Family Health Unit in the New South Wales Department:

*staffing has been so eroded that it is effectively 1 full time policy adviser and 1 part time medical officer (Submission 57).*

It is apparent that the present structure is inadequate since it does not allow for research and policy development in areas of urgent need such as Aboriginal child health and rural family issues (Submission 57).

The Committee agreed that one area of concern that has yet to be adequately addressed in a consistent child and young person's health policy is the problem of ear and hearing

disorders. The Committee recognises this as a major issue, not just from a health perspective, but because of the impact untreated disorders may have on a child's learning ability and behaviour. In a previous Inquiry, *Juvenile Justice in New South Wales* (Standing Committee on Social Issues, 1992), the Committee heard that the source of many young offenders' problems could be traced to hearing disorders caused by *otitis media*. This is a major problem among Aboriginal children. The Committee therefore calls on the Government to address this issue as a matter of urgency.

The terms of reference require the Committee to review the adequacy of the Health Care Complaints Commission. The Commission investigates complaints against medical practitioners and health workers. Evidence was received from Commissioner, Marilyn Walton, and the Committee received a range of submissions that addressed its adequacy in relation to advocating for, and redressing the grievances of, children. Most of those considered that the Health Care Complaints Commission was essentially adult-oriented with the complaints procedures too complicated for children to access effectively. Of course, the lengthy time frame for the resolution of matters deters children and young people from accessing the Commission. The Committee also heard that parents do not utilise the Complaints Commission on behalf of their children. Much of this has to do with the fact that the Complaints Commission is not widely known to health consumers. These issues are addressed further in Chapter Seven.

### 5.4 PREVENTION

The Committee recognises that a major component in successful children's advocacy generally is prevention and early intervention. This is particularly pertinent in the area of child health. Prevention of injury, disease and mental health problems should be an overriding concern for the community. As noted above, Australian children from disadvantaged backgrounds have worse health than those from more affluent backgrounds. Mathers' (1995) analysis of health differentials among Australian children provides the following information in support of this claim:

- *Children in single parent families had a clear pattern of worse health and higher levels of use of health services than children in two parent families;*
- *Children aged 0-4 years in single parent families were substantially more likely not to have been breastfed;*
- *Girls aged 2-6 years in single parent families were 30% more likely not to be fully immunised;*
- *Children in low income families had significantly more serious chronic illnesses than those in high income families;*

- *Children aged 0-4 years in low income families were substantially more likely not to have been breastfed;*
- *Boys aged 2-6 years in low income families were nearly 3 times more likely not to be immunised for measles than boys in high income families;*
- *children whose parents were unemployed or not in the work force had around 25% more serious chronic illness than children with an employed parent;*
- *Boys and girls aged 0-4 years whose parents were not employed were much more likely not to have been breastfed for at least 3 months;*
- *Boys and girls aged 2-6 years whose parents were not employed were around 30% more likely not to be fully immunised, with substantially higher levels of incomplete immunisation for measles, mumps and whooping cough;*
- *There was a clear gradient of increasing death rates for Australian children with increasing level of socioeconomic disadvantage of area of residence;*
- *Mental disorders (for girls) and bronchitis, influenza and deafness (for boys) were reported more frequently for children living in the most disadvantaged areas;*
- *Children whose parents did not speak English at home were much more likely not to be immunised for all the diseases where vaccination is recommended.*

Mathers (1995:x) concludes that there is clear evidence of:

*poorer health among Australian children in socio-economically disadvantaged families where neither parent is employed and in single parent families .... Monitoring of health differentials among Australian children can help to identify priority groups for the development of targeted preventative and curative health interventions to assist economically disadvantaged children to achieve better health and, potentially, to reduce health differentials in adulthood.*

In his evidence to the Committee, paediatrician Dr Victor Nossar, emphasised the need for prevention in any effective form of advocacy for children, including in health. Dr Nossar stated to the Committee:

*You have to try and prevent the disadvantage occurring if you can .... As a paediatrician, it concerns me that when I evaluate resources that impact on health programs, the people who gain most are the people in the middle and upper classes from programs which are intended to help the poor, or the children of the poor ...*

*(nevertheless) what I am convinced about is something like disadvantage having an effect on health (Evidence - 29 April, 1996).*

Fundamentally linked to the health status of children in New South Wales is nutrition. Good nutrition can also impact significantly on learning ability and concentration, and on mental health, including self-esteem and confidence. In a report prepared by the New South Wales Health Department (1994), *Food and Nutrition in New South Wales: A Catalogue of Data*, a range of findings were made in relation to the nutritional standards of children and young people in New South Wales. Aboriginal children, as the report reveals, have very low nutritional standards. Some of the findings are summarised below:

- *Aboriginal children may be at higher risk of nutrient deficiency than non-Aboriginal children;*
- *children of lower socio-economic status had:*
  - *higher intakes of energy and a higher proportion of energy from fat, saturated fat and monounsaturated fat; and*
  - *a lower density of fibre in the diet, a lower ratio of polyunsaturated to saturated fat and a lower proportion of energy from protein and carbohydrates;*
- *high infection rates in Aboriginal infants and children are associated with growth faltering and frank malnutrition;*
- *several studies of New South Wales Aborigines, particularly studies of children, have reported a high prevalence of iron deficiency anaemia, low blood levels of vitamins, and infections or parasitic infestations;*
- *infections are closely related to malnutrition in Aboriginal children. Improvements in nutritional status therefore require attention to water quality, sanitation, housing, food availability and consumption;*
- *several studies have found New South Wales Aboriginal children to be growth retarded compared to international standards or compared to non-Aboriginal Australian children. In some studies, growth measures indicated both past and present malnutrition;*
- *one of the major causes of death among adolescents and young adults (15-24 years of age) was mental disorders, a category which includes alcohol dependence and eating disorders such as anorexia nervosa and bulimia;*

- *infant, neonatal and perinatal death rates in New South Wales decreased considerably from 1971 to 1987. Aboriginal infant and perinatal mortality in New South Wales and Australia were two to three times higher than for the total population;*
- *while there is no apparent socio-economic gradient for blood cholesterol, the prevalence of high blood pressure, and overweight and obesity is greater among those of lower socio-economic status. It appears that these risk factors are prevalent in New South Wales children, and contribute to the development of heart disease over many years.*

Poverty and a lack of food have been identified to the Committee in its Inquiry into *Juvenile Justice in New South Wales* as being one factor associated with offending behaviour among certain young people. In that Inquiry, the Committee heard (1992:43):

*evidence ... of young people committing so-called survival crimes, that is, crimes which related generally to accessing food, clothes and ... accommodation.*

**The Committee considers that lack of nutrition and health care among children and young people is unacceptable. That Aboriginal health remains at such an appalling level, and that the health of the children of the disadvantaged has become worse, is a serious indictment on our community and an unfortunate indication of the priority we accord children.**

**Children of minorities and children of the poor are particularly vulnerable when children's needs are not a priority.**

**All children are entitled to a healthy lifestyle and this is a pre-requisite for them being able to reach their full potential as human beings. Advocacy for children in the area of health should therefore concentrate on preventative and early intervention strategies to ensure that each child does in fact have equal access to a healthy lifestyle.**

As the Committee has noted earlier, advocacy for children involves providing appropriate support and assistance to families, especially families in crisis. To this end, the Committee considers it critical that appropriate support is offered to vulnerable families at the time of the mother's confinement. It considers that such support should begin at the hospital stage following the birth of a baby, where it is considered that vulnerable parents may need support. The support should then continue, by way of home visitations, for the next five years. The Committee considers that a program of this nature must be culturally sensitive.

The Committee sees such a program as being crucial to the prevention of neglect or abuse of children. The Committee notes that this was the approach in the National Strategy for the Prevention of Child Abuse.

**RECOMMENDATION 15**

**That the Minister for Health establish an outreach program for vulnerable families at the time of the mother's confinement. Workers of the outreach program would conduct regular home visits to such families until the child reaches five years of age. Among the tasks of the workers of the outreach program would be to provide advice about nutrition, child development and parenting skills.**

The Committee considers that Aboriginal child and adolescent health, including mental health, must be a priority of the New South Wales Health Department. Effective and practical strategies, developed in consultation with members of the Aboriginal community, that address the dreadful state of health amongst this group, must be devised and implemented as a matter of urgency.

**RECOMMENDATION 16**

**That the Minister for Health and Aboriginal Affairs establish an Aboriginal Child Health Unit within the Department of Health as one means of addressing the unacceptable health status of Aboriginal children. (As a priority that Unit should examine and implement strategies to overcome the problems associated with poor nutrition and otitis media).**

As noted earlier, the special needs and vulnerabilities of children require a holistic approach to health issues and health care. Currently, mainstream health services, such as clinics and hospitals, follow a largely medical-only model, and as such miss many of the broader issues affecting the well-being of the child or young person. As Adrian Ford, Chairperson of the New South Wales Child Protection Council told the Committee in evidence (Evidence - 9 November, 1995):

*There may be children in the hospital system who are there for a physical health reason but, along with that physical health reason, there may be other issues that are not picked up. There may be behavioural issues or emotional issues but, because the child is being seen under the label of a particular health issue, the particular group of experts involved may not necessarily see the other issues which are apparent to other people's eyes .... There can be appropriate and excellent work done but there may not*

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*be more fundamental and broad-ranging holistic views of what is happening to children in a system like that unless someone, or a group, is looking at the broader issues.*

## 5.5 CONSENT TO MEDICAL TREATMENT

The issue of consent to medical treatment has been raised throughout the Inquiry as one area which may give children and young people a say in decisions that affect them. The power of parents in relation to their child's medical treatment is not unfettered (Manning, 1996:32). Manning explains (1996:32):

*First, there are some procedures which do not come within the ordinary scope of parental power to consent to medical treatment, and which require the approval of the Family Court (or Guardianship Board). Secondly, parents are required to act in the child's best interests. If a parent or guardian appears not to be acting in a child's best interests the state may direct that treatment be given. This may be done by application to overrule parents (petition to make child ward of the court) or application by welfare authorities to make child ward of the state .... Finally, there comes an age where children are entitled to consent to their own treatment.*

New South Wales law provides that at 14 years or over, young people can legally give consent to their own general medical or dental treatment.

A child under the age of 14 years may consent to medical treatment if they are considered to be sufficiently mature:

*the doctor must be satisfied that the child has sufficient understanding and intelligence to understand fully what is proposed (Manning, 1996:32).*

In relation to terminations, parental consent is not required for girls over the age of 14 years. Depending on the doctor, parental consent for girls under that age may be requested. If the child's parents refuse consent, she may seek another doctor or make an application to the court for an abortion.

One of the leading cases in the area of consent to medical treatment and which provides some protection to the wishes of children, is the House of Lords case of *Gillick* (1968 Family Law 11). In that case the House of Lords dismissed the mother's claim that the medical practitioner should not provide contraceptive advice or treatment to children under the age of 18 years without parental knowledge or consent:

*The decision was based partly on the notion that parental powers over children 'dwindle' as children grow up and their autonomy increases (Redfern Legal Centre, 1995:224).*

## CHAPTER FIVE

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The New South Wales Department of Health has specific guidelines regarding the consent to medical treatment by minors. These are as follows:

- *Where a patient is under the age of 14 years, the consent of the patient's parent or legal guardian is necessary, except in an emergency.*
- *A child aged 14 years and above may give consent to medical or dental treatment. For this consent to be valid the child must be able to adequately understand and appreciate the nature and consequences of the procedure/treatment.*
- *However, where a patient is aged 14 or 15 years, unless the patient objects, the consent of a parent or legal guardian should also be obtained.*
- *Where a patient is aged 16 years and above the consent of the patient is sufficient, unless the person is incapable of giving consent, in which case the provisions of the Disability Services and Guardianship Act take effect.*
- *A registered medical (or dental) practitioner may carry out medical (or dental) treatment on a minor aged less than 18 years without consent, if the practitioner is of the opinion that it is necessary to carry out the treatment on the child in order to save the child's life or to prevent serious damage to the child's health.*
- *A person shall not carry out medical treatment on a child aged less than 16 years that is:*
  - (a) *intended or reasonably likely to have the effect of rendering the child permanently infertile;*
  - (b) *an experimental procedure that does not conform to the NH and MRC Statement on Human Experimentation and Supplementary Notes 1989;*
  - (c) *an aversive therapy;*
  - (d) *a drug of addiction (otherwise than in association with the treatment of cancer), over a period totalling more than 10 days in any period of 30 days;*
  - (e) *a long acting injectable hormone, such as Depo-Provera, for the purpose of contraception or menstrual regulation;*

*unless:*



- 
- (i) *the treatment is required as a matter of urgency to save the child's life or to prevent serious damage to the child's health;*  
*or*
  - (ii) *the Supreme Court consents to the treatment.*
- *Special requirements exist for consent to anal, vaginal or penile-urethral examination of children living in residential care, and the Children (Care and Protection) Act should be consulted as to these requirements (NSW Department of Health, 1993:9).*

In all decision-making, adequate information and appropriate language to assist the child should be ensured in practice guidelines.

## 5.6 HOSPITALS

The Committee received both oral testimony and written submissions regarding the hospitalisation of children and young people.

Paediatric medicine is a specialist area and many hospitals in the State have in-patient wards and out-patients services for young people. Although hospitals have a brochure for all in-patients regarding patient rights, the Committee heard that it is not "child-friendly". The Committee heard that it should be mandatory for every health facility that cares for paediatric patients to develop, introduce and manage a preparation program for young people entering hospital. This would include multi-lingual brochures, information for parents, and a guide to the hospital and procedure information (Submission 57). The Committee supports this proposal.

The Committee also supports the recommendation of the Australian Red Cross in its submission that there should be 24-hour visiting by parents and siblings and the provision of parent accommodation (Submission 16).

The Committee notes that the issue of parental involvement in procedures is not universally agreed to by experts in the health field. However, it is generally recognised that health care professionals need to consult with both the parents and the child on the involvement of the parents. In its submission, the Association for the Welfare of Child Health stated that:

*there is an urgent need for hospital policy to be developed in consultation with anaesthetists and other health care professionals, to reflect the need for parental involvement as a matter of routine (Submission 57).*

A broad range of issues were raised in submissions and by witnesses about the important features of hospital care for young people. Among those was the issue of adequate and appropriate facilities in hospitals. The Association for the Welfare of Child Health argued that there is a need to ensure there is provision for child-sized equipment, such as baths, furniture and medical equipment (Submission 57). The Australian Red Cross further emphasised the importance of play to a child's well being and for the successful recovery of a child (Submission 16). This was identified as one area which is the first to suffer under budget cuts.

Many submissions were concerned with the education of children during hospital stays. The Committee firmly believes that children who spend lengthy periods in the hospital environment should continue to receive education, as is their right under the United Nations Convention on the Rights of the Child. However, a number of problems were identified to the Committee during the Inquiry, including:

- *teacher numbers are being decreased and adequate staffing levels are not available to maintain a quality service to children both in the hospital school room and those who require teaching by the bedside;*
- *access to hospital schooling is being offered or declined on the basis of 'anticipated length of stay' in hospital. Length of stay is frequently unpredictable, particularly in dealing with children's health, as children's patterns and rates of illness onset and recovery vary markedly from those of adults.*
- *these issues are complicated by the difficulty of the hospital schools being administered under two separate government departments, New South Wales Health and the Special Education section of the Department of Education. Closer co-ordination between departments and more consultation with parents, hospital teachers and health professionals is required (Submission 57).*

### 5.7 COMMUNITY HEALTH CARE

The Committee notes that the change in the delivery of health care services, and in particular the reduced time children (and adults) spend in hospital, has put new pressures on community health care. The increased pressure on the health care system has meant that patients are sent home from hospital still requiring care from health care professionals. The Committee heard evidence that this is often placing undue stress on parents and children.

One of the major concerns of the Committee is the apparent lack of co-ordination in community health care for children. The Committee heard that there is inadequate follow-

up by community support services. According to Irene Hancock of the Association for the Welfare of Child Health, one means of addressing this is to ensure that the general practitioner is included in the discharge plan from hospital. Ms Hancock also suggested in evidence that some form of nursing care should be provided to assist the child in the convalescent process (Evidence - 3 May, 1996). The Committee supports each of these proposals and urges hospitals and the New South Wales Chapter of the Royal Australian College of General Practitioners to develop an appropriate strategy to ensure that general practitioners are included in discharge plans.

The Committee was informed of community-based youth specialist centres including Cellblock and High Street. The Committee understands that such centres offer information and advice to young people on a range of health related issues. According to the submission from the Youth Action and Policy Association there are only a small number of youth health centres, and young people in outer urban Sydney regions and rural areas currently have few youth specific services (Submission 40). That same submission argued that:

*Community health receives approximately 2% of the New South Wales budget. Youth Health Centres are then allocated accordingly from that 2%. This is clearly inadequate.*

The Committee recognises that community youth health centres are well placed to provide an integrated holistic approach to the health needs of young people. That is, workers are trained to deal with a variety of problems and issues brought to them by young people, such as accommodation, employment, gender, sexuality, ethnicity and family relations to name but a few (Submission 40). The Committee considers that youth health centres are an appropriate health model which can meet the rights and needs of young people. It therefore proposes that funding to community based youth health centres be expanded to ensure that the needs of the clients are being adequately met and that all young people throughout New South Wales have access to them.

## 5.8 SPECIAL NEEDS GROUPS

A significant proportion of children and young people who come into contact with the health system have special needs. As the following discussion will demonstrate a number of those needs remain unfulfilled by that system, highlighting the very real lack of systemic advocacy for these children and young people in particular.

An examination of the health status and needs of **Aboriginal children** has already been given throughout this chapter. As that discussion has indicated **Aboriginal children have probably the greatest unmet needs in relation to health of any other member of our community.**

The following discussion will examine the situation of children with a disability, refugee and children from a non-English speaking background, children from rural and remote areas, girls, homeless young people, children as carers, children with a mental illness and children of parents with a mental illness.

A number of submissions argued that **children with a disability** are especially disadvantaged in the health system. The Committee heard that in relation to children with a disability there is a:

*pervasive lack of advocacy in the area of health. Health care provision is random and currently no attempt is being made to improve access to health care (Submission 14).*

The submission from the New South Wales Council for Intellectual Disability stated that children with an intellectual disability are “extremely vulnerable” because they suffer a lack of access to resources, made more difficult by a society which, despite legislative efforts, continues to discriminate against difference.

The Committee was told that children with disabilities can be neglected in hospitals and other health services because they often cannot articulate their views and because they are ignored. Moreover, the New South Wales Council for Intellectual Disability argues that disabled children are especially disadvantaged in receiving sexual health information and advice, making them more susceptible to sexually transmitted diseases (Submission 14).

The submission from the Youth Action and Policy Association stresses that there are clear differences between mental health issues and intellectual disability issues. However, as that submission observes:

*young people with intellectual disability, who are also represented disproportionately among the young homeless for example, have few support services available to them, and are often inappropriately placed in mental health settings (Submission 40).*

Drug and alcohol services are also often inaccessible to children and young people with a disability. Lack of knowledge of these services, or exclusion from them, are reasons cited for this inaccessibility (Submission 14).

**Children and young people of a non-English speaking background** and in particular, those with refugee status, can face particular difficulties accessing health services. Language and cultural differences are often reasons for these difficulties. The Youth Action and Policy Association states (Submission 40):

*access to health and information and services is a major issue for NESB young people, particularly those with limited English language skills. Furthermore, western concepts of health, medicine and counselling are foreign to many NESB communities who may therefore be reluctant to utilise counselling and other support services. This is*

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*particularly true in rural areas. Services that can provide these supports must become more accessible to this group - particularly through education campaigns to local ethnic communities.*

The Committee understands that in recent times there has been a greater awareness of the mental health needs of young refugees and those of a non-English speaking background. The 1995 *State of the Nation* report observed that refugee young people are at particular risk of developing mental health problems. The Committee notes that:

*frequently these are compounded due to cultural factors, a lack of adult support and assistance, unstable living conditions, past trauma and migration stress (Submission 40).*

**Children and young people from rural and remote areas** face particular problems in relation to accessing health care. Vast distances and the lack of specialist health services make many of these children vulnerable to particular health risks. Moreover, as the Committee found in its report, *Suicide in Rural New South Wales*, as disadvantage and poverty has increased in these areas, the health status of the populations has declined. Lawrence and Williams' study noted that (1990:42):

*rural and remote area populations exhibit higher than average levels of premature mortality and death through ischaemic heart disease, cancer, suicide, tuberculosis and malnutrition.*

The Committee's report, *Suicide in Rural New South Wales* (Standing Committee on Social Issues, 1994), identified the problems associated with mental illness for young people in rural and remote areas. Although the Committee found that mental illness among young people is as prevalent in the country as it is in the city, many rural young people's disorders go undetected. Among the reasons for this are a lack of specialist workers and services and the very strong stigma that attaches to mental illness in the country, often preventing disclosure. As the Committee found during the course of its Suicide Inquiry, these issues, together with such factors as access to means (guns), and alcohol abuse, have been found to have contributed to the alarmingly high rate of suicide among young rural men.

During its discussions with students from Taree High School, the Committee was told of the real and perceived problems of confidentiality and privacy when accessing health services in country areas. This was especially the case in relation to matters relating to contraception and/or counselling. Medical practitioners for young people in country regions are normally family doctors which can often make it difficult for a young person to disclose a personal or troubling matter.

As a number of women's health policy reviews have documented, **girls** have special health needs. As well as the health issues common to boys, girls' health needs are often linked to gynaecological issues (including contraception), body health and image, and mental

health. In its report, *Girls at Risk*, the Women's Coordination Unit (1986) found that of the 100 girls interviewed for the study, 83 perceived their health to be an issue at some time. The report noted (1986:177) that:

*their concerns ranged from general physical well-being, contraception, stress/anxiety, through to pregnancy, asthma and major operations, with the three major concerns being contraception, stress/anxiety and general physical health.*

The *Girls at Risk* report (1986:177) also noted that girls felt intimidated and powerless in relation to medical services. Moreover, those who sought assistance from traditional services such as general practitioners or hospitals "did not believe the assistance they were seeking was gained" (1986:179).

The issue of teenage pregnancy or "children having children" is one of considerable concern to the Committee, both in terms of the welfare and well-being of the mother and the baby. The Committee notes that the problem has become so great in the United States that a federal government taskforce has been established by President Clinton to investigate effective and practical strategies to deal with teenage pregnancies. In a document tabled in evidence, Dr Ferry Grunseit provided the following disturbing information (Tabled Document: 29 November, 1995):

*teenage pregnancy is an important public health and social problem especially today when family structures and support systems are often weak. Teenage mothers are at greater risk of failing to cope with their babies who may be of low birth weight or premature. Child abuse in the single mother family is more common than in complete families .... In 1991-92 6% of mothers in New South Wales were teenage, while in the N.T. 15% of confinements were in teenagers. In 1990 there were 1680 mothers whose age at confinement was 16 years or less .... (In relation to Aborigines) the higher incidence of teenage pregnancies and births is a disadvantage which may start a pattern from which recovery is unlikely throughout childhood and later on.*

**Homeless young people** have very special health needs, in terms of both their physical and mental health. As the Report of the Human Rights and Equal Opportunity Commission into Homeless Children found (1989:52), young homeless people are likely to suffer chronic ill-health yet very few access health services. The dangers of life on the street can pose the obvious risks of violence or injury as well as give rise to illnesses that are associated with poor diet and nutrition, and exposure to the cold, including respiratory problems. Moreover, many young homeless people are intravenous drug users and prostitutes which increases the risk of contracting HIV/AIDS, various strains of hepatitis and other sexually transmitted diseases.

The Homeless Children report explained (1989:52) that cost was the primary barrier to homeless children seeking medical attention. According to the Report's findings (1989:52):

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*most respondents did not have a Medicare Card or a Department of Social Security Health Care Card, nor could they afford to fill prescriptions. Specialist care, including dental treatment and physiotherapy, was beyond the reach of most.*

Mental illness, particularly severe depression, is a common phenomenon among homeless children. The report of the House of Representatives Standing Committee on Community Affairs into Aspects of Youth Homelessness (1995) found that there is a clear link between the onset of mental disturbance and homelessness. According to that report (1995:37-38):

*the reluctance to diagnose mental illness among children and adolescents, as well as the paucity of services for these children and their families, is a major factor contributing to many of them ending up in shelters and continuing on the road to chronic homelessness.*

The very fact of homelessness, bringing with it considerable vulnerability and loneliness, can be a precipitating factor to depression, severe anxiety disorders, suicide ideation, suicide attempts and completed suicide. The Human Rights Commission's report on homeless children found that many of the children interviewed experienced episodes of serious depression and many had engaged in self-harm, including drug and alcohol abuse and attempted suicide. A thirteen year old girl who had made several suicide attempts explained (1989:53):

*the way I feel ... you can't survive, so why live if you can't survive. That's what I keep saying to myself.*

The Committee understands that **children as carers** are a group whose needs have been overlooked by the health system. Nationally, there are an estimated 33,000 children under the age of 16 years caring before and after school.

These children act as carer for a sick or disabled parent which can be not only time-consuming but extremely stressful and distressing. Children who fulfil these roles are therefore vulnerable to emotional and psychological problems that are often overlooked or not acknowledged by other adults in their lives.

The Committee understands that currently, Interchange Respite Care (N.S.W.) Inc is conducting a pilot project in relation to children and young people who are carers of parents or adults living at home with disabilities in New South Wales. Interchange has received Commonwealth Respite for Carer funding to undertake the project. The project has the following aims:

- *to investigate the incidence and needs of children and young people who are carers of parents or adults living at home with disabilities across New South Wales;*

- *to raise the awareness of community organisations to the existence of these children in their local area so that eventually they may start to consider them as part of their target group;*
- *to educate service providers, teachers and others who may know young carers so that they may better respond to individual needs;*
- *to record and analyse information from a questionnaire based research project and present it in report form with recommendations for state and federal funding bodies;*
- *to facilitate referrals to appropriate local services; and*
- *to assist young carers in establishing and maintaining peer support networks through Interchange and then in their local areas.*

The final report is due for release in December 1996 and the Committee hopes that its findings and recommendations will assist children and young people who are carers.

### 5.8.1 Mental Illness

The study, recognition, diagnosis and treatment of child and adolescent mental illness has been a relatively recent focus in the field of medical practice. Today, with improved data collection and analysis we now know that children and young people are vulnerable to a range of emotional, behavioural and psychological disturbances.

In 1993, the Human Rights and Equal Opportunity Commission completed the most comprehensive report to date into the human rights of people with mental illness. A major section of that report dealt with child and adolescent mental illness. Among the findings of the Report were that:

- 15% of young people in Australia have an emotional or behavioural problem that required assistance;
- 5% have emotional or behavioural disorders which require intervention; and
- 1% or 2% have a serious or severe disorder which requires specialist assessment and treatment.

The *Human Rights and Mental Illness* Report documented that the average age of the onset of mental illness is 16 years. About 90% of psychiatric disorders have their onset in



adolescence or early adulthood and 50% of emotional and behavioural disorders first appear in people aged between 16 and 18 years. Haliburn (1993:45) also observes that:

*all indicators of emotional illness rise sharply during mid to late adolescence .... Onset of schizophrenia occurs before the age of 25 years in approximately 60% of those affected .... Onset of manic depressive disorder occurs between the ages of 10 and 19 years in approximately 30% of those affected.*

The Committee considers that this information is vital to understanding the concerns expressed by organisations and members of the community with regard to the limited resources for mental health services for children and young people.

While New South Wales has a number of bodies which potentially advocate on behalf of children with a mental illness including the Mental Health Advocacy Service, the Mental Health Review Tribunal, the Guardianship Board, and Health Care Complaints Commission, no specialist body deals exclusively with children and mental health issues.

**The overwhelming majority of evidence heard by the Committee suggested that children are not adequately represented by the current advocacy bodies and there is a desperate need for a specialist service.**

As the Youth Justice Coalition points out, one of the problems is that the majority of mental health non-government organisations deal with adults (Submission 34). Moreover, as the Human Rights Commission report found, the generalist advocacy bodies are limited in their ability to represent people with a mental illness.

According to Dr Robert Hayes, President of the Mental Health Review Tribunal, the greatest issue for children with a mental illness is the adequacy of programs and services available to detect and intervene in 'at risk' cases. Failure to detect and intervene can have devastating consequences including school exclusion, involvement in the juvenile justice system and even suicide.

The Committee heard during the Inquiry that there is a lack of appropriate hospital inpatient treatment for childhood sufferers of mental illness. Moreover, in spite of the prevalence of mental illness in children and young people there are only three publicly funded community-based child psychiatry facilities in the whole of New South Wales, all of which are based in Sydney.

There is some concern amongst organisations working in the area that centralised advocacy bodies would not be able to meet the very specific needs of these children. The Mental Health Review Tribunal suggests that State-wide community-based multidisciplinary programs and services would be more appropriate and would allow for early intervention in psychosis as it emerges in children and adolescents (Submission 53).

In the area of private practice, the training of child and adolescent psychiatrists seems to be ranked as a low priority compared with other areas of psychiatry. There is little on-going education in this area or in the allied profession of general practice (Submission 53).

The Committee considers that the *Mental Health Act, 1990* lacks an appropriate child-focus. It believes that a review of the Act should take place to ensure it is appropriate to the needs of children.

#### RECOMMENDATION 17

**That the Minister for Health review the *Mental Health Act 1990* to ensure it is appropriate to the needs of children.**

The Committee heard evidence that children of parents with a mental illness are greatly at risk of psychological disorder. There is a greater likelihood of these children experiencing social problems while young, and developing a mental illness in adulthood. According to Janet Devlin, coordinator of the IMPACT program (Evidence - 3 May, 1996):

*their problems result mainly from issues relating to emotional deprivation and emotional and physical neglect (and) inadequate supervision.*

Very often these children are taking on added responsibility at home for a mentally ill parent. The child may find him or herself taking on the substitute parenting role which may be detrimental to the child's development.

The primary issue raised in numerous submissions concerning children with, or at risk of, a mental illness, is the need for programmes and services to ensure early intervention.

A further problem identified by the Committee is the lack of a co-ordinated body at a government level responsible for meeting the needs of these children. It is currently left to the adult mental health workers, or to child protection workers dealing with sexual and physical abuse. According to Agnes McMillian, a psychologist from the IMPACT Program, there are no targeted programmes currently available which offer appropriate support in relation to pre-school age children of parents with a mental illness (Evidence - 29 April, 1996).

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## RECOMMENDATION 18

That the Minister for Health investigate the most appropriate existing body which would provide mandatory education, training and professional development for:

- health and allied professionals;
- teachers and school counsellors;
- psychiatrists and general practitioners; and
- early childhood workers.

The focus of this training shall be detection of, and early intervention in, mental illness as it emerges in children and adolescents.

### 5.8.2 Summary

The obvious vulnerability of all the children described above, demonstrate the very real lack of advocacy for these groups in the health system. The fact that the health needs of so many children still fail to be properly met reflects the minor status accorded to children generally, and the Committee is strongly of the view that particular policy development and targeted services should be pursued to overcome these deficits in delivering health programs to all Australian children and young people.

## 5.9 CHILD PROTECTION SERVICES

Children who have been physically, sexually or emotionally assaulted and abused are amongst the most in need children of specialist services and effective advocacy. They are also amongst the most silent - often being unable to disclose the assault or their feelings of distress. Because of their vulnerability, the Committee firmly believes that child protection services must be able to respond effectively to the needs of these children and to appropriately assist them in overcoming the trauma of assault.

The Committee notes that children do not disclose neglect. A large proportion of children who are in care have been removed from their families because of neglect. The principle of disclosure does not apply in cases of neglect; neglect can only be revealed via observation. The Committee considers that early intervention programs can be the greatest benefit to these children. It considers that the implementation of Recommendation 15 concerning the home visitation outreach programs will, through the workers' appropriate observations, go some way to preventing the neglect of children and their removal from their families.

The role of the New South Wales Health Department in relation to child protection is to provide physical, psychological and social assessments as necessary, crisis and ongoing

counselling including individual, group and family counselling and to provide a broad range of health services to the child and family (NSW Child Protection Council, 1991:16). Specially trained doctors also undertake forensic examinations of abused children, the results of which may be used as prosecution evidence at trials.

In defining the guidelines of relevant government departments and agencies, the NSW Child Protection Council (1991:16) considers the Department of Health should:

- *ensure that all medical practitioners are aware of their obligations to notify under the provisions of the Children(Care and Protection) Act 1987, and that all other relevant health workers understand the indicators of child abuse how to report suspected cases and are aware of the Ministerial Direction to notify;*
- *liaise with D.C.S. and other agencies to assist in the co-ordinated care of the child and family;*
- *conduct a medical assessment and provide medical follow up where appropriate;*
- *provide crisis and ongoing counselling and support the child and family;*
- *provide educational and preventative programmes that assist workers and the community in gaining a better understanding of sexual assault, physical abuse, emotional abuse and neglect and of the care of victims of these abuses;*
- *provide support for the child and non-offending family members prior to and during court proceedings;*
- *promote the development of services to children who have been sexually assaulted and, where appropriate, non-offending family members.*

The Health Department operates three highly specialised child protection units. These are located at the New Children's Hospital, Westmead, Sydney Children's Hospital, Randwick and John Hunter Hospital, Newcastle. The Units here deal with the most complex child abuse cases and cases where a serious injury has occurred requiring tertiary paediatric intervention. Multidisciplinary teams staff the Units and consist of child protection health professionals, including paediatricians, social workers, registered nurses and allied health workers. As well as the tertiary paediatric services, these Units provide undergraduate and postgraduate teaching and statewide education as well as conducting research. A 24-hour service is provided.

Each Area Health Service provides a wide range of community and some hospital based services which include early identification/prevention programs, counselling and referral

services. A range of 24-hour service, counselling and referral services are provided through 17 hospital based centres.

In relation to child sexual assault, Department of Health Sexual Assault Services are based in certain hospitals and community health centres throughout the State. Most of these services see both adults and children but in some areas there are separate services for adults and children under 16 years of age. The Committee understands that although it is not mandatory for children who have been sexually abused to be examined by a paediatrician, they must be examined by a medical practitioner trained in sexual assault examinations. The Committee also understands that most of these services offer both crisis and long-term counselling, including support through the court system. It further recognises that caseloads are generally considerable and that staff can be extremely stressed and overworked, creating the potential for inadequate service to traumatised children.

The Committee acknowledges that child sexual assault is a serious crime and that specialist services must be available to assist the victims. However, it also recognises that approximately two thirds of abused children suffer physical and emotional abuse with often extremely damaging consequences. Over the last few years it seems that services and policy direction have tended to place priority on sexual assault matters over physical and emotional abuse cases.

The Committee considers that children and young people who have been physically and emotionally abused or neglected, both individually and as a group, also require their needs to be addressed with urgency. The Committee notes that the Government has recently allocated an additional \$300,000 per annum for the expansion of the Health Department's Physical and/or Emotional Abuse and Neglect of Children Service. It also notes that recently, New South Wales Health has sought to address this issue by providing training on early intervention of physical and emotional abuse of children. The Committee encourages and supports this initiative.

## 5.10 CHILDREN BORN THROUGH DONOR INSEMINATION

The issue of donor insemination (DI) is complex and clearly a matter of human rights. The Committee received a number of submissions, and spoke with interested parties, which raised concerns about genetic inheritance and the rights of DI children to information about their biological inheritance. Currently in New South Wales, donor insemination children have no right of access to identifying donor information. Availability of non-identifying information can vary from clinic to clinic. The Committee notes that the New South Wales Health Department is currently undertaking a review of the *Human Tissue Act* to investigate the implications of sperm donation and donor registers (Submission 6).

## CHAPTER FIVE

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The Committee acknowledges the concerns expressed by members of the community as evidenced in their submissions to the Inquiry. It recognises that under the United Nations Convention on the Rights of the Child, Article 7 provides that:

1. *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
2. *State Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

Article 8 further provides that:

1. *State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.*

The Committee considers that the issue of the right of children born through donor insemination to information about their genetic inheritance requires urgent attention and resolution by the Minister for Health.

It notes that Victoria has responded to the issue with the enactment of the *Infertility Treatment Act, 1995*. Section 79 of that Act provides that a person born as a result of a donor treatment procedure may, on attaining the age of 18 years, apply for information about the donor. The rights of parents to apply for this information is contained in section 74. The Act also provides for the establishment of a donor treatment procedure information register (s. 82). Information contained at that Register includes the names and addresses of persons born as a result of donor treatment procedures, the descendants of persons born as a result of donor treatment procedures, donors, women who have undergone donor treatment procedures and their husbands and the relatives of all such persons. The *Infertility Treatment Act, 1995* also provides for counselling for donors and for applicants applying for relevant information.

The Committee sees considerable merit in the *Infertility Treatment Act, 1995*, as a means of meeting the needs of all those involved in donor insemination procedures, including recognising the rights of children born through such procedures. It therefore recommends that the Minister for Health introduce and implement similar legislation in New South Wales. The Committee considers that this action will help to advance a national approach to issues concerning donor insemination. The Committee also considers that the Minister for Health immediately provide guidelines to public and private clinics regarding the collection of relevant donor program information.

The Committee is concerned about the safe-keeping of the donor insemination records when the Royal Hospital for Women, Paddington is re-located to the Prince of Wales Hospital, Randwick. It therefore calls on the Minister for Health to guarantee the safe-keeping and preservation of all donor insemination records when this re-location occurs. It also recommends that the 10 year rule relating to the destruction of files be stayed in relation to donor insemination records.

#### RECOMMENDATION 19

**That the Minister for Health introduce and implement legislation that is similar to the Victorian *Infertility Treatment Act 1995*, as soon as possible. As an interim measure the Minister for Health should provide guidelines regarding the standardised collection of relevant donor program information for use by public and private clinics.**

#### RECOMMENDATION 20

**That the Minister for Health guarantee that all records relating to donor insemination procedures are safeguarded and preserved when the Royal Hospital for Women is transferred to the Prince of Wales Hospital and that the 10 year rule relating to records be stayed in relation to donor insemination.**

### 5.11 CONCLUSION

The Committee recognises that generally speaking, Australia and New South Wales have successful models of health services for adults and children alike. According to Taylor and Salkeld, (1996: 233),

*Australia has improved its ranking for life expectancy (at birth) since 1960, and in 1990 ranked ninth and seventh of 24 countries for females and males respectively; this is ahead of the United States and United Kingdom, and approximately equal to Canada.*

However, in both oral testimony and submissions received for this Inquiry, the Committee found overwhelming support for improved advocacy for children in relation to health-related concerns. The broad goal of advocacy for children in the area of health requires first and foremost a prevention-based approach.

As Dr Victor Nossar told the Committee in evidence:

*we have to make sure children grow and develop.*  
(Evidence - 29 November, 1995)

The health of a child is dependent on ensuring that children do not have their development and opportunities blighted by poverty, are educated and do not suffer from discrimination. These are the factors identified as having the greatest influence on the health of a child. According to the many submissions and evidence, part of this goal must be to ensure that the services in the public sector are adequately resourced.

A part of this approach is the improved awareness and understanding of the risk factors for all children. The Committee is encouraged by the statements made by the Minister for Health that a policy on child health priorities is currently being developed. The Committee supports the need for child specific policy development which provides universal access to health care services.



## CHAPTER SIX

# EDUCATION

### 6.1 INTRODUCTION

The fulfilment of children's rights to advocacy must include a sympathetic and meaningful expression of these concepts within the education system at all levels. Individuals spend a large part of their childhood attending various educational institutions and their impression of their place in society is strongly influenced by the treatment they experience.

Article 28 of the United Nations Convention on the Rights of the Child contains a recognition of the right of the child to education, and requires governments to:

- *make primary education compulsory and available free to all;*
- *encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in cases of need;*
- *make higher education accessible to all on the basis of capacity by every appropriate means;*
- *make educational and vocational information available and accessible to all children; and*
- *take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

Governments are also required to take all appropriate steps to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention.

The demands that our society makes on its educational institutions have increased and broadened in recent decades. Social and economic factors are continuing to drive these changes. Examples of these factors influencing our society are:

- the increased competition for employment;
- the reduced availability of unskilled jobs;

- the need for more extensive life-skills and training;
- increasing numbers of families with two working parents; and
- the decline in extended family support in modern society.

The change in the nature of work has also impacted on the education of our young people. In Western nations there has been a move away from manufacturing, which was a major source of employment for young women, and a provider of trade apprenticeships for boys. The Committee understands that the reduction in apprenticeships, the decline of the manufacturing sector, and the loss of opportunities for employment in unskilled jobs have significantly affected employment prospects for those young people not wishing to pursue further study.

Today the youth unemployment rate is approximately 27%. In some areas of the country this figure reaches as high as 35-40%. With such high levels of unemployment, more children are staying at school with the hope of gaining access to tertiary education or some form of employment. According to the 1991 census, 58.8% of 15 - 24 year olds are attending education institutions (Submission 40).

In his submission, Dr Ferry Grunseit, the New South Wales Child Advocate, also points out that children are entering the school system at an earlier age. He suggests that while this is not always a problem, some children who are entering school at four years of age and competing with older and more mature children "start off disadvantaged and never catch up" (Submission 35).

### 6.2 STUDENT INVOLVEMENT IN DECISION-MAKING

The Committee heard from a number of witnesses that the greatest challenge in improving advocacy within the education system is to ensure that children have a voice on issues that concern them. In speaking to students from schools in both urban and rural New South Wales, the Committee found this to be the single issue of greatest concern.

Article 12 of the United Nations Convention on the Rights of the Child states that a child capable of forming his or her own views shall be assured the right to express those views freely in all matters affecting the child. In recognition of the large proportion of a child's life that is spent at school, the Committee considers it important for children to have adequate input into their educational environment, as well as an equal right to access education services.

In addition, the Committee believes it essential that students are educated for citizenship in a democratic society such as our own. Students are expected to leave school at the age of 18 years and begin to exercise their democratic right to participate in social institutions.

Providing adequate training in how those institutions work, how to access citizenship rights and how to develop skills in that area is a fundamental necessity of an education system in a free society.

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Minister for Education review student involvement in decision-making in schools; urge schools to ensure that students are consulted in the development of anti-violence initiatives; and produce information on standards of best practice regarding student participation for dissemination to all schools (Standing Committee on Social Issues, 1995:217). The Committee appreciates that the right of children to be heard in decisions affecting them has begun to be recognised through mechanisms such as student representative councils. The Committee was informed that these groups are increasingly becoming part of the decision-making process in the school, and they advocate on behalf of other students on issues arising in the school.

The revised *Student Welfare Policy* (Department of School Education, 1996c), released in July, encourages schools to include their Student Representative Councils in decision-making. *The Good Discipline and Effective Learning* statement (Aquilina, 1995), released by the Minister for Education in December 1995, requires all public schools to prepare their own school discipline policy in time for the 1997 school year. This work is to be undertaken collaboratively involving the whole school community - students, staff, parent organisations and school councils.

The Committee heard students are also increasingly becoming involved as part of school councils which have a significant role to play in identifying educational needs and priorities and in decisions regarding school finances (Kyrios Evidence - 29 November, 1995). Students are also involved in Quality Assurance Reviews. Quality Assurance Panels gather information through structured meetings and interviews with a cross-section of pupils, school staff (both teaching and non-teaching) and parents in the local community. These reviews evaluate the effectiveness with which schools meet community educational needs within the context of statewide policy and resources, and have been conducted in over 1,200 schools. Some regions have recently provided specific training for students so that they can become panel members themselves (Kerr-Roubicek Evidence - 29 November, 1995).

The Committee welcomes and approves these initiatives. However, the Committee recognises that consultation can take a number of forms and may not be regarded as bona fide by those consulted. Isobel Seidel, a Year 11 student from the Billabong High School in Walla Walla, told the Committee of her experience of the process of consultation between students and government as a member of the New South Wales Students Representative Council. Ms Seidel stated:

*With my involvement in the consultation, I found that we were successful in the recommendations we put forward to the Assistant Director-General. He accepted our*

*recommendation, and in the restructure which will happen throughout the State we have been allocated a welfare officer and another body which will help SRCs. This shows that they have listened to what we wanted. I thought that that was very good because they were able to include us in the process. However, I found that they included us after the decision had been made. I suppose it really has to do with government. We are not consulted on the effects the decisions will have, and we are left with the consequences. I found that difficult (Evidence - 9 November, 1995).*

For students to have a more meaningful voice, the Committee believes further cultural change is required in the education system. With major reviews of areas such as the Higher School Certificate, the Committee hopes significant consultation occurs with children across New South Wales to ensure their best interests and needs are addressed.

### 6.3 SUPPORT FOR STUDENTS

Social and economic stresses, which bear down heavily on less fortunate families in our society, may often be manifest in the behaviour of children at their school. Children from families with working parents may also face certain difficulties in gaining the support and nurturing they need.

Children are also spending a greater part of their lives in the care and supervision of our school system and greater resources are needed to support them to cope with difficulties which arise in their life outside school. The Committee recognises that the school system increasingly is expected to adopt a parenting role, which poses considerable challenges given the current burdens on the curriculum.

The Youth Action Policy Association stated in their submission:

*Schools must be recognised as primary sites where students problems will manifest themselves and a site for intervention if problems occur. It must also be recognised that however skilled, teachers are not trained to deal with a whole range of social and psychological problems exhibited by their students (Submission, 40).*

#### 6.3.1 School Counsellors

Student problems are most often dealt with by school counsellors. School counselling was introduced to government schools in New South Wales in 1935 with the appointment of two "educational counsellors" to Sydney Boys' High and Sydney Girls' High. The number of school counsellors has grown in subsequent years to today's total of 653, with 91 district guidance officers. The average counsellor to student ratio is a little over one counsellor for every 1,000 students (Davidson, 1996).

School counsellors support students by:

- providing psychological counselling services and teacher in service training;
- maintaining links with government bodies and private organisations providing student services; and
- keeping informed of Departmental and inter-Departmental policies, and strategies for dealing with students.

During its Inquiry into Youth Violence, School Psychologists Australia Inc provided the Committee with statistics from a survey sample consisting of one-third of all school counsellors in New South Wales, and based on their work in the twelve months to November 1992 (Grunsell, 1993). From extrapolating these survey data, the frequency with which school counsellors in New South Wales deal with various types of incidents in one year was estimated. These incidents included:

Type of Referral	No. of Incidents
Parent Separation or divorce; traumatic family breakdown	3,368
Violence in the family	3,029
Violence among peers (including dating violence), or within the school, or towards a teacher	2,853
Family financial hardship (chronic or crisis)	2,639
Severe depression, suicidal thoughts of student	1,656
Drug/alcohol abuse by student	1,599
Notification of Child Sexual Assault	1,360
Notification of Child Physical Assault	1,010
Attempted suicide of student	864

These figures refer to the number of cases, and any one case could involve many interviews with a number of individual students, groups of students, students with their parents or siblings, with teachers or with health professionals.

● **Availability and Numbers**

According to the Youth Action Policy Association, the current ratio of counsellors to students is inadequate. The Association believes there is a need for a greater number of school counsellors in the education system (Submission 40). This was supported by student members of the New South Wales Students Representative Council, which represents students across the state, in evidence before the Committee.

In its *Report into Youth Violence In New South Wales*, the Committee recommended a review of the school counsellor service to examine the adequacy of counsellor numbers in each region; the basis upon which the allocation occurs; and the services provided by school counsellors (Standing Committee on Social Issues, 1995:212). The Government's response was that school counsellors are currently provided to schools "on the basis of

need" (Cabinet Office, 1996:41). School counsellors usually service one or more high schools and a number of feeder primary schools.

The Committee sought clarification of the basis for allocation decisions, and was informed that each year the allocation is reviewed taking into account such factors as the number of special education classes and students with disabilities integrated in the school; the level of suspensions; the level of child protection notifications; the number of non-English speaking background students; and other factors based on local specialist knowledge (Davidson, 1996).

Each of the Department of School Education's 40 District Offices has a student welfare consultant as well as a Senior Education Officer and Student Services and Equity Officer. The Department of School Education established a new Student Welfare Directorate in 1996. This Directorate has a Student Counselling and Welfare Unit which will review the processes for allocation of school counsellors, with the view to some changes being made for the beginning of 1997 (Davidson, 1996). The Committee welcomes this initiative, and calls for the adequacy of current numbers of school counsellors to be considered further.

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Minister for Education allow the appointment of selected experienced psychologists without teaching diplomas to the position of school counsellor (Standing Committee on Social Issues, 1995:212). The Committee was subsequently advised that the purpose of requiring school counsellors to have teaching qualifications is to ensure they have an understanding of student needs in a school context (Cabinet Office, 1996:41). The Committee rejects this proposition, and believes the skills of experienced psychologists would be more than adequate to enable them to appreciate student needs and their context. The Committee again calls on the Government to amend the employment criteria for school counsellors.

- **Access to Counsellors and Confidence**

Irrespective of the number of school counsellors, counselling services can only be effective in advocating and promoting the needs of children if they are appropriately accessed by students. In its *Report into Youth Violence in New South Wales*, the Committee recommended that a policy regarding the operations and protocols of the school counselling service be introduced; students be advised of the availability of school counsellors and support teachers; and students be assured access to appropriate guidance and counselling and that, if necessary, this be enshrined in legislation (Standing Committee on Social Issues, 1995:213).

However, Isobel Seidel from Billabong High School told the Committee:

*some people do not go to counsellors because they are linked to the department. They are seen as being part of the departmental body which will table and bring out all*

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*the information. They feel obliged to say everything. They believe it is always recorded and that further steps will be taken. In some schools they are very helpful - I know that. It is always good to have someone available for those who need it, but it is hard for them to talk about it with a counsellor (Evidence - 9 November 1995).*

During this Inquiry, the Committee found that the issue of privacy was a particular problem for students in rural and regional New South Wales. Students from Taree High told the Committee that in smaller communities such as theirs, most people knew each other and students were often unable to discuss personal issues with school teachers, counsellors or the family practitioner because those individuals may have close social contacts with the student's family (Taree High School Briefing - 9 May 1996).

Student Representatives of the New South Wales Student Representative Council responded favourably to a proposal for an additional community-based option for students who need counselling services. Isobel Seidel stated in her evidence:

*An outside body coming to the school would be preferable because the student would be speaking to someone from the community and not under the school's name. That might be helpful (Evidence - 9 November 1995).*

Andrew Zaw, a student from Arthur Phillip High School, also expressed his concerns about the issue of confidentiality in talking to counsellors linked to the school. He suggested students might feel more comfortable talking to an independent person because the information about them would not be recorded within the school system (Evidence - 9 November 1995).

The Committee has been advised that only qualified school counsellors and counsellors-in-training under the supervision of qualified school counsellors have routine access to registered guidance files. All guidance personnel have a responsibility to ensure secure storage of registered guidance files and to restrict access to them. These files contain confidential records of students who have received a significant guidance or counselling intervention. Records may include psychological test protocols, reports received from parents, and medical reports. Files are registered at Regional Offices and are Departmental rather than school records. School counsellors must inform principals and teachers about information on the file that is relevant to the management of the student concerned or would contribute to education programming for that student. Such information may be photocopied for the Principal provided that this does not infringe confidentiality or copyright (Department of School Education, 1991). Registered guidance files can be the subject of a Freedom of Information request or a subpoena.

The Committee considers these guidelines do not overcome the conflict between student confidentiality and access to records, and recommends this conflict be investigated and reported on.

## CHAPTER SIX

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Recommendations included in the Committee's *Report into Youth Violence in New South Wales* also focused on the need for school counsellors to have access to telephones and accommodation to ensure sufficient privacy and confidentiality (Standing Committee on Social Issues, 1995:213). The Government's response was that it is not financially feasible to provide counsellors with a telephone line for their exclusive use (Cabinet Office, 1996:41).

The Committee finds this response unacceptable. The Committee finds it astonishing that in Australia, which has the highest rate of mobile telephone usage in the world, a school counsellor cannot access a fixed private telephone line in a school. The Committee believes this could undermine the dignity of the child seeking assistance from a counsellor. The potential for breaches of confidentiality exists when counsellors do not have the technical and environmental facilities to ensure privacy. Such breaches of confidentiality could be devastating for a child already burdened by personal difficulties. The Committee urges the Government to implement the relevant recommendations of the *Report into Youth Violence in New South Wales*.

The Committee acknowledges that many children, particularly those in small communities, would value having a person outside of the school environment to approach when they were experiencing problems. The Committee believes that the efficacy of alternative counselling services external to the school is worthy of further consideration. Such services could be provided through existing youth services networks.

### RECOMMENDATION 21

**That the Minister for Education require the Department of School Education to report on:**

- the adequacy of current numbers of school counsellors;
- the appropriateness of existing employment criteria which prevent the appointment of selected experienced psychologists without teaching diplomas to the position of school counsellor;
- the conflict between student confidentiality and access to guidance records;
- attitudes of students to school counsellors; and
- possible alternatives to school-based counselling, having regard to the particular needs of rural children and children who may be reluctant to seek assistance from counsellors within the school establishment.



### 6.3.2 Interagency Initiatives

The Committee was made aware of efforts to co-ordinate the activities of relevant departments and agencies to provide a holistic approach to student welfare. The Chairperson of the New South Wales Child Protection Council, Mr Adrian Ford, referred to these initiatives and supported closer collaboration between the Department of Education and other departments to help resolve some of the problems that children experience. In evidence to the Committee he commented:

*The Department of Education is doing some extremely valuable work in terms of meeting children's needs, but there are also examples ... of children being caught up and labelled as, for want of a better expression, "bad" children. They exhibit particular problems such as difficult behaviour, emotional problems, or even psychological or psychiatric difficulties, and they may be attended to by a stretched school counsellor system. They may then be referred to a health system but there are no resources to get them to a health system. So that may not help to resolve the issue at hand (Evidence - 9 November, 1995).*

In its Inquiry into Youth Violence in New South Wales, the Committee recommended the extension of the use of schools for community-based programs and services, and of the Department of School Education's involvement in parenting programs. The Government's Inter-Agency School Community Centres Pilot Project, involving joint collaboration between the Departments of School Education, Health and Community Services to fund a two year pilot project to establish four community centres, is in accord with these recommendations. The project will develop and trial models of inter-agency coordination to support families with children under 5 years of age, with a view to promoting a positive start to school and to prevent disadvantage on school entry.

Schools are also working with the Department of Training and Education Co-ordination to refer students to community based programs such as the Time Out and Circuit Breaker programs. The Time Out Program is a co-operative strategy between schools and community organisations to address the needs of chronic truants and behaviour disordered students. The Circuit Breaker Program is for young people of non-English speaking backgrounds who are members of ethnic groups which experience disproportionately high levels of youth unemployment. The program is designed to assist them move from school to work.

The Committee supports the continued development and extension of the policy of making schools throughout New South Wales available as community centres, to enable young people to have access to a range of local services within the security of the school, and promote the sharing of resources within the local community.

### 6.3.3 Bullying

The Committee found in its *Report into Youth Violence in New South Wales* that the incidence of bullying in schools is alarmingly high. Evidence to the Committee during that Inquiry suggested that approximately 15% of children, or one in seven, report being bullied at least once a week. Victims tend to become withdrawn, and are often very suspicious of other people. Their peers tend to reject them, so they become increasingly isolated, and increasingly likely to be targets.

In health questionnaires, students who were victims of bullying were twice as likely to respond that they were not in good health; felt ill; lost sleep over worry; were panicky without reason; and had "bad nerves".

Students from this group were also more likely to feel depressed and worthless, and feel that life was not worth living. These victimised children were two to three times more likely to indicate that they had thought of "doing away with themselves", wished they were dead, and to have the recurring idea of taking their own life (Standing Committee on Social Issues, 1995:88).

The incidence and nature of bullying described in the *Report into Youth Violence in New South Wales* demonstrates the need for advocacy and the promotion of students' best interests within the education system. In evidence during this Inquiry, Helen Kerr-Roubicek, Chief Executive Officer of the Department's Guidance and Student Welfare Unit, told the Committee of the difficulty in identifying and responding to bullying in schools:

*We know from the research that young people need to feel that they will be believed ... and they need to have confidence that the system will respond in a way that will not exacerbate the issue. It is clearly a difficult question for schools because this is a kind of coercive behaviour that occurs behind teachers' backs, which is why it is difficult to intervene in. Teachers underestimate it because they do not see it (Evidence - 29 November, 1995).*

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Department of School Education ensure regional education offices:

- offer appropriate information resources to schools to assist them in identifying and intervening appropriately when bullying occurs;
- develop in-service workshops for teachers to assist them in addressing bullying;
- direct schools to formulate a school policy on bullying, with appropriate input from students and parents; and

- develop or approve self-administered, anonymous questionnaires to offer to schools to assist them in evaluating the extent of the problem and in developing an appropriate, co-ordinated response to bullying (Standing Committee on Social Issues, 1995:261).

In its response to the Youth Violence report, the Government has indicated the Committee's recommendations will be incorporated in the work of the newly formed Directorate of Student Welfare (Cabinet Office, 1996:52). The Department of School Education's *Strategies for Safer Schools* (1995b) also addresses bullying. The program provides a process whereby school communities can review current practice, identify training needs and develop whole school behaviour management strategies for classrooms and playgrounds.

The Committee is aware that certain groups of children may be singled out for victimisation by their peers. During its Inquiry into Youth Violence, the Committee heard that children who are different in some way may be the most vulnerable. These groups include Aboriginal students, students with a disability and gay and lesbian students. Female students may also be subjected to sexual harassment by boys.

For example, the SchoolWatch report (Griffin, 1994) examined harassment and violence directed against lesbian, bisexual and gay teachers and students in Australian schools. This report includes data from 152 respondents, and reveals that 67% of student respondents experienced verbal harassment and 30% experienced physical harassment or violence. The most likely location for the incident regarded by students as the most serious was the playground (31%), followed by the classroom (23%), and corridors (17%). Other students of the same school were identified as perpetrators in almost all cases, and the majority of the most serious incidents had not been reported to school authorities.

This victimisation can lead to these students discontinuing their studies. An indirect result of leaving school is that once these students leave the education system they are no longer able to access school-based counselling services and receive support.

A research project was commissioned to examine gender-based harassment as part of the Commonwealth Government's Gender Equity in Curriculum Reform Project, which originated in 1987. Teachers from 10 pre-schools and primary schools in Northern NSW and Queensland participated in the research, co-ordinated by a team from James Cook University in Townsville. At one school, a six-year old boy was observed clenching his fist and threatening to punch a girl who would not lend him her book. At another, a boy of six kicked and tripped up a visually impaired girl and then laughed at her (Alloway, 1995:92). One little boy clenched his fists, glared at his small friend and shouted furiously: "I'm tired of your stupidity, woman. Can't you ever get anything right?" (Alloway, 1995:86).

The Committee is conscious of the anxiety and suffering of students who experience sex-based harassment, or victimisation on the basis of race or disability. The Committee is concerned that these students may be prevented from reaching their full potential because of the harassment they are subjected to.

The Department of School Education has undertaken a number of initiatives to address the victimisation of these students.

The Department of School Education's *Procedures for Resolving Complaints About Discrimination Against Students* (1995a) include discrimination on the grounds of homosexuality, and also refer to the anti-vilification provisions of the Anti-Discrimination Act. School counsellors have access to appropriate referrals for students reporting victimisation.

The *Resources for Teaching Against Violence* kit (Department of School Education, 1996b) has been revised and distributed to all schools. The kit now includes a section on bullying, and strategies for its management. A further curriculum component in the *Resources for Teaching Against Violence* kit, entitled *Violence Against Homosexual Men and Women*, is recommended as being appropriate for students from Years 9 to 12.

During its Inquiry into Youth Violence, the Committee heard that while the kit is widely accepted as a valuable teaching aid, there was also concern regarding the extent to which it is being used in schools. The Committee recommended the Minister for Education develop strategies to encourage the introduction of the revised Resources for Teaching Against Violence kit in the Personal Development, Health and Physical Education (PDHPE) curriculum; and monitor its use and effectiveness (Standing Committee on Social Issues, 1995:266).

In response, the Committee was informed the kit will be promoted as appropriate for use in the PDHPE curriculum, and its usefulness for school programs will be monitored. The Board of Studies is producing a Board Bulletin article drawing teachers' attention to the links between the kit and the PDHPE syllabus (Cabinet Office, 1996:55).

### 6.4 DISCIPLINE IN SCHOOLS

Discipline within schools is a contentious issue impinging on the rights and needs of the child and further illustrates the requirement for enlightened advocacy. Balancing the rights of teachers and all students to a safe and productive teaching and learning environment with the rights of individual students who may be disruptive or require special attention poses particular difficulties. Both sides must be addressed before determining how to manage the needs of individual students or broad disciplinary policy.

Debate about the use of corporal punishment in schools led the then Minister for Education to ban its use in government schools in the early 1980s. Most private schools also responded to public rejection of corporal punishment by developing alternative discipline policies. Following some subsequent policy changes, the issue has been further clarified by the *Education Reform Amendment (School Discipline) Act 1995* which outlaws the use of physical punishment in the discipline of children in all public and private schools in New South Wales.

#### 6.4.1 Suspension, Exclusion, and Expulsion

The Committee received considerable evidence regarding suspensions, exclusions and expulsions from school. Most submissions on this issue, both oral and written, were critical of current policies and practices. The Department of School Education's *Procedures Concerning Suspension, Exclusion and Expulsion of Students from School and Procedures for the Declaration of Place Vacant* contains the policy on these disciplinary actions, and has recently been revised and re-issued (Department of School Education, 1996a).

In discussing the 1994 version of the procedures, the New South Wales Federation of Parents' and Citizens' Associations suggested:

*The policy (in that document) dramatically enhanced the powers of school principals to apply severe disciplinary measures on students who behaved violently or in otherwise unacceptable ways (Submission 17).*

In its *Report into Youth Violence in New South Wales*, the Committee found there had been:

- a 94% increase in the number of long suspensions (five days or more) in government schools, from 1,732 in 1993 to 3,353 in 1994 (Standing Committee on Social Issues, 1995:69); and
- a 32% increase in the number of short suspensions (fewer than five days) in government schools, from 16,670 in 1993 to 22,083 in 1994 (Standing Committee on Social Issues, 1995:71).

The submission from the New South Wales Federation of Parents' and Citizens' Associations declared the information collected by the Department of Education on suspensions, exclusions and expulsions to be "inconsistent" (Submission 17).

The Committee is pleased to note the revised procedures contain more explicit directions to principals regarding the maintenance and reporting of information on suspensions, and the inclusion of a standard register.

However, the National Children's and Youth Law Centre contends that:

*many students in New South Wales are unfairly and sometimes illegally being denied their basic right to an education and decisions are made which do not conform with the principles of natural justice (Submission 15).*

In its *Report into Youth Violence in New South Wales*, the Committee raised concerns regarding the involvement of School Welfare and Discipline Committee and parents/caregivers in disciplinary decisions (Standing Committee on Social Issues, 1995:230-1). In response, the Government has contended the former and current procedures on Suspension, Exclusion and Expulsion of Students from School required full consultation through each stage leading to expulsion (Cabinet Office, 1996:45). The issue of appeal mechanisms is discussed in Section 6.5.

The Committee is also concerned regarding work programs for children on suspension, and their safety. Initiatives brought to the attention of the Committee during its Inquiry into Youth Violence included the Macarthur suspension support program which offers suspended students an academic and social skills program. The Committee also visited a number of alternative education facilities, including The Cottage, which is located on the grounds of Regents Park Public School, and offers a pre-suspension program. James Busby High School operates a Tutorial Centre for students from schools in the region who are on long suspensions, or have a history of failed interventions. The Committee was encouraged by this range of strategies, and supports their continued development and expansion.

The Committee believes improved advocacy is required for students facing disciplinary action in their school, and especially when suspension or expulsion is being contemplated.

### ● **Aboriginal and Non-English Speaking Background Students**

The discrimination experienced by Aboriginal people, and by people from non-English speaking backgrounds (NESB) is well documented. Children and young adolescents are particularly vulnerable to this discrimination and they often find themselves as unexpected targets of abuse. This can happen in the school yards, as well in the general community. This on-going discrimination can have devastating effects on the behaviour of Aboriginal and NESB children.

The rapid escalation of suspensions of school students in recent years has been particularly serious for Aboriginal students. Research conducted by the Aboriginal Education Consultative Group indicated that in a six year period an average of 28 Aboriginal students, 14 students from Non-English Speaking Background and 6 Anglo-Celtic students were suspended by government schools each week (Submission 17).

In its submission to the Inquiry, the Vietnamese-Australian Welfare Association of New South Wales documented the problems experienced by NESB students over matters of discipline. Information provided to the Association by community and youth workers

illustrates the nature of the problem and incidents which lead to suspension, exclusion or expulsion:

*Most cases of dismissal cite the reason as a verbal or physical confrontation between parties, usually students. It is often reported by NESB students that "the other guy got away with it" because he is white or speaks English, despite both of them being equally responsible for the incident (Submission 33).*

Language limitations also mean many students feel they could not make themselves understood to the school officials who handled the matter when they were given an opportunity to explain themselves; as a result, some accept accusations without challenge (Submission 33).

In its *Report into Youth Violence in New South Wales*, the Committee recommended that data be collected on suspensions to provide information on gender distribution and the incidence of similar reasons for suspensions (Standing Committee on Social Issues, 1995:73). The Department of School Education has been collecting this data from schools since Term 3, 1995. Additional data is also being collected on grade, Aboriginal and Torres Strait Islander and NESB status. This will enable the development of effective strategies and the related targeting of Departmental resources. This process will be completed by the end of 1996 (Cabinet Office, 1996:1).

One of the problems identified by the Vietnamese-Australian Welfare Association of New South Wales is the lack of time and resources schools spend on enacting the procedures of the New South Wales Department of School Education's Fair Discipline Code. This has particular significance in schools with large NESB populations which require more bilingual assistance. These schools are greatly in need of additional welfare and support services and programs in the discipline process (Submission 33).

The Committee believes particular assistance is required in schools with large populations of Aboriginal students and students from non-English speaking backgrounds to ensure they are not unfairly targeted by or discriminated against in disciplinary procedures.

## RECOMMENDATION 22

**That the Minister for Education ensure that Aboriginal students and students from a non-English speaking background are not unfairly targeted by disciplinary procedures in schools by:**

- **providing adequate resources to schools with large Aboriginal and non-English speaking background student populations to enable full investigation of incidents, and appropriate welfare and counselling support; and**

(Continued Over Page)

- **advising principals to contact a nominated student advocate, such as a youth or community worker, to assist in any procedures for suspension, exclusion or expulsion, including appeal procedures, for Aboriginal students or students from a non-English speaking background.**

#### 6.4.2 Removal of Students Through Informal Means

The New South Wales Federation of Parents' and Citizens' Associations recognises that increases in the rate of suspensions may reflect the implementation of recording practices which legitimise the previous authority of principals to remove students informally.

However, anecdotal evidence suggests informal practices are still used to remove difficult and unpopular students. The Committee heard these practices may range from subtle "career counselling" approaches to the "time-honoured" threats of denying the child the School Certificate (Johnson Evidence - 3 May 1996).

In its *Report into Youth Violence in New South Wales*, the Committee recommended the issue of the unauthorised removal of students be examined at the regional level, with reports to the Minister (Standing Committee on Social Issues, 1995:234). In response, the Government informed the Committee that when the new procedures for dealing with suspensions, exclusions and expulsion were brought to the attention of principals and District Superintendents, the need to follow formal suspension procedures would be reiterated (Cabinet Office, 1996:46). However, no such direction was given upon the release of the revised procedures in June 1996. **The Committee believes that principals must use formal means to deal with student problems, with the associated guarantee of access to appeal mechanisms for the student concerned.**

The Committee was also concerned over evidence of the use of Declaration of Place Vacant. This procedure is used to remove students of a post-compulsory age when their attendance or effort is less than satisfactory. The Federation of Parents' and Citizens' Associations contend it is:

*a set of bureaucratic procedures which give the impression of being objective but in fact are totally subjective* (Brennan Evidence - 3 May 1996).

The Committee supported an independent review of these practices in its *Report into Youth Violence in New South Wales* (Standing Committee on Social Issues, 1995:232). The Government responded that in the context of the abolition of Department of School Education regions and the establishment of 40 district offices, the opportunity exists to monitor the application of the Declaration of Place Vacant policy across districts (Cabinet Office, 1995:45). Data concerning declarations of place vacant are to be reported by schools along with suspension and exclusion information. The Committee has been advised that these data will be collected by each district office at the end of each term and



monitored by the district superintendent, the Student Welfare Directorate and the State Executive. The first data to be collected following the issuing of the revised procedures will be for Term 3, 1996, and will be reviewed during Term 4 (Davidson, 1996).

The Committee was told that one of the consequences of the removal of children from the education system because of unacceptable behaviour, whether it be through formal or informal means, is that they have an increased likelihood of involvement in the juvenile justice system. Evidence to this Inquiry from an Official Visitor with the Department of Juvenile Justice, and a former district inspector of schools with the New South Wales Department of School Education, Mr Ray Bird, also addressed the issue of removal of a child from school and entry into the juvenile justice system. According to Mr Bird:

*I am absolutely convinced that many youngsters end up in juvenile detention centres and in crime because of the schools kicking them out without going through due processes (Evidence - 29 November 1996).*

The failure of authorities to ensure effective follow-up and adequate support services leaves the offending child with little chance of avoiding further trouble. As the Committee found in its report, *Juvenile Justice in New South Wales*, many of the cases of young people who were coming before the courts had a history of problems with the education system (Standing Committee on Social Issues, 1992:37).

The Committee also heard that certain groups of children were being excluded from school on the basis of their domestic circumstances. Barnardos Australia, in a report prepared for the Inquiry into Truancy, "Dropping Out" and Exclusion from School, documented anecdotal accounts of young people in the Penrith area in outer western Sydney who are homeless and have been refused admission to schools. Barnardos suggests this happens because the schools request statutory declarations from adults taking responsibility for the young person before admission is allowed. According to Barnardos:

*Workers feel that Principals often find 'excuses' for not accepting enrolments from homeless young people (Barnardos Australia, 1995:5)*

The Committee is alarmed by this assertion and agrees with Barnardos Australia that no child should be excluded from education because of their domestic circumstances. The Committee urges the Minister to investigate and address this matter.

### RECOMMENDATION 23

**That the Minister for Education address as a matter of urgency the informal exclusion of young homeless people from schools in New South Wales due to their domestic circumstances.**

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Minister for Education, in consultation with other relevant agencies, develop protocols in dealing with homeless young people attending school (Standing Committee on Social Issues, 1995:276). The Government has indicated support for this recommendation, and has already developed a number of related initiatives, including the development of further protocols with other support agencies as part of the Students at Risk (STAR) program (Cabinet Office, 1996:58).

The Committee was told that children in substitute care also experience difficulties in receiving adequate education, and are often alienated from school. Workers in Barnardos "Find-A-Family" program for state wards report that state wards appear to be categorised as "trouble-makers" by schools. According to Barnardos, the education system has some difficulty with coping with "children whose family circumstances have interfered so markedly with their education" (Barnardos Australia, 1995:6).

The Committee has been informed (Cabinet Office, 1996:58) that a protocol for the provision of educational services to students in substitute care is being developed by the Department of School Education and the Department of Community Services and the Committee welcomes this initiative.

### 6.5 COMPLAINTS AND APPEAL PROCEDURES

In evidence the Committee heard that the complaints procedures currently available to students and parents are inadequate. This applies to students facing disciplinary proceedings, and also to members of the school community, including parents, who may wish to raise matters of concern.

When they appeared before the Committee, representatives of the New South Wales Federation of Parents' and Citizens' Associations contended in evidence that the existing Suspension, Exclusion and Expulsion Procedures were "glaringly lacking" in any form of appeals process for students (Brennan Evidence - 3 May 1996). As previously indicated, the *Procedures on Suspension, Exclusion and Expulsion of Students from School and Declaration of Place Vacant* have subsequently been revised, and were released to schools as part of the kit entitled Student Welfare, Good Discipline and Effective Learning in July 1996. The New South Wales Ombudsman's annual report (1995), which discussed the suspension of a student at a New South Wales high school has been taken into account in the review of New South Wales procedures, and appeal procedures are now incorporated.

The New South Wales Federation of Parents' and Citizens' Associations was also supportive of a more active and equal partnership between parents and schools in resolving complaints. They contend parents often feel "stonewalled and ignored" by school staff

denying problems exist or have occurred when complaints are raised (Johnson Evidence - 3 May 1996).

The Department of School Education (1994) outlined its Complaints Procedures in a memorandum to school principals of 27 May, 1994. The procedures focus on conciliation, but provide for appeal to the level of Assistant Director-General.

In its analysis of this document, the Federation of Parents' and Citizens' Associations suggest that:

- the definitions of "formal" and "informal" complaints are not clear, and parents and students appear required to use the words "formal complaint" to gain access to the procedures;
- those wishing to complain are often not made aware of the complaints procedure documents and the relevant mechanisms for complaint;
- compliance with the terms of the procedures is inconsistent, with those complaining often not consulted regarding any decisions made when the matter has not been satisfactorily resolved through conciliation;
- there is no requirement that a person making a complaint receive a copy of the response from the staff member who is the subject of the complaint;
- there is no period specified in which a decision should be made if conciliation (which is to be completed within 12 days) fails, nor a period in which to notify the person bringing the complaint of the decision; and
- the policy and procedures are now outdated following the 1995 restructuring of the Department of School Education and the abolition of positions with responsibilities in the policy (Submission 17).

The former Director of the National Children's and Youth Law Centre also believes the procedure lacks the "essential element of independence". The requirement that any support person for the person making the complaint be allowed to attend only as an observer places many at a disadvantage and, in the case of students under the age of 18 years making the complaint, is in breach of Article 12 of the United Nations Convention on the Rights of the Child (see Appendix 1) which entitles children to a 'representative' to help them put forward their views (Submission 17).

In public schools in New South Wales, students are offered a further formal mechanism for complaints. The New South Wales Department of School Education (1995a) has distributed *Procedures for Resolving Complaints about Discrimination against Students* to all schools. The procedures state that the Department of School Education:

*is committed to the provision of learning and working environments that are free from all forms of unlawful discrimination, harassment and vilification (Department of School Education 1995a:1).*

The procedures provide that principals and other senior departmental officers must ensure that all staff under their supervision are informed of these procedures. Principals must also ensure that:

- *students, parents and others in the school community are aware of the details of these procedures and have access to them;*
- *the complaints procedures are incorporated into the range of strategies available within schools to assist students to resolve complaints; and*
- *an appropriate contact officer(s) for discrimination, harassment and vilification matters is appointed following consideration of expressions of interest from staff (Department of School Education, 1995a:2).*

In his evidence to the Committee Mr Bill Kyrios, Director of Legal Services at the Department of School Education told the Committee that while formal mechanisms for complaints are important and necessary, some students are uncomfortable about using formal procedures for complaints. He said it was equally as important that students could “go to the year adviser, the school discrimination contact officer or whomever else they feel comfortable with” (Evidence - 29 November 1995).

The Committee noted the Department of Education was aware of the needs of children to access both formal and informal procedures when they feel they have been unfairly dealt with or discriminated against.

The Committee remains to be convinced that the formal procedures are working effectively in the best interests of students. It therefore recommends the Department’s Complaints Procedures be amended and strengthened to provide members of the school community, and students in particular, with an enhanced means of protecting their interests.

**RECOMMENDATION 24**

That the Department of Education revise the Complaints Procedures document of 27 May, 1994 to ensure:

- the definitions of “formal” and “informal” complaints are clarified;
- those wishing to complain are made aware of the complaints procedure documents and the relevant mechanisms for complaint;
- those making complaints are consulted regarding any decisions made when the matter has not been satisfactorily resolved through conciliation;
- those making complaints receive a copy of the response from the staff member who is the subject of the complaint;
- a period is specified in which a decision should be made if conciliation fails, together with a period in which to notify the person making the complaint of the decision;
- a support person for a student under the age of 18 years making a complaint can assist that student in putting forward their views; and
- the policy and procedures reflect the 1995 restructuring of the Department of School Education.

**6.6 STUDENTS WITH DISABILITIES**

There is serious concern held by individuals and community interest groups that students with disabilities are being discriminated against and are not receiving adequate access to education facilities. A key community group, Kids Belong Together, focuses on the needs of students

*who, because of intellectual, physical, communication or behavioural characteristics, may require changes to the regular curriculum, staffing, instructional strategies, access or equipment and/or who may require health related services (Submission 7).*

community. It believes inclusive education, whereby children with disabilities are included in regular classrooms, is of greater benefit to the student, and is supported by most current research. The research also suggests that inclusion can have a positive impact on all other students.

The Australian Red Cross also outlines the importance of access and equity in the provision of services to the personal development of children with a disability. Its submission states:

*by not providing adequate recreational facilities or by restricting access to existing facilities, children with disabilities may be denied their right to participate freely in cultural life and the arts (Submission 16).*

The Committee heard that inclusion is supported by a number of pieces of legislation including, the Disability Services Act 1986, the Disability Services Act 1993, the State and Federal Anti-Discrimination Act (Epstein-Frisch Evidence - 3 May 1996).

One strategic aim of the current *Special Education Plan*, within the *Special Education Policy* of the New South Wales Department of School Education (1993), is to provide the most effective support services within regular and special schools for students with disabilities, learning difficulties and behaviour disorders. However, the Committee heard the current policy in New South Wales is weighted towards the segregation of students with high educational needs (Epstein-Frisch Evidence - 3 May 1996). In its submission, the New South Wales Council for Intellectual Disability states that:

*the need and right of children to be educated in regular classes in local schools has not been adequately advocated for or protected. Students with high educational support needs are seldom made aware that the option to attend regular schools exists. Instead, many students are directed towards segregated education in supported or special school environments (Submission 14).*

Representatives of the Council explained to the Committee that it is currently the role of the parents to justify the inclusion of their child into mainstream education. According to Ms Belinda Epstein-Frisch, the process of appeal if a child is rejected from a regular class is inadequate. She told the Committee:

*The rights of the child are further denied through a process of internal appeals where anecdotal evidence indicates very strongly that no decision is ever overturned .... There are conflicts of interest that stop children with disabilities being able to be enrolled in a regular class and here the lack of advocacy is absolutely essential (Evidence - 3 May 1996).*

The Committee recognises that the parent or principal care-giver is the most important advocate for the child, and it is therefore vitally important that those parents or care-givers also receive support.

The Committee understands that the Minister for Education has commissioned and is currently considering a feasibility study on integration and inclusion. Consideration of this report may lead to community consultation on a review of the Department's current Special Education Policy.

The Committee recognises that there are limits to the extent to which children with disabilities can comfortably be incorporated into mainstream educational environments. Such decisions involve sensitive and delicate considerations and a careful examination is required to ensure the best interests of the child predominate in every case.

The interests of teachers must be also regarded in decisions on the inclusion of children with disabilities within general classes. In any instance where a child with disabilities is included in a general classroom, the Committee believes appropriate support must be provided to the teacher to ensure that educational opportunities are maximised for that child and for the remainder of the class.

The Committee supports the need for improved advocacy to assist children and their parents or care-givers in accessing both mainstream educational services and special services. Special services in which modified curricula, increased staffing and specialist equipment have been appropriately resourced may be required to meet the special needs of particularly disabled children.

The Committee believes the Special Education Policy should be reviewed and the inclusion of students with disabilities in appropriately resourced mainstream classes should be a major focus. The internal appeals process undertaken when a child's application to attend regular classes is rejected should also be considered. In undertaking this review, the Minister for Education should ensure that community interest groups, education specialists and members of the school community, particularly children in mainstream classes and those with disabilities, are consulted.

RECOMMENDATION 25

**That the Minister for Education undertake a review of the Special Education Policy to:**

- **consider increasing the inclusion of students with disabilities in appropriately resourced mainstream classes; and**
- **review the internal appeals process undertaken when a child's application to attend regular classes is rejected.**

**In undertaking this review, the Minister for Education should ensure that community interest groups, education specialists and members of the school community, particularly children in mainstream classes and those with disabilities, are consulted.**

6.7 CHILDREN'S SERVICES

In a number of its previous Inquiries, including the Inquiry into Youth Violence, the Committee has stressed the importance of support for children in early childhood. During this Inquiry, a range of information was put to the Committee that the needs of children in this group are not being sufficiently protected and promoted. Many children in the state are unable to gain access to early childhood services, due to long waiting lists. Families in rural and remote areas face additional difficulties, as there may simply be no services for children at all (Goddard Evidence, 22.04.96).

Child care programs provide a unique opportunity to support families in their caring roles. They are able to provide a doorway into early intervention services for children with disabilities, learning delays and behavioural problems. Child care can also provide an important case work support for social welfare agencies working with children at risk of abuse and with their families.

An American study has estimated that one dollar invested in early childhood programs returns seven dollars to society in reduced government spending on welfare, criminal justice, remedial education and health care (in Zvirbulis, 1996).

The Economic Planning Advisory Commission (EPAC) Child Care Task Force (1996) has released an interim report recommending the operational funding of family day care schemes and long day care centres be replaced by a single, means-tested child-care payment direct to parents. The Committee believes that it is imperative that the NSW Government provide a strong submission to the EPAC proposals on the delivery of children's services.



With the re-allocation of federal child care priorities and the consequent withdrawal of operational subsidies for Community Based Long Day Care Centres, the Expanded National Child Care Strategy signed in 1995 has effectively ceased.

It is recognised that the Community Based Sector sets the standards and benchmarks for quality within the child care industry, and the Committee is concerned that the withdrawal of operational subsidies from Community Based Long Day Care Centres will affect the ability of low income and disadvantaged families to access affordable, quality child care. The Committee believes the availability of long day care for children under two years may be limited to those families that can pay a substantial fee.

The Committee is also concerned that families with children at risk may not be able to access long day care. Assisting children at risk, and keeping them from entering care, requires a preventative approach. The provision of child care places is an important means of supporting families, and providing real benefits for some of the most vulnerable children in our community.

The Committee is pleased to note that the State Government has indicated that it is committed to spending \$20 million in this field over two years. The Committee accepts that governments must remain committed to an affordable, available range of children's services that promote equity and accessibility.

The Committee acknowledges the current budgetary constraints on governments at all levels but there is an imperative that governments provide continued support for high quality, affordable community based child care services. In these budgetary contexts, a tension exists between the need to defend the quality of care for children and the demand for more places for all out of home care services.

As a general principle, the Committee is, however, firmly of the view that the care and protection of our children must be guaranteed by appropriate, agreed standards of care at the same time as every endeavour is made through co-operative State, Commonwealth and community action to increase the number and range of services for children and their families.

**The Committee strongly believes that access, equity, standards of care and the protection of children's best interests should remain paramount in the delivery of all child care services.**

#### **6.7.1 Out of School Hours (OOSH) Care**

Changing social and economic conditions have greatly increased the need for access to out of school hours care.

● **Community Wide Needs**

Another issue of concern relevant to the education of young people in New South Wales is the access to outside school hours care, including before school, after school and vacation care. Network of Community Activities, the peak organisation for Out of School Hours Services in New South Wales, believes children have few advocates in relation to their time out of school hours. That organisation considers that while it is understandable that governments direct the majority of resources to formal education, out of school hours services should be regarded as an important part of a child's intellectual and social development.

Network identifies the major concerns as:

- the inadequate premises of many services;
- low funding levels;
- the withholding of Commonwealth child care assistance for state-funded vacation care;
- the present emphasis on growth in the number of new places with no consideration of quality;
- a lack of services for children of non-working parents. Unemployed parents in housing estates, high rise areas and rural communities are unable to obtain financial support to provide safe environments for children to be with their friends and take part in activities (Submission 12).

Network suggests services may be planned to meet the needs of adults, not children, and models are often devised by people with little knowledge of the "real situation" without consultation with children or those who can speak on their behalf:

*This low level of support from government for school age children during such an important stage of their development would appear to indicate poor advice to policy makers or a disregard for children's needs on behalf of decision-makers (Submission 12).*

National child care standards have been agreed to by the states and are to be implemented during 1996. Network contends these standards will not contain sufficient quality requirements (Submission 12). Service providers are currently being surveyed by Network to determine how closely they conform to the national standards, and what steps will be required to effect an upgrade of New South Wales OOSH services.

One of the greatest concerns of Network is that OOSH services are not included in the children's services regulations. The regulations under the *Children (Care and Protection) Act 1987* have been reviewed in accordance with the requirements of the *Subordinate Legislation Act 1989*. A Regulatory Impact Statement and Draft Regulations were developed and released for community consultation. The revised regulations were required to be in place by 1 September 1996. Since the *Children (Care and Protection) Act* is under review, any amendment to, or replacement of, that legislation will be followed by further revision of the regulations made under that revised Act.

Outside school hours care is not currently regulated. A Voluntary Code of Practice was introduced by the New South Wales Department of Community Services in 1993, which Network believes is "a good beginning" which is limited by its voluntary nature. They contend regulations are needed to ensure acceptable standards of care and protection for children attending both community-based and private services (Submission 12).

**The Committee agrees with Network's concerns in this area of children's services, and calls upon the Minister for Community Services to provide for out of school hours care providers to be subject to regulations under the Children (Care and Protection) Act to ensure standards of care are adequate.**

- **OOSH Care for Disabled Children**

Several groups are concerned about the particular problem of access for children with a disability. One such group is the New South Wales Council for Intellectual Disability which quotes Network of Community Activities in their submission to the Committee. In a document, *We need care too! Out of School Services and Children with a Disability - A Position Paper*, Network (1995:4) argues:

*there is no co-ordinated approach to ensuring children with a disability requiring OOSH care are able to access appropriate services. Current integration in most areas is haphazard and not adequately supported.*

The New South Wales Council for Intellectual Disability believes that the inadequate provision of Supplementary Services (SUPS) Grants has resulted in a lack of specialist staff, poor quality premises and facilities, and limited transport for disabled children (Submission 14). The Committee notes that \$10 million has been allocated to support children with special needs in child care in the federal budget for 1996-97, and hopes children with disabilities requiring OOSH care will benefit from this allocation.

The Committee received a submission from a parent of a child with physical and intellectual disabilities living in rural New South Wales. Mr Greg Watts explained in his submission to the Committee there is a great need for OOSH services for school aged children with a disability.

He argued:

*the present system presents barriers to children with disabilities to access and participate in OOSH care. These barriers impact on the quality of life of my daughter and the quality of life of our family. My daughter needs continuity of support and stimulation during school holidays. Access to quality care and play is a fundamental right of all children (Submission 8).*

The Committee recognises that this is a right recognised by the United Nations Convention on the Rights of the Child. Article 31 provides for:

*the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child.*

Mr Watts blames the shortage of OOSH care for disabled children on inappropriate staffing ratios and the lack of co-ordination in the provision of special needs resources. He recommends funding be provided to allow for a staff ratio of 1:10 children in OOSH centres that provide a service for children with disabilities, plus additional carers to meet the needs of high support children. The Committee supports these proposals, and calls for increased funding for children's services to ensure the fundamental right of all children to adequate care and play is recognised.

**The Committee believes out of school hours care programs must be extended and improved for children with a disability; children from non-working families; and rural communities.**

### 6.8 CONCLUSION

The Committee considers enhanced and extended and include the child in a meaningful way to increase the dignity and status of the child within the education system. The relationship between the community and government should be a partnership to produce a better society, and children must be introduced into this partnership.

Children should have the right to participate in decisions affecting them within the education system, and the inclusion of and effective consultation with bodies such as Student Representative Councils should be encouraged.

The Committee believes the form of advocacy that exists for students through counselling services should be further enhanced by a range of strategies.

The Committee acknowledges the increasing awareness of children's needs within the education system. There is now a greater understanding within the community of the incidence of bullying and the damage that it causes, and the need for children to have

mechanisms they can access to deal with this problem and its consequences. The Committee supports a continuing focus and strong action in this area.

The Committee is concerned regarding the welfare, safety and support of students facing disciplinary procedures. Groups of students who are over-represented in suspension statistics, particularly Aboriginal students and those from non-English speaking backgrounds, require particular support in this regard. No student should be removed from school through informal means.

**All students are entitled to have their voices heard, and complaints mechanisms must be reviewed to facilitate this basic right.**

Access to education and child care services is a particular concern of the Committee. These services should promote equity by maximising opportunities for all children, and appropriate standards of care must be maintained.

The Committee appreciates that to meet the needs of all students and children in these areas, a significant injection of funding is required in a range of children's services, and calls on governments to meet their obligations in this regard.



## CHAPTER SEVEN

# DEPARTMENTS AND ORGANISATIONS RESPONSIBLE FOR CHILDREN'S ADVOCACY

The Terms of Reference issued to the Committee specifically requested it to inquire into and report on a number of agencies responsible for children's advocacy. Those identified included: the Office of the Ombudsman; the Child Protection Council; the Official Visitors Program; the Community Services Commission; the Health Care Complaints Commission; and the National Children's and Youth Law Centre.

As the submission from the Community Services Commission noted, this term of reference highlights the fact that there are various agencies with an interest in, and involvement with, children. As a result, there is:

*potential for lack of coordination, gaps in service, failure to take responsibility for issues and duplication of effort and resources (Submission 37).*

As well as those identified in the terms of reference this Chapter will review a number of other agencies which, in the Committee's opinion, are actively involved in various facets of advocacy for children and young people. These additional bodies are the Community Services Appeals Tribunal and the Guardianship Board. The role of the Youth Branch of the New South Wales Cabinet Office is also considered.

### 7.1 INTRODUCTION

The Committee was asked to review the adequacy of the organisation and coordination of the agencies as outlined above. The Committee considered the term "adequacy" to be somewhat nebulous and difficult to assess objectively. It considered the most appropriate source of determining the adequacy of the agencies would come from those working in the area. Comments were therefore sought during the hearing process and by written submissions. It is such comments that form the basis of the Committee's assessment of the agencies' adequacy and coordination.

The Committee wishes to point out at the outset of this Chapter that each of the agencies discussed have been identified as being inaccessible to Aboriginal young people and young people of non-English speaking background. As Shireen Malamoo explained to the Committee (Evidence - 29 November 1995) in relation specifically to Aboriginal people:

*it should be noted that generally these bodies remain inaccessible to indigenous people because of the history of the intervention of government agencies in their lives and the procedures which must be complied with in order to lodge a complaint or access the body. Such bodies seem a very long way away from the day to day struggles of mothers, families and communities trying to keep their kids out of trouble. Further, many people are unaware that such bodies even exist.*

Numerous submissions stressed the need to differentiate between an advocacy service and an agency dealing with complaints only in an impartial and even-handed manner. Accordingly, the Office of the Ombudsman, the Community Services Commission and the Health Care Complaints Commission were frequently identified as complaints or “watchdog” agencies rather than advocacy bodies. The submission from the Office of the Ombudsman clearly supported this view:

*investigation agencies cannot be partisan or be seen to be partisan without their independence and standing being adversely impacted (Submission 62).*

Given this constraint, it was suggested that the ability of these particular three agencies to provide the sort of attention required by children’s interests is “limited” (Hogan Evidence - 9 November, 1995).

It was, however, generally recognised that these agencies can, and often do, play an important role in systems advocacy. The submission from the Community Services Commission noted its ability to fulfil this function by:

*identifying the cause of problems for consumers of community services and seeking changes to redress the problems (Submission 37).*

It did, however, note that “this is different from the role of an advocate who will stand by a child and represent their interests unreservedly” (Submission 37).

It was also suggested that these watchdog agencies can provide citizen advocacy, although this is generally at a systemic level through their powers to make recommendations for reform in reports to Ministers of the Crown or Parliaments.

Of the six “advocacy” agencies the Committee was asked to review, only three were consistently considered to fulfil advocacy functions: the Official Visitors program; the Child Protection Council; and the National Children’s and Youth Law Centre. These agencies were seen as defending, upholding and promoting children’s views (Submission 41).



## 7.2 THE OFFICE OF THE OMBUDSMAN

Representatives of the Office of the Ombudsman made it clear to the Committee that they did not consider the Office to be “an advocate for complainants or special interest groups” (Andrews Evidence - 9 November, 1995 and Submission 62). As the Office’s submission noted:

*the Ombudsman is not on anyone’s side, but rather is a neutral investigator whose duty is to establish the truth of allegations of misconduct and to make appropriate recommendations to fix the individual problems identified. In particular, the Ombudsman has no statutory responsibility for “children’s advocacy”. Rather the Ombudsman should be seen as a protector of/for watchdog for fairness and integrity in public administration (Submission 62).*

The submission further stressed that:

*we believe it is somewhat misleading to label the Ombudsman as a children’s advocate. This is not to say that the work of the Ombudsman and other investigation bodies is not critical to ensuring that the rights and needs of children are effectively protected. Rather it is an important philosophical distinction that indicates that the advocacy role does not sit well with the neutral, independent and objective role of the Ombudsman as an investigator. The requirement to be impartial and objective restricts any ability to act as an advocate for children (Submission 62).*

### 7.2.1 Role and Function

The Ombudsman operates under several pieces of legislation, the most important being the *Ombudsman Act, 1974* and the *Police Services Act, 1993*. The former Act creates a right for any person, including a child or someone acting on behalf of a child, to make a complaint to the Ombudsman about some action or inaction of a public authority relating to a matter of administration that is considered to be wrong (Submission 62).

Conduct can be “wrong” in terms of the Act because it is:

- contrary to law;
- unreasonable, unjust, oppressive or improperly discriminatory;
- based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- based wholly or partly on mistake of law or fact; and/or

- conduct for which reasons should be given but are not given (Submission 62).

Conduct can also be wrong if the conduct is in accordance with established law and practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory (Submission 62).

The enabling legislation excludes from the Ombudsman's jurisdiction a number of bodies and types of conduct, some of which regularly deal with children and children's services. The Act, for example, prohibits the Ombudsman from investigating any conduct of a court or persons associated with a court; the conduct of a public authority or person acting as a legal adviser to a public authority; and the conduct of public authorities relating to the carrying on of proceedings before any court, including coronial inquiries and committal proceedings before a magistrate. As a result:

*the Ombudsman has never been able to get involved in matters relating directly to care and detention proceedings, so the adequacy of children's representation before the courts is certainly not a matter that [the Office] has any expertise in or knowledge of (Andrews Evidence - 9 November, 1995).*

Under the *Ombudsman Act*, the major areas that have traditionally produced complaints by or involving children have been Juvenile Justice Centres and the work of the Department of School Education and the Department of Community Services. However, with the introduction of the *Community Services (Complaints, Appeals and Monitoring) Act, 1993* the Ombudsman's jurisdiction with respect to the Department of Community Services has changed considerably in the last few years. The Community Services Commission and the Community Services Appeals Tribunal have largely taken over the role previously assigned to the Ombudsman in this area.

However, where a complaint concerns systemic misconduct or maladministration the Ombudsman retains jurisdiction. The Ombudsman will also continue to be able to exercise her "own motion" power to investigate certain matters involving the Department of Community Services if the need arises. This allows the Ombudsman to initiate an investigation whether or not she has a complaint from a citizen.

As the submission from the Ombudsman observes, there "remains some potential for overlap between the Ombudsman and the [Community Services] Commission". However, the submission notes that such a problem has not as yet arisen and "there is good liaison between the two bodies" (Submission 62).

The second area in which the Office receives and acts on complaints from or involving children is in the area of complaints of police conduct. As the Office's submission noted, the "vast majority" of complaints involving children and young people are complaints against police. In the 1994-95 financial year, the Office received 162 complaints from, or

on behalf of, children and young people concerning the police. This figure represents just over 3% of the 5056 complaints about police assessed and actioned during the year. The nature of the complaints included:

- allegations of juveniles being assaulted by police officers or being the subject of unreasonable use of force (approximately 80% of complaints);
- juveniles being injured while in police custody or being involved in self harm activities;
- juveniles escaping from police custody;
- juveniles being shot by police;
- allegations of police having sex with juveniles in custody;
- strip searching;
- wrongful arrest;
- unlawful questioning of juveniles; and
- general unfair treatment (Submission 62).

The *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993* enables the Ombudsman to monitor on-going investigations carried out by the Police Service into complaints about police conduct. The amendments have also enabled the Ombudsman to deal with complaints directly, rather than having to rely on the traditional method of using the Police Service to investigate complaints. The annual report of the Ombudsman suggests there are, however, difficulties in conducting direct investigations:

*Due to our very modest funding, it is unfortunately not possible to conduct more than a few direct investigations each year, far less than we would like (NSW Ombudsman, 1994:40).*

The other main source of complaints received is from children in Juvenile Justice Centres. However, they are "much fewer" in number than complaints received about the police (Andrews Evidence - 9 November, 1995). In the 1994-95 financial year the Office received 19 formal and 139 informal complaints involving the Department of Juvenile Justice (Andrews Evidence - 9 November, 1995). The formal complaints covered a range of issues including the implementation of smoking bans in the centres, and allegations of assault by youth workers (Andrews Evidence - 9 November, 1995).

Representatives from the Office of the Ombudsman visit every Juvenile Justice Centre at least twice a year. The Committee was told that, in comparison with adult correctional centres, “there is far less awareness of the rights and avenues of complaint among detainees [in Juvenile Justice Centres]”. It was felt this could be due to the short stay of the majority of young detainees which mitigates against their bringing unresolved issues to the attention of outside bodies (Andrews Evidence - 9 November, 1995).

The Ombudsman does not have any statutory education or prevention functions and, as was pointed out to the Committee in the Office’s submission, it “has not been provided with any resources to undertake such work”. The submission further notes that:

*this is something that some commentators who may have been critical of the effectiveness of the Ombudsman in terms of children’s advocacy in past years, have failed to appreciate (Submission 62).*

Statistics provided showed that many of the advocacy bodies which could make good use of the Ombudsman have, over the years, not done so. As the Committee heard, these agencies have “brought very few matters to [the Ombudsman’s] attention” (Andrews Evidence - 9 November, 1995).

Over the past 20 years, the Ombudsman has dealt with 95,000 formal complaints and two to three times that number of informal complaints. Amongst the formal complaints were:

- 1 complaint from the Child Protection Council;
- 1 inquiry from the NSW Federation of Parents’ and Citizens’ Associations;
- 2 complaints from the National Children’s and Youth Law Centre;
- 1 complaint from the Juvenile Justice Advisory Council; and
- 7 complaints from the Public Interest Advocacy Centre (Submission 62).

The various community legal centres have also referred relatively few children’s complaints to the Ombudsman, although these agencies regularly make complaints regarding adults. The Committee was advised that the Ombudsman has received the following complaints from community legal centres on behalf of children:

- 6 complaints from the Redfern Legal Centre;
- 9 complaints from the Marrickville Legal Centre;
- 8 complaints from the Macquarie Legal Centre; and

- 2 complaints from the Kingsford Legal Centre (Submission 62).

The Office considers such statistics to be “almost infinitesimal” (Andrews Evidence - 9 November, 1995). While the submission suggests these figures could be:

*evidence of the good work these bodies do advocating for children directly with service providers to resolve problems, ... we do not know for sure. Certainly, there is not a record of any of those bodies actively seeking the Ombudsman’s assistance on a variety of matters over time (Submission 62).*

Evidence presented to the Committee suggests that existing investigation agencies, such as the Office of the Ombudsman, could “have a much greater impact if other children’s advocacy groups used them better” (Andrews Evidence - 9 November, 1995).

### 7.2.2 Adequacy of the Office

As discussed above, the Ombudsman has traditionally received and investigated complaints concerning children and young people and a number of government authorities such as the Departments of School Education, Community Services and the Police Service. With the partial transfer of the Ombudsman’s jurisdiction to the Community Services Commission, it was suggested that there is the potential for such complaints to “fall through the jurisdictional cracks” (Submission 62). The submission from the Office of the Ombudsman asserts that mechanisms are in place to prevent such a problem occurring. The Ombudsman is, for example, a member of the Community Services Review Council and there is “close liaison and cooperation” between the Commission and the Ombudsman (Submission 62).

The Committee understands that the Office, in conjunction with a number of other relevant agencies, has put in place mechanisms to enhance coordination and reduce overlap including:

- the major complaints handling organisations (the Ombudsman, the Community Services Commissioner, the Health Care Complaints Commissioner, and the Legal Services Commissioner) meeting on an informal but regular basis to discuss issues of common concern. The group tries “to sort out particular problems of coordination and overlap” (Andrews Evidence - 9 November 1995). They also share information about their operations, cross-referral processes, training, public education and information. The group aims to “avoid duplication, and to work in a complementary and collaborative way” (Submission 37);
- the Office of the Ombudsman referring to the Community Services Commission any complaints made to them about the Department of Community Services; and

- attempts being made to “set up and coordinate a relationship to make it easier to investigate and get matters resolved” with those agencies, such as the Department of School Education, that produce a significant number of complaints regarding children (Andrews Evidence - 9 November 1995).

The extent to which these mechanisms prevent complaints from falling through cracks has not been determined. It does, however, appear that these coordination measures are largely ad hoc and generated from either the Ombudsman’s Office or any other agency which considers it may be useful at any particular time to establish inter-agency contact.

Possibly due to its watchdog, rather than advocacy, role, the Ombudsman’s Office received very little comment in both written submissions and oral testimony. Burnside did, however, consider it to be an “important” agency (Submission 23).

Burnside identified two shortcomings with the Office:

- lack of resources leading to delays and a lack of awareness in the community of the role the Office can play; and
- the inadequate powers given to the Office under its enabling legislation which, in Burnside’s opinion, hampers its ability to investigate complaints properly and provide adequate and appropriate remedies for complainants (Submission 23).

The Youth Justice Coalition notes that delays in handling cases which may be politically sensitive means that groups of young people are left in unacceptable conditions. (Submission 34). They also suggested:

*it is difficult to get a child to agree to make an individual complaint. Their fear of reprisal especially from the police inhibits action* (Submission 34).

The Committee has previously recommended in reports on *Juvenile Justice in New South Wales* and *Youth Violence in New South Wales*, that a position be created, with the status of Deputy Ombudsman, in the Office of the Ombudsman. This position would have responsibility for the co-ordination of complaints from young people. During this Inquiry, the New South Wales Child Advocate supported the consideration of specialist positions in the Office of the Ombudsman, but noted this is likely to be “costly, cumbersome and only partly successful” (Submission 35).

The Office of the Ombudsman does not support the concept of a separate, specialist Ombudsman for children’s complaints, believing it likely to fragment existing expertise and jurisdictions and lead to duplication of resources and effort. It could also set a precedent for other special needs Ombudsmen (Submission 62).

The Committee understands that the Office currently has a range of staff to call upon who have some special expertise in relation to children's matters, such as staff who have worked as District Officers with the Department of Community Services, been involved in children's services in the local government or community sphere, or have a background in teaching or educational psychology (Submission 62).

As discussed above, the Ombudsman receives relatively few complaints from young people. A lack of knowledge of the Ombudsman's role may restrict access by young people. The Office's submission acknowledges that the problem of being more accessible to young people has been "long recognised" despite it being a "common problem" experienced by all investigation and watchdog bodies (Submission 62).

In an attempt to increase awareness, a special edition of *Legal Eagle* on the Ombudsman was published by the Law Society of New South Wales in 1992 for use as a resource in secondary schools, in association with the legal studies syllabus (Submission 62).

Ongoing problems in raising the Office's profile were also identified by the Joint Parliamentary Committee on the Office of the Ombudsman (1994) in their report on the Access and Awareness Inquiry.

In response, the Ombudsman also developed a three year strategic plan to improve access to, and awareness of, the New South Wales Ombudsman by specific target groups, including young people. The Office sought enhancement funding in 1995/96 to employ a specialist Youth Liaison Officer to implement the strategic plan with respect to children and young people. This bid was unsuccessful, but funding of \$60,000 per annum for two years was made available in the 1996-97 budget to allow this appointment to proceed. The Committee welcomes this initiative.

The Office hopes that at the end of the two-year appointment, the Youth Liaison Officer will have implemented strategies that can be carried on by other staff to ensure the continued development of young people's awareness of the Ombudsman's role.

The submission from the Office of the Ombudsman suggested that despite limited resources, advocacy agencies can still advance children's interests by bringing selected complaints to the Ombudsman:

*the limited resources of the investigation agencies such as the Ombudsman are also more likely to be put to effective use if instead of being responsible for dealing with all complaints from children and young people, they are encouraged to take up specific complaints that are seen by advocacy agencies to have significant public interest or second stage matters where the advocacy agency's endeavours to have grievances dealt with appropriately and adequately by the service provider directly have failed (Submission 62).*

In order to encourage complaints of this nature to be brought to the Office of the Ombudsman, the Committee believes that on-going funding must be provided to allow education and publicity campaigns developed by the Youth Liaison Officer to continue into the future. On-going liaison with peak groups providing advice and services to young people is also vital to ensure the continued development of their awareness of the Ombudsman's role in relation to complaints by young people.

#### RECOMMENDATION 26

**That the Government provide the Office of the Ombudsman with on-going funding for:**

- **education and publicity campaigns;**
- **liaison with peak groups providing advice and services to young people; and**
- **the selection of staff with particular skills and interest in these issues to deal with their complaints.**

**This would ensure that awareness of the Ombudsman's role in relation to complaints by young people continues to be developed.**

### 7.3 THE CHILD PROTECTION COUNCIL

Of the six agencies the Committee was requested to report on, the Child Protection Council is, as Cashmore notes, "alone" in providing an inter-departmental and inter-disciplinary approach (Submission 45).

#### 7.3.1 Role and Function

The Child Protection Council was established in 1985 to coordinate, monitor and evaluate child protection programs. The establishment of the Council was recommended in the Report of the New South Wales Child Sexual Assault TaskForce (1985). The Council was to place special emphasis for the first four years on a comprehensive program to help victims of child sexual assault. The goals of this Child Sexual Assault program were to reduce the incidence of child sexual assault, and facilitate the optimum recovery of victims of child sexual assault and their families. Objectives of the Program included:

- to ensure crisis intervention services, medical services, legal services, police services, accommodation services and counselling services were available to meet the needs of child sexual assault victims and their families;



- to raise community awareness of the incidence, dynamics, effects and unacceptability of child sexual assault;
- to facilitate and co-ordinate trainers and the training of people working with victims of child sexual assault and their families;
- to monitor the 1985 child sexual assault legislative reforms; and
- to sponsor and co-ordinate research into child sexual assault (NSW Child Protection Council, 1991:8-9).

The Child Protection Council was to assist in the implementation of programs in all relevant government departments, authorities and non-government agencies, for example, regional training programs; the development of inter and intra-departmental guidelines; and services to victims in rural areas. The Council was also to provide pre-budget advice to the Minister and Treasurer.

The Council does not focus on individual issues affecting a particular child. Rather it advocates for children at the broad, systemic level. In taking on such a role, it:

*advises the government through the Minister for Community Services on matters of child protection .... It attempts to provide strategic leadership in the State around child protection issues within its advisory capacity to government (Ford Evidence - 9 November, 1995).*

The Council's major focus is on inter-agency collaboration:

*the Council has a very extensive role in working at a senior government and non-government level, both centrally and around the State, in trying to build collaboration and cooperation amongst all agencies and government bodies involved in child protection (Ford Evidence - 9 November, 1995).*

The Council has no statutory base. The Committee was advised that it is considered to be only an advisory committee to the Minister for Community Services and:

*depending on the attitudes and political agendas of a particular administration at a particular time, this definition can be interpreted more or less literally (Submission 35).*

The Council meets monthly and membership is drawn from both government organisations and agencies and the community. Government representatives are nominated by their departments and appointed by the respective Minister. The Departments of Community Services and Health have two representatives, and the Departments of School Education, Juvenile Justice, Attorney-General, the Police Service and the Department for Women

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have one representative. The remainder of the Council's membership consists of community representatives appointed by Government. In this sense, the Council "is able to present its points of view to a number of departments" (Submission 35).

Secretariat and support services are provided by the Department of Community Services.

The Council, in collaboration with the Department of Community Services, has also established 20 area committees which replicate council membership at the local level. This structure enables :

*the local key agencies, both government and non-government [to] meet regularly to look at their particular child protection issues and again ... advocacy issues are brought through [this avenue] but within the confines of child protection (Ford Evidence - 9 November, 1995).*

There is also facility for informal "interest" groups to meet which can raise directly with the Council:

*issues of children who are often caught up in systems in which their needs are not being attended to, and the groups ask for those to be addressed (Ford Evidence - 9 November, 1995).*

### 7.3.2 Adequacy of the Council

The Youth Justice Coalition considers the Council to carry out "excellent" work in training and research and provide "high quality" advice to government (Submission 34).

In terms of coordination, the Council is in "close collaboration" with at least three bodies: the Community Services Commission, Community Visitors and the Child Advocate (Ford Evidence - 9 November, 1995).

A number of shortcomings were, however, brought to the attention of the Committee. Cashmore, for example, sees the Council as "limited" to issues concerned with child protection and the prevention of abuse and neglect (Submission 45). The Youth Justice Coalition also considers the coordination role of the Council to be "limited" in that it is a "captive" of the portfolio administration within which it operates (Submission 34). In evidence before the Committee the Council's Chair noted that the Council:

*raises issues of children's rights and advocacy but it is really confined to the issues around child protection. And significant as they are, they are not the whole picture. There are also issues around health and law in particular that are outside the child protection areas that we are not in a position to address (Ford Evidence - 9 November 1995).*

Dr Ferry Grunseit, who, over the ten years of the Council's existence, has held a range of positions on the Council including Health representative, Community representative, Chairman, member of the Executive and, more recently, Child Advocate, raised a number of concerns regarding the independence of the Council. He observed that:

*in the past the Department of Community Services has been represented not only on Council but also on the Executive, a practice which gave rise to questions regarding the freedom of the Council to advocate for children at all times. The Council has been seen by some as being an "extension" of the Department of Community Services and although we have strenuously argued against this perception, we were not always able to sound convincing enough (Submission 35).*

He further noted that he had:

*encountered significant constraints and problems at times. These were particularly obvious when issues about children's rights or best interests as seen by me or by "us" were not seen as in the best interests of the Minister, the Director General, the Department of Community Services or the Department of Health for example. Many of the Council's documents were endlessly debated and reviewed until they more or less agreed with Departmental policy and were not controversial or more than mildly critical (Submission 35).*

By way of example to support his concern, Dr Grunseit cited a situation in which the Council had been asked to conduct a consultation for the Department on proposed changes in child protection strategy and philosophy. He was very clear that the Council:

*should not be seen as a kind of facilitator or broker for the Department of Community Services, but should present its own views to the Minister, and the Department should conduct its own consultations, on its own policy (Submission 35).*

Dr Grunseit called for "a more obvious separation" of Council from the Department and an opportunity for the Council to be "free to offer sensible and balanced but unhampered advice on what are seen to be children's best interests" (Submission 35). He does not wish to see the Council become a "loose cannon", admitting that "it should be under ministerial control, but within reason one should be able to express views" (Grunseit Evidence - 29 November 1995).

Dr Grunseit also told the Committee how:

*in 1991 we published a three-year annual report in which we said a few things about the Department and about wards. I was chairman then. We made a mild statement of fact. We nearly got the whole Council sacked (Grunseit Evidence - 29 November 1995).*

The 1991 report stated that further cutting of resources from child protection programs should not be acceptable, and noted the Council had also been affected by constraints and staff cuts. The report rejected a political, partisan approach to child protection, and called for a continuing, consistent and genuine commitment, with “the Council providing a stable body which can advise and monitor what goes on in important child protection matters”. The Council called for governments to ask for advice to ensure the Council continues to fulfil its terms of reference (Child Protection Council, 1991:11).

In comparing the Child Protection Council with the Community Services Commission, Grunseit notes that the Commission has a statutory base and is *able to carry out its functions and obligations ... without being hindered by bureaucratic controls*. Further, the Community Services Commissioner “has expressed strongly independent views on many occasions without being castigated for it, contrary to our experience on the Child Protection Council” (Submission 35).

The Youth Justice Coalition is also concerned with the extent to which the very existence of the Council provides opportunities for government departments with responsibilities for child protection work to abrogate their responsibilities. As has been noted, the Council has to rely upon the Department of Community Services for its secretariat and support services. In the opinion of the Youth Justice Coalition this “reduces its effectiveness” as a coordinator of child protection policies and programs across the portfolios of health, education, law and justice and care and protection. As the Youth Justice Coalition notes:

*these Departments have important policy leadership roles to play in child protection work, however these roles are unclear (or unrecognised) in their relationship with the Department of Community Services* (Submission 34).

Given these shortcomings the Youth Justice Coalition would like to see the current functions and structure of the Council reviewed and consideration given to alternative ways of fulfilling the functions of the Council.

In conclusion Dr Grunseit considered:

*the present strength and significance of the Child Protection Council [is] debatable* (Submission 35).

Currently, the Child Protection Council reports directly to the Minister for Community Services and is not a part of the Department of Community Services. Whilst the Committee considers that the Council should remain independent, it believes that it should be responsible to the Premier. This issue is further considered in Chapter Eight which examines systemic advocacy within government.

### 7.3.3 The New South Wales Child Advocate

In 1994, the New South Wales Minister for Community Services appointed a Child Advocate, Dr Ferry Grunseit, for an initial period of three years. The position is administratively attached to the Child Protection Council. However, no additional financial or administrative assistance was provided to the Council to support the position. Further:

*the publicity given to the Office was minimal and the existence of a Child Advocate has remained largely unknown. I have endeavoured to fulfil this role to the best of my ability under the circumstances ... however I have not been satisfied that the Office of Advocate has been taken seriously so far (Submission 35).*

The position's Terms of Reference were developed after discussion with the Council's Secretariat and the Department of Community Services' Executive. The Terms of Reference given to the Child Advocate are:

*to speak and act on behalf of children and children's rights, and at all times aim for the best outcomes for the child. Whenever there is conflict about best interests the Advocate will steadfastly represent those of the children (Submission 35).*

The Child Advocate has powers to report annually on compliance with the United Nations Convention, to raise the status of children and young people, and promote the well-being of children and young people with special needs. The Advocate also advises the Minister for Community Services on matters relating to children which might need investigation and review.

It is the Committee's understanding that the Advocate has limited resources and capacity to advocate on behalf of children and young people. Further, as the Youth Justice Coalition notes, the powers and appointment of the Advocate have not been advertised widely (Submission 34).

The Director of the Public Interest Advocacy Centre observed in evidence before the Committee, that the appointment was "an interesting and, in principle, welcome decision" (Hogan Evidence - 9 November 1995). However, the position has no statute, no resources, no identity and provides no services to children and families. But:

*at least the last government seemed to accept the need for a children's advocate. But if government is going to be serious about that need, government needs to give a children's advocate teeth, resources and a capacity to provide services to children and families (Hogan Evidence - 9 November 1995).*

The Child Advocate informed the Committee that the position:

*has a fairly low profile because the appointment was made when the whole childhood protection system was being minimalised. In one sense that was serendipitous and in another sense incongruous (Grunseit Evidence - 29 November, 1995).*

The Committee has made recommendations for the future direction of children's advocacy in Chapter Eight. In that Chapter it recommends that a fully resourced and staffed office, with close liaison with a range of groups, located within the Premier's Department and, answerable to the Premier, be established. In light of these recommendations the Committee recommends that the position of Child Advocate be deleted.

### RECOMMENDATION 27

**That the position of the Child Advocate be deleted when the Office of the Status of Children and Young People is established (See Recommendation 31).**

## 7.4 THE COMMUNITY SERVICES COMMISSION

The Community Services Commission was established in 1994 to promote the rights and welfare of citizens (including children) who are subject to community welfare legislation. The Commission is an independent watchdog for consumers of community services in New South Wales established under the *Community Services (Complaints, Appeals and Monitoring) Act, 1993*. As the Commissioner advised the Committee, the Commission is "only part way through an establishment process that we would expect to take of the order of three years" (Evidence - 29 November, 1995).

### 7.4.1 Role and Function

The Commission's specific role with children includes:

- dealing with complaints from children or involving children who are receiving or are eligible to receive community services;
- carrying out reviews of individual children in residential or foster care;
- coordinating the Community Visitors program, discussed below;
- advising the Minister about systemic problems and issues in the delivery of community service to children;
- educating service providers about best practice in handling complaints from their consumers;

- informing children of their rights to complain and ways of accessing complaints systems; and
- supporting and encouraging advocacy services and programs for children (Submission 37).

In 1994-95 the highest proportion of complaints received by the Commission concerned children. Of the 548 complaints received, 27% related to child protection, with a further 25% concerned with children in care (Community Services Commission, 1995a:17). While exact data are not available, it would appear children rarely initiated these complaints.

Child protection complaints involved issues about the adequacy of Department of Community Services investigation of alleged child abuse, and ongoing supervision and support for abused children and their families. Children in care issues were concerned with the inadequacies in the substitute care system, poor communication between the service provider and both children and their natural parents, and their non-involvement in decision-making (Community Services Commission, 1995a:17).

#### 7.4.2 Adequacy of the Commission

During the course of the Inquiry, the Committee received a number of positive statements concerning the work of the Commission. The National Children's and Youth Law Centre is, for example, a "strong supporter" of the Commission and considers it to do "excellent work although it has certain constraints" (Ludbrook Evidence - 9 November, 1995). The Association of Child Welfare Agencies perceives the Commission as doing an:

*admirable job ... exploring opportunities for young people's voices to be heard and ... showing an independence that is admirable and welcomed* (Young Evidence - 9 November, 1995).

The Youth Justice Coalition views the establishment of the Commission as an expansion of the opportunities for accountability in the provision of services for children and young people (Submission 34). And finally, Dr Cashmore's experience with the agency has "shown the commitment and sensitivity of its staff to children's issues within its ambit" (Submission 45).

In terms of coordination, the Commission meets with the other major complaints handling organisations. In addition, the Committee was advised that the Commission has met with the staff of the Ombudsman's office who are undertaking an inquiry into juvenile justice facilities and that it is in "close contact" with the Child Protection Council, the Child Advocate and the National Children's and Youth Law Centre (Submission 37).

Despite the comments received by the Committee supporting the work of the Commission, a number of shortcomings were identified. Burnside, for example, identified the Commission's lack of resources to investigate comprehensively and resolve complaints (Submission 23). Grunseit, while acknowledging the Commission to be "an excellent idea" noted that it was not "especially set up to look after children" (Grunseit Evidence - 29 November 1995). The Youth Justice Coalition felt the usefulness of the Commission to be limited without adequate advocacy services to facilitate access by children and young people (Submission 34).

The Commission has recently appointed a permanent Children's Liaison Officer. The duties of this Officer are to:

- design, implement and evaluate programs for children who are consumers of community services and their advocates about consumer rights, how to complain effectively and how to resolve grievances at a local level;
- explore and promote a range of advocacy approaches to promote the rights of vulnerable children who are consumers of community services;
- support and facilitate advocacy, consumer and peak organisations in their efforts to promote the rights of children as consumers of community services; and
- provide advice and support to government and non-government community service providers in establishing and/or improving their systems for complaints handling, consumer service and standards/quality assurance, in accordance with their responsibilities under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*.

The Committee welcomes this initiative. The creation of this position is an important step in addressing the need for improved advocacy for children, and increasing children's access to complaints mechanisms.

The Executive Director of the Association of Child Welfare Agencies discussed two other "handicaps" of the Commission in his evidence to the Committee. The first concerned the Commission's inability to cross portfolios:

*children and young people in the care system who have a grievance or complaint about the way they are treated in the Department of School Education or the Department of Health may not find the Commission helpful in that area (Young Evidence - 9 November, 1995).*

Similar comments were made by the Chair of the Child Protection Council who considered a shortcoming of the Commission to be its limited focus:



*a child may have a problem that is not being addressed well enough in Community Services. Matters of that nature often involve other departments or other agencies, and they are stymied from being able to do anything about it. If the Commission can only look at matters relating to community services, the grievance is only part heard. That would be the concern about that most prominent structure that is being created (Ford Evidence - 9 November, 1995).*

The submission from the Office of the Ombudsman also raised concerns with the legislative basis of the Commission noting that it is "far more restricted in [its] powers than the Ombudsman". The Commission's enabling legislation provides that it must not make any determinations or recommendations that are beyond the resources appropriated by Parliament for delivery of community services, inconsistent with the way resources have been allocated by the Minister or Director General in accordance with government policy, or inconsistent with government policy. As the submission notes, this is a "serious impediment" given that the Commission is seen to have a general advocacy role on behalf of children (Submission 62).

A second issue of concern identified by the Association of Child Welfare Agencies concerned the Commission's review process which gives:

*the Commissioner the power to review the circumstances of children in care selectively, that is somebody may apply to him or he may choose to review a case. There is no systematic or universal obligation under his legislation (Young Evidence - 9 November, 1995).*

The Association was particularly concerned with the "selective" nature of the review process and the lack of "universal obligation". Young considered the establishment of a Children's Board of Review to be a more comprehensive mechanism to review children in care:

*The [unproclaimed] Board of Review requirement in the Children (Care and Protection) Act obligates the President ... of the board to review every child in care at six months and then annually. Until you can review the circumstances of children in care, you do not know what those circumstances are. If it relies on a system that is proactive either on the part of the commission or somebody in the community, or the child, you may not necessarily be providing a review of those most in need of a review. That is the problem I have with the legislation under which the Commissioner operates (Evidence - 9 November, 1995).*

The Committee has recommended Boards of Review be implemented in Chapter Three.

## 7.5 COMMUNITY VISITORS PROGRAM

### 7.5.1 Role and Function

The Community Services Commission also co-ordinates the Community Visitors program. The Community Visitors program, established under the *Community Services (Complaints, Appeals and Monitoring) Act, 1993* is an expansion of a "very small scheme" of official visitors that dealt with the large residential institutions, such as Ormond and Minali, run by the Department of Community Services (West Evidence - 29 November 1995). Under the legislation the program has been expanded to cover all visitable services, that is, places of full-time accommodation for children and adults in care, excluding foster care. The program provides a way for children and young people in institutional care to seek assistance and to complain formally about their circumstances and treatment.

Community Visitors are independent representatives from the community appointed by the Minister for Community Services. As the Minister for Community Services has stated in an open letter to service providers introducing the Visitors:

*Community Visitors will advocate on behalf of residents to improve the quality of their lives. In particular, they will try to help those residents who have little or no family or other support. Community Visitors will also work with service providers and residents to resolve any complaints (Dyer, 1995).*

In June 1995, 38 Visitors were appointed to visit services across the state. They include people who were in care themselves, people with disabilities, Aborigines, family members of people with disabilities, advocates and people with professional experience in community services (Minister for Community Services, 1995). Some focus exclusively on children in residential care, others visit services for children with disabilities.

There are over 750 services within New South Wales considered under the Act to be "visitable". Not all services are visited at the same rate. Factors determining the rate of visitation include:

- the number of residents living together;
- the age of the residents;
- the type of disability;
- geographic isolation of services; and
- complaints to the Community Services Commission (Community Services Commission, 1995b:4).

The Committee understands that Community Visitors will:

- talk and listen to what residents, their family and advocates have to say about their service;
- advocate on behalf of residents to improve the quality of their care;
- bring issues that have an impact on residents to the attention of management and staff;
- provide information and support to residents wanting to raise matters with the service providers about the quality of care they receive;
- where appropriate, assist both the resident and the service provider to resolve any complaint a resident may have about their service; and
- report to the Community Service Commission and the Minister for Community Services on the quality of services and any serious issues raised by residents (Community Services Commission, 1995b:1-2).

Under the enabling legislation, the Visitors have the authority to:

- enter and inspect any visitable service at any reasonable time. Notice of a visit is not required;
- talk alone with any resident or person employed at a service; and
- inspect any document held in a service which relates to the operation of the service (Community Services Commission, 1995b:3).

The first step in attempting to resolve an issue brought to the attention of a Visitor is to seek resolution within the Centre. Where this is not possible, the case is then brought to the attention of the Commissioner, the Department of Community Services or the Minister where relevant.

### **7.5.2 Adequacy of the Program**

While acknowledging that Visitors have an “important” advocacy role for individual children and young people, the Youth Justice Coalition considers there to be constraints on their role such as the limited extent to which Visitors are acknowledged and remunerated as advocates (Submission 34).

The *Systems Abuse* Report highlighted the extent to which children and young people in residential care are reluctant to complain for fear of retribution, or being picked upon. The Committee strongly agrees with the Youth Justice Coalition who suggest that there:

*is no use having a system of review if the potential users are too scared to use it*  
(Submission 34).

In addition, the Committee understands that the Program does not extend to young people in foster care who make up most of the children and adolescents in substitute care. As the submission from SNYPIC observes:

*the main limitation we see with (the Community Visitors Scheme) is that it only targets children and young people in residential care and group homes. It does not target children in foster homes, and given that the majority of children and young people in care are in foster homes, that leaves a lot of very isolated children and young people* (Submission 41).

Most submissions noted that, given the recent change to the program, it is too early to assess how successful it will be in adequately advocating for those children in care covered by the scheme.

## 7.6 COMMUNITY SERVICES APPEALS TRIBUNAL

### 7.6.1 Role and Function

The Community Services Appeals Tribunal is constituted under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*. It is part of the independent review and appeals system in the community services area which includes the Community Services Commission, the Community Services Review Council and the Community Visitors Scheme.

The Community Services Appeals Tribunal hears appeals against decisions of the Minister and the Department of Community Services. An application for an order for the termination of wardship or guardianship can be made either to the Children's Court or to the Minister. The Tribunal hears appeals against the Minister's refusal to terminate his guardianship and decisions to remove a child from the custody of any person, such as foster parents. The Tribunal also has jurisdiction to hear appeals against the granting, suspension or revocation of child care, fostering agency and children's residential care licences and the placement of conditions on those licences.

As soon as an appeal is launched at the Tribunal that involves children, they are visited so that the Tribunal proceedings can be explained in an appropriate way. They are asked whether they would like to participate either by informing the Tribunal of their views or

wishes in the matter, or attending the Tribunal. The Tribunal selects an advocate for the child with particular skills and taking into account any special needs of the child. The advocate supports the child or participates in the Tribunal's proceedings if the child is not able to directly attend or participate. Advocates have been drawn from:

- The State Network of Young People in Care;
- Voluntary child care and protection agencies;
- Legal Aid Commission Social Workers;
- Individual professionals selected for their skills and experience with children in contact with the substitute care system (Submission 39).

The Tribunal intends to set up a panel of non-lawyer advocates who can act for children. Such a panel could also serve the needs of bodies other than the Tribunal.

#### 7.6.2 Adequacy of Organisation

The Committee heard that while the Tribunal may address the needs of children who are the subject of or involved in proceedings, these proceedings are not child-focused:

*we become involved with those children only once the parents' or the foster parents' rights are challenged, or if the foster parents or the birth parents bring an appeal .... Although the children's rights are met, once the right of appeal arises it is a very parent-focused right (Evidence - 29 November 1995).*

The child has no right of appeal against a decision to place that child with a particular foster parent, or against the termination of their wardship if it is against their wishes.

In evidence to the Committee, a solicitor appearing on behalf of the Youth Justice Coalition contended that while the Community Services Appeals Tribunal had been successful in addressing the needs of children involved in proceedings, its powers are very limited and must be extended. She recommended the creation of an Administrative Appeals Tribunal to review administrative decisions made by schools, the Department of Community Services, and other government agencies (Evidence - 22 April, 1996).

#### RECOMMENDATION 28

**That the Minister for Community Services appoint a Children's Liaison Officer to the Community Services Appeals Tribunal for an initial period of two years to develop a publicity campaign to make children and young people aware of its functions and to advise the Tribunal in making its proceedings involving children more child-focussed.**

## 7.7 THE HEALTH CARE COMPLAINTS COMMISSION

The Complaints Unit was established in January 1984 within the New South Wales Department of Health to provide a clear avenue to resolve complaints about the delivery of health services. The Unit was restructured in 1994 and became known as the Health Care Complaints Commission. The Commission is established under the *Health Care Complaints Act, 1993* and is an independent statutory body reporting directly to the Health Minister and the Health Care Complaints Parliamentary Committee.

### 7.7.1 Role and Function

The Commission combines a three-fold approach that includes receiving complaints, investigation and, where appropriate, prosecution (Health Care Complaints Commission, 1995:15). The Commission is able to take disciplinary action or bring matters of concern to the attention of the Director-General of the Health Department or the Minister for Health.

Under its enabling legislation the Commission has the following functions:

- to receive and deal with complaints relating to the professional conduct of health practitioners or health services;
- to assess complaints and refer them for conciliation or investigation;
- to prosecute complaints through a variety of forums;
- to report on action to be taken following the investigation of a complaint if the complaint is found to be justified in part or whole;
- to publish and distribute information to the community on the process of making a complaint;
- to provide information to health service providers and professional and educational bodies concerning complaints;
- to monitor, identify and advise the Minister on trends in complaints and recommend changes in policy arising out of cases investigated;
- to consult with groups with an interest in the provision of health services;
- to develop a Code of Practice; and

- to investigate the frequency, type and nature of allegations made in legal proceedings of malpractice by health practitioners (Health Care Complaints Commission, 1995:15).

The Commission collects detailed information about complaints and maintains a comprehensive database about complaints and their outcomes. However, until recently, the information collected did not include age-related information. It is therefore not possible to provide statistics on how frequently children complain, or others complain on behalf of children about health care services (Submission 38). According to Ms Marilyn Walton, Commissioner of the Health Care Complaints Commission, the agency “rarely” gets complaints from children (Walton Evidence - 29 November 1995).

### 7.7.2 Adequacy of the Commission

As has been noted earlier, the number of watchdog agencies could lead to overlap and duplication of services. However, from the perspective of the Commission, overlapping is not experienced as “we understand each other’s jurisdiction” (Walton Evidence - 9 November 1995):

*the Commission has sole responsibility for health professionals, those that are regulated under the Nurses Act and the Medical Practitioners Act. As soon as a person has been identified as a doctor, nurse, chiropractor, physiotherapist, or whatever, he or she clearly comes into our jurisdiction. No-one else would want to touch it anyway because it is so complex (Walton Evidence - 29 November 1995).*

A number of criticisms were levelled at the Commission from those making submissions, or giving evidence, to the Committee. Burnside, for example, considered the Commission to be “chronically” short of resources to investigate the volume of complaints it receives. It also claims that it lacks staff experienced in dealing with children and young people and has a limited range of remedies available to complainants (Submission 23).

The Youth Justice Coalition suggested to the Committee that the Commission does not necessarily provide an “easy” avenue of redress for children or young people. The Coalition identified long delays in dealing with complaints, the large and bureaucratic nature of the Commission and a process that is intimidating to young people to manage on their own (Submission 34). Similar comments were made by Cashmore, who notes there is little indication that children and young people use the service (Submission 45).

The Commissioner commented in evidence before the Committee that:

*it is not a question of there being no system. The problem is access. Getting children to us is the problem (Walton Evidence - 29 November 1995).*

The Youth Justice Coalition suggested the Health Care Complaints Commission should consider appointing a Youth Liaison Officer to promote young people's interests, and educate young people and workers in the youth sector about the Commission's services (Submission 34). As discussed above, a position has been created in the Office of the Ombudsman for a two year period to carry out similar functions in improving access to and awareness of that agency among young people. The Committee believes this model would be equally appropriate for the Health Care Complaints Commission.

### RECOMMENDATION 29

**That the Government provide additional funding over two years for the appointment of a Children's Liaison Officer in the Health Care Complaints Commission to:**

- **conduct education and publicity campaigns; and**
- **liaise with peak groups providing advice and services to young people.**

**This would ensure that an awareness of the Health Care Complaints Commission's role in relation to complaints by young people is developed.**

## 7.8 THE OFFICIAL VISITORS PROGRAM

### 7.8.1 Role and Function

The current official visitors scheme was established in September 1992 by the then Office of Juvenile Justice. The scheme's statutory base comes from section 8A of the *Children (Detention Centres) Act 1987*. That section provides that:

- 8A (1) *The Minister may appoint a person to be an Official Visitor for a detention centre.*
- (2) *A person is eligible for appointment if, in the opinion of the Minister the person is expert in some branch of juvenile justice and demonstrates concern for persons within the juvenile justice system. However, an officer is not eligible for appointment.*
- (3) *An Official Visitor holds office for such period not exceeding 2 years as is specified in the instrument of appointment and is, if otherwise qualified, eligible for re-appointment.*



- (4) *An Official Visitor may, as regards a detention centre for which the Official Visitor is appointed:*
- (a) *enter and inspect the detention centre at any reasonable time; and*
  - (b) *confer privately with any person who is resident, employed or detained in the detention centre; and*
  - (c) *furnish to the Minister advice or reports on any matters relating to the conduct of the detention centre; and*
  - (d) *exercise such other functions as may be prescribed by the regulations.*
- (5) *A copy of any advice or report furnished to the Minister under subsection (4)(c) is to be forwarded to the Minister for School Education if the advice or report related to any part of an educational establishment that is under the control or direction of the Minister for School Education.*

Currently, there are 10 Official Visitors, one appointed to each Juvenile Justice Centre in the state. Each Official Visitor is required to visit his or her nominated detention centre twice a month and report to the Minister every six months.

During the course of the Inquiry the Committee received evidence from the coordinator of the Official Visitors Scheme, and two Official Visitors, Shireen Malamoo and Ray Bird. The Committee heard that:

*The annual reports for 1993-94 and 1994-95 show that official visitors dealt with 1,000 complaints and 750 complaints in the respective years. Inquiries have ranged from food quality and non-smoking policies in centres to compensation for loss of property by detainees (Matthews Evidence - 29 April 1996).*

#### **7.8.2 Adequacy of the Official Visitors Scheme**

A number of submissions commented that the Official Visitors Scheme, in contrast to many of the other agencies identified above, has a real child advocacy role. The submission from SNYPIC for instance, argued that:

*the Official Visitors program and the National Children's and Youth Law Centre work more as advocates who defend, uphold and promote children's views (than the NSW Ombudsman, the Community Services Commission and the Health Care Complaints Commission). Their advocacy role may start off as a complaint, but they are there for the child only. These services also have a role in promoting the needs and views of all children as well as individual children (Submission 41).*

Similarly, the submission from the Youth Justice Coalition stated that:

*[Official] Visitors have an important advocacy role for individual children and young people ... Visitors also have an important role to play in referring children and young people to appropriate advocates when necessary (Submission 34).*

Despite evidence of the positive advocacy function that Official Visitors can play, the Committee also heard of shortcomings within the scheme that limited its role. The Youth Justice Coalition commented that:

*there are constraints on their role, including the limited extent to which Visitors are acknowledged and remunerated as advocates (Submission 34).*

In relation to the situation for Aboriginal young people, Shireen Malamoo (Evidence - 29 November, 1996) commented that:

*The impact of the juvenile justice system on indigenous juveniles is a compelling problem for indigenous communities and the wider community in this state. I am of the opinion that the Official Visitor's program, like many other programmes which attempt to address this problem, lacks the urgency which should characterise government's efforts to address juvenile justice issues. I also feel that the role of indigenous official visitors should be given greater acceptance. The potential for such visitors to contribute significantly to solutions and initiatives to deal with the clear problem of juvenile justice and Aboriginal children should be given greater currency and support by the Government.*

## 7.9 THE NATIONAL CHILDREN'S AND YOUTH LAW CENTRE

The National Children's and Youth Law Centre was established in 1993 at the initiative of the Public Interest Advocacy Centre (PIAC) and was developed by a consortium made up of the Centre and the law schools of Sydney University and University of New South Wales. The two universities and PIAC have provided financial support or support in kind to the Centre which was "crucial" in its formative years (Submission 3).

A three year seeding grant was provided from the Australian Youth Foundation to "address the vast unmet need for advocacy for disadvantaged children and young people and their legal rights" (National Children's and Youth Law Centre, 1995:3). This funding expired at the end of 1995 and could not be renewed. The Commonwealth government has offered funding through the Attorney-General's Department as part of the government's Justice Strategy. The Justice Strategy, for the first time, recognised the special legal needs of children and young people by providing funding for five specialist youth advocate positions, two of which have been offered to the Centre (Submission 3).

The Commonwealth funding however provides approximately one-half of that previously provided by the Foundation. As a result of this reduced funding the Committee was advised that the Centre has had to:

*cut back its services and has had to retrench or let staff go. It is not now being funded at a level that is viable to operate effectively nationally or to provide the services at a State level that it gets called upon to do (Hogan Evidence - 9 November 1995).*

Further, although the funding offered by the Commonwealth government is described as "recurrent", there is no guarantee that funding will continue after 1 November 1996. The conditions attached to the federal funding will see the Centre refocus its work on advice, information and legal casework with reduced opportunities for policy work and new publications (Submission 3).

### 7.9.1 Role and Function

The objectives of the Centre are:

- to improve the conditions and opportunities of Australian children and young people, especially the disadvantaged, by identifying the major legal issues facing them and by using and improving the law, legal systems and legal services for the promotion and enforcement of their rights;
- to promote through advocacy and education the comprehensive implementation throughout Australia of the United Nations Convention on the Rights of the Child;
- to provide accessible and independent expert advice, advocacy and referral for children and young people especially the disadvantaged, and for organisations and individuals seeking to assist them;
- to provide an information exchange service on a national basis to collect, produce, disseminate and promote information on laws, legal processes and legal services affecting children and young people; and
- to undertake, sponsor and publicise critical research, policy review and development and lobbying in relation to laws, legal processes and legal services affecting children and young people (National Children's and Youth Law Centre, 1995:4).

The Centre's core program includes the following components:

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- policy and law reform which aims to undertake policy analysis and reviews of laws and to lobby in relation to the reform of laws, legal processes and legal services affecting children and young people;
- casework and litigation which provides expert advice, advocacy and referral on appropriate test case litigation to organisations and individuals concerned with the rights of children and young people; and
- information and research aimed at providing a national information service, to collect, produce, disseminate and promote information and research on laws, legal processes and legal services for children and young people (National Children's and Youth Law Centre, 1995:9-12). The Centre handled 1,664 advice and information calls in 1994 (Submission 3).

The Centre identified six areas of priority in its submission to the Committee. These include:

- the United Nations Convention on the Rights of the Child;
- education and students' rights;
- children in institutional care;
- advocacy for children and young people;
- juvenile justice; and
- discrimination and disability (Submission 3).

The Centre has been very involved in the development of an Australian Charter of Rights for Children and Young People. The Charter's supporting document includes discussion on:

- fundamental rights;
- culture, language and religion;
- children and families;
- standard of living;
- health;
- children with a disability;

- education;
- employment;
- juvenile justice; and
- punishment of children (Australian Youth Foundation, 1995:11-24).

Among the list of fundamental rights is advocacy for children's views which states that:

*children have the right to choose an appropriate advocate to assist them in putting their views forward. If children lack the capacity to put forward their views or to instruct an advocate then a suitably qualified advocate must be appointed to represent them based on their interests (Australian Youth Foundation, 1995:12).*

Those drafting the Charter propose that it become part of Australia's domestic law. They also see a number of other factors as necessary in implementing and enforcing the Charter. These include:

- an audit of existing legislation conducting to identify where existing laws do not meet the standards identified in the Charter. Action to bring existing legislation into line with the Charter would be necessary, as would assessments of all future legislation;
- the preparation of Child Impact Statements in relation to all proposed legislation and budget packages;
- the establishment of an Office of the Child in the Department of the Prime Minister and Cabinet, and in the Premier's Department at state or territory level. The Offices would be responsible for fulfilling governments' responsibilities under the United Nations Convention to educate the community about the Convention;
- the development of a national agenda for children to look at the practical issues confronting children in the implementation of their rights under the Charter; and
- the establishment of an independent Commissioner for Children with statutory responsibility to advocate for children and young people and promote their interests (Australian Youth Foundation, 1995:54-56).

### 7.9.2 Adequacy of the Centre

During the course of taking evidence, the Committee received strong support for the work undertaken by the Centre. The Director of Public Interest Advocacy Centre, for example, told the Committee that the Centre provides a “significant service to children and families” (Hogan Evidence - 9 November 1995). The Executive Director of the Association of Children’s Welfare Agencies considered the National Children’s and Youth Law Centre to have the “potential” to be a strong advocacy organisation for children (Young Evidence - 9 November 1995). The Youth Justice Coalition informed the Committee that the Centre had played a “vital role” in the provision of advocacy for children and young people and that it had:

*identified issues of national importance and taken a leadership role in the development of policy affecting children and young people (Submission 34).*

Burnside claimed the Centre to be an “outstanding agency”. Its work in the areas of community education, publications, policy and law reform are considered “extremely admirable” (Submission 23).

The major shortcoming identified by those appearing before the Committee related to the national orientation taken by the Centre, with many feeling it was not resourced adequately to fulfil such a mandate. The Executive Director of the Association of Children’s Welfare Agencies, for example, considered the Centre to be “bound” by its national and legal framework (Young Evidence, 9 November 1995).

Burnside noted that:

*given its resources (which have just been significantly diminished) and its national role, any expectation that it can be in any way an effective advocate for individual children and young people is misplaced (Submission 23).*

## 7.10 THE GUARDIANSHIP BOARD

### 7.10.1 Role and Functions

The Guardianship Board functions as an independent tribunal, established under the *Guardianship Act 1989*. The Board's role is to assess applications for the appointment of substitute decision makers for people over 16 years of age who have some degree of incapacity. Substitute decision-makers may include guardians to make decisions about matters such as accommodation and medical treatment, or financial managers. Guardianship orders can be designed to overcome a lack of competent advocacy or conflict between people purporting to be advocates.

The Guardianship Board has a range of powers of guardianship under the *Guardianship Act*. These are:

- limited guardianship (with defined powers and scope for specific directions to a guardian);
- plenary guardianship; or
- temporary, interim, short or long term orders, with mandatory reviews.

The Board is able to set out a plan for each person for whom a guardianship order is made, with time frames for action, and adopts a multi-disciplinary approach. The Committee heard that in the first instance a guardianship order can only be made for up to twelve months, with the Board conducting a review hearing at the end of that period which provides a monitoring role (Brown Evidence - 29 April 1996).

#### 7.10.2 Adequacy of the Board

A number of witnesses suggested in evidence that elements of the Guardianship Board's model of advocacy could have advantages in areas concerning children outside the disability area. In supporting this model, the Community Services Commission noted:

*The current model for guardianship of children through the children's court lacks this flexible, multi-disciplinary approach, or the capacity to provide for clear plans for the future of a child (Submission 37).*

However, the Committee also heard from solicitor, Leonie Miller that the Guardianship Board is bound by systemic limitations in what it can achieve for children under its jurisdiction:

*the Guardianship Board has no power currently for persons appearing before it to provide services; it can only advocate .... whatever we establish, the end result must be something better for the client base, not the system that has been established. When a person goes before the Guardianship Board, they can only have the Guardianship Board advocate the services. The Guardianship Board is not a direct service provider (Miller Evidence - 22 April 1996).*

#### 7.11 YOUTH BRANCH, NEW SOUTH WALES CABINET OFFICE

Under the previous government, the Office of Youth Affairs existed as part of the Ministry of Education and Youth Affairs. After the 1995 state election, the youth policy staff of the Office were transferred to the Cabinet Office, and following a restructure, a Youth Branch was created.

### 7.11.1 Role and Function

The Youth Branch provides advice to the Premier on youth issues and undertakes the following functions:

- co-ordinating the implementation of the Government's commitments and developing youth policies;
- reviewing priorities and funding for "at risk" young people;
- developing measures to ensure services are appropriate and responsive to young people; and
- developing initiatives to address emerging youth needs.

The Youth Branch also co-ordinates youth policy initiatives through:

- the Youth Advisory Council which provides advice to the Premier on issues affecting young people;
- an Interdepartmental Committee with representatives from ten key youth affairs agencies;
- inter-governmental liaison via the Ministerial Council on Employment, Education, Training and Youth Affairs Taskforce; and
- intersectoral liaison through regular meetings with peak non-government organisations like the Youth Action and Policy Association (Cabinet Office, 1995:22)

### 7.11.2 Adequacy of Branch

The Youth Branch or the Youth Advisory Council were not raised in submissions or evidence to the Committee as major sources of advocacy for children in New South Wales. This may reveal a lack of knowledge regarding their role, or a belief that they lack the independence from government to be effective advocates for children. Certainly, it reveals their profiles are limited.

In its Report, *Youth Violence in New South Wales* (Standing Committee on Social Issues, 1995), the Committee expressed concern regarding the division of policy and program responsibilities between the Youth Branch of the Cabinet Office (policy) and the Youth Program Unit of the Department of Training and Education Coordination (programs). The Committee was concerned regarding the message the closure of the Office of Youth



Affairs sent to the youth of the state, and regarding the appropriateness of splitting the coordination of policy and programs.

The Committee supports the identification of children's and youth affairs as a distinct policy area by governments. The Committee also believes a separate bureaucratic structure within government is required to respond effectively to children's needs. In its current form however, the Committee feels the Youth Branch has not been effectively developed as a children's advocacy forum. In Chapter Eight it makes a number of recommendations regarding the establishment of the Office of the Status of Children and Young People. It considers that in order for the Office of the Status of Children and Young People to function effectively, the Youth Branch in the Cabinet Office should be disbanded and/or incorporated into the recommended office (See Recommendation 31).

## 7.12 CONCLUSION

Although a number of the agencies identified above offer some advocacy for children, the Committee is concerned that there is still an uncoordinated and reactive approach, with advocacy overall being largely ad hoc and piecemeal. This in itself represents a clear example of the inadequacy of children's advocacy in this state.

As the Committee was told:

*these organisations respond to the issues or needs of individual children, rather than the collective welfare of all children, or special groups of children. They are ... remedial and grievance driven, rather than being positive and proactive in their advocacy (Submission 15).*

In its submission, Centacare identified a number of problems in relation to the lack of a coordinated approach to advocacy for children. It argues that the plethora of agencies and processes working on behalf of children is "part of the problem":

*for children and parents or carers, the consumers of such services, what results is a picture that is bewildering and far too compartmentalised (Submission 15).*

The Committee concurs with this view. It is also concerned by the fact that the current advocacy bodies rely on the children, their parents or other interested parties to raise issues or grievances.

To increase access to and awareness of complaints agencies among young people, the Committee supports the establishment of a Youth Liaison Officer in the Office of the Ombudsman. The Committee recommends on-going funding for education and publicity campaigns, and liaison with peak groups providing advice and services to young people. The Committee also calls for a similar initiative for the Community Services Appeals Tribunal and the Health Care Complaints Commission.

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The Committee considers that successful advocacy requires a proactive and preventative strategy. The Committee recognises that this requires increased support for parents and families. This is especially the case for children at risk of entering the care or juvenile justice systems.

The Committee recognises the original objectives of the NSW Child Protection Council included the development of proactive strategies to respond to child sexual assault. The Committee believes that the Council's influence will be enhanced as an integral part of the Office of the Status of Children and Young People. It also considers that the relocation of the Youth Branch to this Office will result in a higher profile for youth issues.

## CHAPTER EIGHT

## FUTURE DIRECTIONS

## 8.1 INTRODUCTION

Recent public Inquiries have heightened community awareness about the powerlessness of many children, their vulnerability to abuse and exploitation, and their voicelessness in so many decisions that impact upon their lives. This Report has confirmed much of the evidence and findings of those Inquiries. The Committee's evidence has revealed that public support for addressing the needs of children and young people, and giving them a voice, has never been greater.

To date, children's advocacy has been ad hoc and inconsistent, representing more of a reaction to a crisis or immediate situation. The Committee firmly believes that advocacy for children must be proactive. Advocacy for children, according to Committee witness Dr Victor Nossar (Evidence, 29 April, 1996), should not be about:

*simply improv(ing) the administrative grievance procedures ... there needs to be some sort of broader framework which says that the interests of children are important, not just important vis a vis the current political situation, not just important vis a vis a particular scandal or problem that has arisen, but important because Australians need to think about the next generation.*

The Community Services Commission explained in its submission:

- *there are no programs, apart from legal advocates, which provide individual advocacy for children on a crisis or an 'as needed' basis, or on a long term relationship basis;*
- *there is no single agency responsible for systemic policy work in relation to children, across all sectors and portfolios;*
- *there is no agency that can provide information, education and training about advocacy and children's rights, on a state-wide basis;*
- *there is no agency which collects and publishes comprehensive information about children in New South Wales on a regular basis (Submission 37).*

That same submission observes that:

*It is also notable that while the state government is advised by a Department of Ageing and Disability and a Department of Women, there is no comparable Office*

*on Children. While the Child Protection Council has a role in advising government and coordinating portfolios, this is only in relation to child protection matters.*

In undertaking this Inquiry the Committee has examined numerous child advocacy models at a **systemic** level. Among them have been the Children's Commissioner in New Zealand, the Children's Ombudsman in Norway and Sweden and the Parliamentary groups such as exist in Denmark and, to a lesser extent, in England. It has also examined the model of the former New South Wales Women's Coordination Unit as a possible basis for a similar children's unit.

The Committee has also investigated a range of **independent advocacy services**, both in Australia and overseas. These have included the National Children's and Youth Law Centre in Sydney; the Youth Advocacy Centre in Brisbane; the UK Children's Legal Centre in Essex; the Children's Rights Office and the National Children's Bureau in London; the Children's Defense Fund in Washington, DC; and the Children's Rights Project in New York. All take on a range of issues, including juvenile justice, welfare, housing and education, both through the courts or other forums, and through policy and education work.

The Committee is aware of the announcements of funding by the Government for abused children and children in care totalling \$13 million over three years. In announcing the package, the Premier stated that "the protection of children is the greatest priority of my Government". Mention has been made throughout the Report of the components of that funding, including \$300,000 to the State Network of Young People in Care for three years; \$300,000 for foster carer support for three years; \$1.2 million annually for three years for leaving care and after care services and \$2.5 million over the next three years to install closed circuit television systems in all major locations across New South Wales and in the Children's Courts. The Committee also notes that the Government has established a Ministerial Advisory Committee on Substitute Care, to provide advice to the Government on suitable standards for care and to establish an independent monitoring system.

The Committee commends these initiatives. Nevertheless, it is concerned that there is still a lack of proper coordination among agencies and organisations that deal with children's issues. It considers that whilst these initiatives will greatly assist in service provision to disadvantaged and abused children and young people, there needs to be some coordinated body that can direct and advise on children's policy.

The following discussion will firstly examine the United Nations Convention on the Rights of the Child and its role in relation to children's advocacy in Australia. It will also look at the issue of systems advocacy and propose a model which it considers to be suitable for New South Wales. The discussion will then examine the issue of individual children's advocacy and peer advocacy.

## 8.2 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Committee has dealt extensively with the issue of the United Nations Convention on the Rights of the Child throughout the Report. It recognises that many of the articles in the Convention are not being adhered to by governments and in some instances are being flagrantly breached, for example Article 25 which concerns the periodic review of children in care. Australia has agreed to be bound by the articles contained within the Convention - so the Convention is important to our society and the Committee acknowledges its significance.

The Committee considers that there needs to be a body that would promote the implementation of the United Nations Convention on the Rights of the Child and would ensure that governments meet their obligations arising from the Convention. It therefore recommends that a position of Children's Commissioner be established within the Human Rights and Equal Opportunity Commission to undertake this role.

### RECOMMENDATION 30

**That the Premier urge the Prime Minister to create the position of Children's Commissioner within the Human Rights and Equal Opportunity Commission to ensure that governments meet their obligations arising from the United Nations Convention on the Rights of the Child.**

## 8.3 SYSTEMS ADVOCACY

The Committee considers that advocacy for children at a systemic level is necessary for a number of reasons. It believes that children are vulnerable to having their needs, wishes and rights ignored, both as individuals and collectively, since they cannot express their views and opinions through the normal democratic or political channels available to adults. Moreover, they often lack the skills, knowledge or confidence to express their views, assert their rights, negotiate for their needs to be met, or seek redress when their rights have been infringed. A cohesive advocacy system for children is also required to evaluate the impact of measures on children who may be affected by policies or decisions of which they may not be the direct individual subject.

It was submitted to the Committee that the best way to ensure that children's needs and rights are recognised and met is through a Minister for Children. The Committee understands that there is such a Minister in Ireland and the Opposition Labour Party in Great Britain has a Member who is designated as a shadow minister for Children's Affairs. Although the Committee recognises that the position of Minister for Children would theoretically provide children with a representative with considerable authority, it

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considers that this may not be the case in practice. It has heard and concedes that such a position could become marginalised and relegated to a junior rank.

It further considers that major children's issues, such as health, education and care and protection, which would come within the portfolio of the Minister, would therefore be given a low priority. The Committee does not consider that a Minister for Children should be appointed before any proper government structures are put in place and have been given time to enhance the status of children's issues within government.

A number of witnesses and submissions were very supportive of the position of a state-based Children's Commissioner or Children's Ombudsman. Such a position, it was argued, would provide children with a powerful representative whose primary role would be to uphold, protect and advocate for children's needs and rights. This position would have a statutory base and, although funded by government, would remain independent. A Children's Commissioner or Ombudsman would not be solely grievance or complaints based. The role would require more proactive intervention in issues affecting children.

After careful consideration the Committee considers that a Children's Commissioner/Ombudsman at the state level is not the most appropriate avenue to pursue in respect of children's advocacy in New South Wales. The Committee is concerned that the position of Children's Commissioner would, in reality, have a limited opportunity for a proactive role. It considers that the position may be marginalised and isolated from real policy influence as has been the situation for the New South Wales Child Advocate.

The Committee is of the view that the position of Children's Commissioner may not be broad enough or have the scope to bring together the many different organisations and systems which affect children. Whilst a number of submissions and testimony supported the idea of a Children's Commissioner others felt that its functions would be limited and that a more broad based organisation needed to be established. Committee witness, Ms Helen L'Orange explained in evidence:

*... [a Children's Commissioner] is a statutory office holder and ... they do not get to know what is actually going on because it has not got that critical mix of both being simultaneously within government, at the heart of government and with a capacity to advocate. I also think it is a situation where naming is quite important. The Children's Commissioner or the Children's Ombudsperson ... has, to me, a bit of an air that this is all happening around a personality. The fact is that strong advocacy occurs around a government and it occurs around the head of government than some ... charismatic and seemingly powerful person. (Evidence - 22 April, 1996).*

The Committee concurs with this view. **It considers that an effective model for children's advocacy at the systemic level is to place children's issues squarely within the domain of government decision-making.** This is also an approach supported by the

President of the Community Services Appeals Tribunal. In her submission, President Robin Gurr proposed to the Committee that:

*As a first step towards developing services and policies designed to address the disadvantages of children and young people in New South Wales it is recommended that:*

*An appropriately resourced Children's Coordination Unit (along the lines of the Women's Coordination Unit or the Federal Office for the Status of Women) be established within the New South Wales Government Administration.*

*Ministerial responsibility for the Unit be located initially with the Premier or Deputy Premier (Submission 39).*

Further, the submission from Dr John Yu of the New Children's Hospital and Secretary of the Children's Forum strongly supported children's advocacy at the systemic level and considered that:

*this would best be achieved by the establishment of an Office for Children, preferably attached to the Premier's Department, which would represent the interests of children where legislation is being proposed and regulations are being formulated. This would require the Office to have access to legislation in the drafting stage (Submission 5).*

Commenting on the value of this type of model for children, former head of the New South Wales Women's Coordination Unit and the Federal Office of the Status of Women, Ms Helen L'Orange, told the Committee in evidence:

*What I identify as the key components for success are being in a powerful hub position and having access to Government decision-making, including budgetary processes, and also having linked from that empowered central point in Government to the community and professional sectors and actually encouraging the interchange and connection ... A very significant example of this sort of approach was in respect of law reform where, although the Women's's Coordination Unit had no carriage of legislation, the Premier said he wanted law reform for women and children to be led from this point. Attorney General's participated but would hand over the leadership of those exercises to the Women's Coordination Unit, and the subsequent consultation, community consultation papers, reports to Government, budget funding proposals, Cabinet submissions on legislation, all went from the Premier, rather than from the responsible Minister .... I would reiterate, it is being a central point, having the authority of that central point and having the support of the Premier and the Prime Minister for that work (Evidence, 22 April, 1996).*

The Committee strongly supports and endorses this approach to children's advocacy at the systemic level.

As the Committee recognised in Chapter Seven, a Youth Branch currently exists within the Cabinet Office. However, given that the Youth Branch was not mentioned during the Inquiry as an appropriate child advocacy forum, the Committee considers that its role and status are limited. Unlike the model proposed above, it appears that the role of the Youth Branch is not broad enough to participate in government decision making regarding children and youth.

The Committee, therefore, recommends the establishment of an Office of the Status of Children and Young People to be based within the Premier's Department. The Office would lead government efforts to ensure that government and community resources create positive outcomes for children.

The Committee further recommends that the Office of the Status of Children and Young People be provided with adequate staff and resources to properly fulfil its role and functions. A major task of the Office of the Status of Children and Young People should be to pursue the findings of this Report, to develop relevant policies, and to promote effective cooperation between government and non-government organisations which are engaged in the provision of services to children.

The Committee recommends that the NSW Child Protection Council and the Child Death Review Team be re-located to the Office of the Status of Children and Young People. The Committee further recommends that the Youth Branch in the NSW Cabinet Office be disbanded and/or incorporated into the Office of the Status of Children and Young People (See section 7.11).

The Office of the Status of Children and Young People should pursue specific objectives including:

- advising the government on relevant law reform and policy options and strategies for children and young people;
- participating in the budget development process;
- liaising regularly with, and gaining input from, government and non-government agencies and a broad cross-section of children and young people on issues and policies relevant to the needs and interests of children and young people;
- conducting ongoing research and inquiry into areas affecting children and young people; and



- establishing and maintaining a data base of information regarding the needs of children throughout the State.

These objectives would ensure a whole of government approach to the delivery of programs for children and young people.

The Committee acknowledges that a major part of the role of the Office of the Status of Children and Young People would be to liaise with a wide range of organisations and, in particular, young people, in order to coordinate positive action for children and young people. It therefore recommends that the Office of the Status of Children and Young People regularly meet and consult with the following independent bodies and agencies:

- the Children's Advocacy Network (see Recommendation 36);
- the State Network of Young People in Care;
- the Youth Justice Coalition;
- the Association of Children's Welfare Agencies;
- the Association for the Welfare of Child Health;
- the New South Wales Council for Intellectual Disability;
- the Juvenile Justice Advisory Council;
- Aboriginal groups and agencies;
- the Article 12 Committee (See Recommendation 37);
- the New South Wales Students Representative Council; and
- any other organisation that it deems appropriate.

The operation of the Office of the Status of Children and Young People should be reviewed after three years.

### RECOMMENDATION 31

**That:**

- **the Premier establish an Office of the Status of Children and Young People to be located within the Premier's Department and reporting directly to the Premier;**
- **the NSW Child Protection Council and the NSW Child Death Review Team be re-located to the Office of the Status of Children and Young People; and**
- **the Youth Branch of the New South Wales Cabinet Office be disbanded and/or incorporated into the Office of the Status of Children and Young People.**

**RECOMMENDATION 32**

**That the Office of the Status of Children and Young People be charged with the responsibility of leading government efforts to ensure that government and community resources create positive outcomes for children.**

**RECOMMENDATION 33**

**That the Office of the Status of Children and Young People be provided with adequate staff and resources to fulfil its role and functions independently.**

**RECOMMENDATION 34**

**That the Office of the Status of Children and Young People also pursue specific objectives including:**

- **advising the government on relevant law reform and policy options and strategies for children and young people;**
- **participating in the budget development process;**
- **liaising regularly with, and gaining input from, government and non-government agencies and a broad cross-section of children and young people on issues and policies relevant to the needs and interests of children and young people;**
- **conducting ongoing research and inquiries into areas affecting children and young people; and**
- **establishing and maintaining a data-base of information regarding the needs of children throughout the State.**

**This should ensure a whole of government approach to the delivery of programs for children and young people.**

## RECOMMENDATION 35

That the Office of the Status of Children and Young People regularly meet and consult with the following independent bodies and agencies:

- the Children's Advocacy Network (see Recommendation 36);
- the State Network of Young People in Care;
- the Youth Justice Coalition;
- the Association of Children's Welfare Agencies;
- the Association for the Welfare of Child Health;
- the New South Wales Council for Intellectual Disability;
- the Juvenile Justice Advisory Council;
- Aboriginal groups and agencies;
- the Committee of Children and Young People (See Recommendation 37);
- the New South Wales Students Representative Council; and
- any other organisation that it deems appropriate.

## 8.4 INDIVIDUAL ADVOCACY

The Committee received a range of submissions and oral testimony which emphasised the importance of individual children's advocacy as well as systemic advocacy. The Committee recognises that parents can often fulfil the role of the best individual advocate for their child. As the Report revealed earlier, this was supported by testimony and submissions. However, as the Committee acknowledges, children and young people may require external independent advocacy services where a parent cannot or will not advocate on their behalf. Furthermore, independent child advocacy services can assist children and parents or carers alike, in accessing systems and processes. (See also Recommendation 15)

The submission from the State Network of Young People in Care (Submission 41) stated that:

*there needs to be a range of better systems advocacy for children in which decisions are made with children and young people actively participating in the process as well as a system of individual advocacy for those who need support or cannot express their views. It is the view of SNYPIC that systems need to change to become more 'user friendly' for children. As this occurs, the need for individual advocacy will reduce. It will not, however, eliminate the need for individual advocacy altogether, which is why individual advocates are needed .... Whilst the Department of Community Services funds advocacy services for people with disabilities there has been no provision of funding for a specialist advocacy service for children and young people who are at risk or are in care.*

Further, Dr Judy Cashmore explained in her submission (Submission 45):

*children need independent advocacy services that give them a voice, both individually and as a class, and that encourage a child-oriented approach.*

The submission from the Department of Ageing and Disability (Submission 58) also noted that an effective model of advocacy should include both an individual and systems function. Similarly, the Community Services Commission stated in its submission:

*there is a need for advocacy to be provided in a range of forms for children including:*

- *individual level advocacy and support, or group/class advocacy and systemic advocacy;*
- *under the auspice of statutory bodies or through non-government agencies and in legal and non-legal contexts;*
- *peer support and education or self-advocacy;*
- *advocacy may be provided on a professional basis (e.g. lawyers, complaints advocates) or by unpaid volunteers (e.g. citizen advocates) (Submission 37).*

*It should be stressed that these different forms of advocacy are not mutually exclusive but complementary, and that a range of programs is required to ensure that the needs and views of children are considered in a comprehensive way and in a wide variety of forums.*

In her evidence to the Committee, Ms Helen L'Orange stated (Evidence 22 April, 1996) that advocacy models which are attached to government and are at the hub of decision making can, through their community component:

*empower the independent advocates and give them very good connections.*

The Committee understands that the model it has recommended above largely will be dealing with children and young people as a collective group. It recognises that there are, and will, be children who, because of vulnerabilities, including an inability to articulate their views, wishes and concerns, require advocates at an individual level. **It notes that this is especially the case for children in the care and protection system.**

The Committee accepts the point made by SNYPIC that as systems change and there is a greater acknowledgment of the rights of children at a systemic level, the need for individual advocacy will diminish. Nevertheless, it recognises that this will take time. Many children will, in the meantime, need someone to assist them in legal and grievance processes and in a range of forums that in some way require their participation. Matters before or with the Community Services Commission; the Children's Courts; the Police Service; the Office of the Ombudsman; the Department of School Education; the

Department of Housing; and the Department of Community Services, are some of the areas in which children may need an independent advocate.

The Youth Justice Coalition has pointed to the need for an independent child advocacy service for children and young people in the State's care and protection system who the Committee has already identified as being one of the most vulnerable and silent groups within the community. The role of the service would be to undertake individual advocacy, community legal education and information, policy development and law reform work (Submission 34).

A submission from Marrickville Legal Centre and the National Children's and Youth Law Centre has been presented to the Minister for Community Services to fund an independent advocacy centre. Support for that centre has been given by the State Network of Young People in Care and the Community Services Commission.

In its submission to this Inquiry the Community Services Commission attached an extract from a letter to the Minister for Community Services regarding the establishment of an independent advocacy centre for children. The extract states that:

*in the work of the Commission to date we have identified a serious lack of advocacy services for children. We agree with the submission that the needs of children and young people in terms of advocacy have traditionally been narrowly defined as relating to child welfare and juvenile justice matters before the Children's Courts and more recently the Family Court. However, their advocacy needs extend to all areas of young people's lives that are regulated either directly or indirectly by the law. It is our view that many instances of 'systems abuse' of children result partly from children not having someone to stand by their side and support them as they move between different services such as community services, education and juvenile justice. The multi-disciplinary service ... would play a significant role in providing individual support for children across services.*

*It is our experience of such centres ... that they are extremely cost effective and efficient, for example:*

- through specialisation, the centre can raise the profile of children's issues within the community in a positive way;*
- from a relatively small recurrent funding base, they are often able to attract additional resources, eg federal funding, pro bono work from solicitors and barristers, other voluntary input;*
- the multidisciplinary approach provides a flexibility of service to children which is not generally available, i.e. lawyers, social workers, peer advocates;*

- *they become part of a strong community network, and work closely with other services, e.g. SNYPIC, to strengthen complementary roles and avoid duplication of work (emphasis added).*

Although the Committee generally supports the establishment of an independent advocacy service it is concerned about its location and therefore its accessibility to children and young people. Should it be located in Sydney, for instance, it is likely that many children from rural and remote areas would be denied access to the service. Further, a Sydney-city location could be problematic for those living in outer suburbs.

### 8.4.1 Children's Advocacy Network

The Committee believes that effective advocacy services for children and young people should be state-wide. It also considers that such services should be responsive to the particular needs of children and young people in each community. The Committee therefore recommends that a Children's Advocacy Network be established. The Network would operate as independent advocacy services for children and young people with 20 workers to be initially employed and based in non-Government agencies, such as Community Legal Centres and child welfare agencies, throughout New South Wales. The Committee further recommends that the services be located in areas of disadvantage and where there is a high child and youth population. The 20 workers would not only provide independent advocacy to children and young people but also provide independent policy advice to Government. Consideration should also be given to teleconferencing to maximise accessibility by children and young people.

The Committee considers that the advocacy services should meet, liaise and consult with each other on a regular basis. It therefore recommends that the Office of the Status of Children and Young People be responsible for convening conferences among the services.

The Committee envisages that the services would provide advocacy assistance in relation to a range of areas. Whilst legal advocacy (such as criminal and care work) may be a function of the services, it would not be limited to such work. The Committee recognises that the Legal Aid Commission's primary role in relation to children and young people is in the criminal, care and family law jurisdictions. The advocacy services which it is proposing would assist children and young people in other areas such as housing, education, health, social security and in lodging complaints with relevant bodies. They would also offer community education on children and youth issues and undertake any relevant policy work.

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**RECOMMENDATION 36**

**That:**

- **the Premier establish a Children's Advocacy Network throughout New South Wales;**
- **the Children's Advocacy Network be based in non-government agencies throughout New South Wales in areas of disadvantage and where there is a high children and youth population;**
- **initially there be 20 workers attached to the Children's Advocacy Network, augmented by teleconferencing facilities;**
- **the Children's Advocacy Network be a source of independent policy advice to government; and**
- **the Office of the Status of Children and Young People convene conferences among the workers of the Children's Advocacy Network.**

## **8.5 PEER ADVOCACY**

The Committee firmly supports the notion of children and young people advocating for and on behalf of each other. It considers that the State Network of Young People in Care is an excellent example of the success and importance of peer advocacy.

The Committee has been informed of a type of peer advocacy being established in the United Kingdom. Known as the Article 12 Committee, and based on Article 12 of the United Nations Convention on the Rights of the Child, which concerns the obligation of State Parties to give effect to children's views and opinions, this advocacy group is made up of children and young people, up to the age of 18 years. Its aim is to meet and discuss relevant issues and provide advice to agencies and departments on matters affecting children and young people. Although initially to begin in the United Kingdom the plan is for Article 12 Committees to be established throughout Europe.

The Committee considers that, as a means of promoting peer advocacy for children in New South Wales, the Office of the Status of Children and Young People should establish an Article 12 Committee in New South Wales.

RECOMMENDATION 37

That the Office of the Status of Children and Young People establish a Committee of Children and Young People for the purpose of promoting peer advocacy in New South Wales (based on Article 12 UN Convention on the Rights of the Child).

8.6 CONCLUSION

The Committee recognises that fundamental to effective advocacy for children is the proper functioning of government departments and their non-government partners which deliver services to children and young people.

Government has an obligation to protect society's most vulnerable children - the abused, neglected and marginalised children whose needs and interests have for too long been ignored. In order to fulfil this obligation properly, the Government must ensure that there are adequate resources available to the departments and organisations which deliver services and programs to children.

The Committee considers that full recognition of the rights of children and a commitment to uphold and protect these rights is the foundation on which advocacy systems for children can be built and which will secure a just society for all its members.



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APPENDIX ONE

THE CONVENTION ON THE RIGHTS OF THE CHILD

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being 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,

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,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including

appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## PART I

### Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

### Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, 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.



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## THE CONVENTION ON THE RIGHTS OF THE CHILD

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3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particular in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

### Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### Article 5

States Parties shall respect the responsibilities, rights and duties of parents, or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

### Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

### Article 9

## APPENDIX ONE

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1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that States Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

### Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (order public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

### Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

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## THE CONVENTION ON THE RIGHTS OF THE CHILD

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2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (order public), or of public health or morals.

### Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

### Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests

## APPENDIX ONE

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of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

### Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

### Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

### Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child 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.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

**Article 21**

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

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- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

### Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological

and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - (a) To diminish infant and child mortality;
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
  - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
  - (f) To develop preventive health care, guidance for parents, and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her

placement.

**Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

**Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;



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- (d) Make educational and vocational information and guidance available and accessible to all children;
  - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
  3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

### **Article 29**

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and

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practise his or her own religion, or to use his or her own language.

### Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

### Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admissions to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment;
  - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

### Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

### Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

**Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

**Article 38**

- 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
- 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
- 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
- 4. In accordance with their obligations under international humanitarian law to protect the

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civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense, of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
    - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
    - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
    - (v) If considered to have infringed the penal law, to have this decision and any measures

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imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:
  - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

### **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

## **PART II**

### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions

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hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present

Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

**Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
  - (a) Within two years of the entry into force of the Convention for the State Party concerned;
  - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1(b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

**Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

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- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) the Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) the Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### PART III

#### Article 46

The present Convention shall be open for signature by all States.

#### Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a



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majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph (1) of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

### **Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

### **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

### **Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

### **Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

The instrument of ratification contained the following reservations and declarations:

- (a) The United Kingdom interprets the Convention as applicable only following a live birth.
- (b) The United Kingdom interprets the reference in the Convention to "parents" to mean only those persons who, as a matter of national law, are treated as parents. This includes cases

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where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent.

- (c) The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.
- (d) Employment legislation in the United Kingdom does not treat persons under 18, but under the school-leaving age as children, but as “young people”. Accordingly the United Kingdom reserves the right to continue to apply Article 32 subject to such employment legislation.
- (e) Where at any time there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution in which young offenders are detained, or where the mixing of adults and children is deemed to be mutually beneficial, the United Kingdom reserves the right not to apply Article 37(c) in so far as those provisions require children who are detained to be accommodated separately from adults.
- (f) In Scotland there are tribunals (known as “children’s hearings”) which consider the welfare of the child and deal with the majority of offences which a child is alleged to have committed. In some cases, mainly of a welfare nature, the child is temporarily deprived of its liberty for up to seven days prior to attending the hearing. The child and its family are, however, allowed access to lawyer during this period. Although the decisions of the hearings are subject to appeal to the courts, legal representation is not permitted at the proceedings of the children’s hearings themselves. Children’s hearings have proved over the years to be a very effective way of dealing with the problems of children in a less formal, non-adversarial manner. Accordingly, the United Kingdom, in respect of Article 37(d) reserves its right to continue the present operation of children’s hearings.

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**APPENDIX TWO****SUBMISSIONS**

Submission No. 1	Ms Patricia Egan
Submission No. 2	Mr Michael Hogan Director Public Interest Advocacy Centre
Submission No. 3	Mr Robert Ludbrook Director National Children's and Youth Law Centre
Submission No. 4	Mr Philip Dart Assistant Solicitor (Legal) Office of the Director of Public Prosecutions
Submission No. 5	Dr John Yu Secretary The Children's Forum
Submission No. 6	Caroline and Patrice Lorbach
Submission No. 7	Ms Belinda Epstein-Frisch Kids Belong Together
Submission No. 8	Mr Greg Watts
Submission No. 9	Mr A Tees
Submission No. 10	Mr David Goad State Liaison Co-ordinator Kids Help Line
Submission No. 11	Ms Meret Field
Submission No. 12	Ms Judy Finlason Co-ordinator Network of Community Activities
Submission No. 13	Ms Pauline O'Kane NSW Play Alliance

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- Submission No. 14      Mr John Jacobson  
Chairperson  
The New South Wales Council for Intellectual Disability
- Submission No. 15      Father John Usher  
Director  
Centacare
- Submission No. 16      Mr Phillip J. Hart  
Executive Director  
Australian Red Cross - NSW
- Submission No. 17      Mr Warren Johnson  
Executive Officer  
Federation of Parents and Citizens Associations of NSW
- Submission No. 18      Mr Jeff and Mrs Michelle Cefai
- Submission No. 19      Mr Andrew Tink, MP  
Shadow Minister for Community Services and  
Member for Eastwood
- Submission No. 20      Mr Robert Watt
- Submission No. 21      Mr Terry Murphy  
General Manager Legal Services  
Legal Aid New South Wales
- Submission No. 22      Mr Trevor Wight  
Manager, Professional Services  
Wesley Mission - Dalmar Child and Family Care
- Submission No. 23      Ms Rhonda Stien  
Chief Executive Officer  
Burnside
- Submission No. 24      Ms Agnes McMillan, Chairperson  
Ms Janet Devlin, Project Co-ordinator  
Children of Parents with Mental Illness
- Submission No. 25      Ms Anne Butterworth  
Consultant  
Families At Work

- Submission No. 26      Mr Stuart Davis-Meehan  
Chairperson  
NSW Youth Sector Training Council Inc.
- Submission No. 27      Ms Sue Brown  
Manager - Children's Services  
The Northcott Society
- Submission No. 28      Dr Tim Bohane  
Registrar  
The Australian College of Paediatrics
- Submission No. 29      Ms Judy Kynaston  
Executive Officer  
Country Children's Services Association of NSW Inc
- Submission No. 30      Mr Steve Walkerden  
General Manager  
United Protestant Association of NSW Limited
- Submission No. 31      Ms Louise Voigt  
CEO and Director of Welfare  
Barnardos Australia
- Submission No. 32      The Hon. Dr A. Refshauge, MP  
Deputy Premier, Minister for Health and  
Minister for Aboriginal Affairs
- Submission No. 33      Ninh Nguyen  
Youth Policy Development Officer  
Vietnamese-Australian Welfare Association NSW Inc.
- Submission No. 34      Ms Teresa O'Sullivan  
Convenor  
The Youth Justice Coalition
- Submission No. 35      Dr Ferry Grunseit  
NSW Child Advocate
- Submission No. 36      Ms Shireen Malamoo  
Official Visitor  
Department of Juvenile Justice

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- Submission No. 37      Mr Roger West  
Commissioner  
Community Services Commission
- Submission No. 38      Health Care Complaints Commission
- Submission No. 39      Ms Robin Gurr  
President  
Community Services Appeals Tribunal
- Submission No. 40      Mr Mark Morey  
Chairperson  
Youth Action and Policy Association (NSW) Inc
- Submission No. 41      Mr Andrew O'Brien  
Co-ordinator  
NSW State Network of Young People in Care
- Submission No. 42      Ms Jacinta Dykes  
Indo-Chinese Youth Development Project  
Fairfield City Migrant Resource Centre
- Submission No. 43      Ms Marion Gledhill  
Executive Officer  
Family Support Services Association of NSW Inc.
- Submission No. 44      Ms Regan Gilmour
- Submission No. 45      Dr Judy Cashmore  
Research Psychologist  
Social Policy Research Centre, UNSW
- Submission No. 46      Mr & Mrs P & G O'Brien
- Submission No. 47      Ms Liz Reedy  
Gaining Ground Committee  
South Western Sydney Area Health Service
- Submission No. 48      Ms Sandra Heilpern  
Tyagarah Consultants Pty Ltd
- Submission No. 49      Mrs Michelle Cefai  
The Donor Insemination Support Group

Submission No. 50	Mr and Mrs Warren and Leonie Hewitt
Submission No. 51	Miss Lauren Taylor
Submission No. 52	Ms Joanna Rose
Submission No. 53	Dr Robert Hayes President Mental Health Review Tribunal
Submission No. 54	Ms Jan Shier Director, Care and Protection Department of Community Services
Submission No. 55	Mr Laurie O'Reilly Commissioner for Children, New Zealand
Submission No. 56	Ms Gwenn Murray Co-ordinator Youth Advocacy Centre Inc.
Submission No. 57	Ms Irene Hancock National President Association for the Welfare of Child Health
Submission No. 58	Ms Jane Woodruff Director-General Department of Aging and Disability
Submission No. 59	Anonymous
Submission No. 60	Co-ordinator Mr Peter Foster Voluntary Group to Support Research into Myalgic Encephalomyetitis/Chronic Fatigue Syndrome
Submission No. 61	Ms Bernadette O'Reilly Macquarie Legal Centre Inc
Submission No. 62	Mr Greg Andrews Assistant Ombudsman Office of the NSW Ombudsman

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Submission No. 63

Ms Vivienne A. Llewellyn  
Executive Director  
Murray-Dwyer Group Homes  
Catholic Family Welfare Bureau

Submission No. 64

Ms Shirley Allen  
General Secretary  
The NSW Federation of School Community Organisations



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WITNESSES AT HEARINGS

Mr Greg Andrews	Assistant Ombudsman Office of the NSW Ombudsman (Sydney: 9 November 1995)
Professor Marie Bashir	Chairman Juvenile Justice Advisory Council (Sydney: 22 April 1996)
Mr Robert Bellear	Member Juvenile Justice Advisory Council (Sydney: 22 April 1996)
Mr Ray Bird	Official Visitor (Sydney: 29 November 1995)
Mr Raymond Brazil	Investigations Officer Community Services Tribunal (Sydney: 29 November 1995)
Ms Ros Brennan	President Federation of Parents and Citizens Associations of NSW (Sydney: 3 May 1996)
Mr John Le Breton	Director Office of the Public Guardian (Sydney: 29 April 1996)
Ms Marion Brown	Deputy President Guardianship Board (Sydney: 29 April 1996)
Dr Judy Cashmore	Research Psychologist Social Policy Research Centre (Sydney: 19 April 1996)

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<b>Dr Kathryn Cronin</b>	Commissioner Australian Law Reform Commission (Sydney: 29 April 1996)
<b>Ms Janet Devlin</b>	Child and Adolescent Mental Health Team (Sydney: 29 April 1996)
<b>Mr Richard Dube</b>	Manager Community Services Centre (Kempsey: 8 May 1996)
<b>Ms Learne Durrington</b>	Area Manager Mid North Coast Area Office Department of Community Services (Kempsey: 8 May 1996)
<b>Ms Belinda Epstein-Frisch</b>	Institute for Family Advocacy and Leadership Development (Sydney: 3 May 1996)
<b>Mr Adrian Ford</b>	Chairperson NSW Child Protection Council (Sydney: 9 November 1995)
<b>Mr Phillip French</b>	Board Member NSW Council for Intellectual Disability (Sydney: 3 May 1996)
<b>Ms Tonia Goddard</b>	President Australian Early Childhood Association (Sydney: 22 April 1996)
<b>Mr Jack Griffin</b>	Youth Worker Durri Medical Service (Kempsey: 8 May 1996)
<b>Dr Ferry Grunseit</b>	Child Advocate NSW Child Protection Council (Sydney: 29 November 1995)
<b>Ms Robin Gurr</b>	President Community Services Tribunal (Sydney: 29 November 1995)

<b>Ms Irene Hancock</b>	National President Association for the Welfare of Child Health (Sydney: 29 April 1996)
<b>Dr Robert Hayes</b>	President Mental Health Review Tribunal (Sydney: 29 April 1996)
<b>Mr Michael Hogan</b>	Director Public Interest Advocacy Centre (Sydney: 9 November 1995)
<b>Mr Hal Holley</b>	Convenor, Streetworkers Network Youth Action and Policy Association (NSW) Inc (Sydney: 3 May 1996)
<b>Ms Dianne Hudson</b>	Principal Program Officer Department of Community Services (Sydney: 3 May 1996)
<b>Mr Doug Humphreys</b>	Manager, Criminal Law Legal Aid Commission (Sydney: 22 April 1996)
<b>Mr Warren Johnson</b>	Executive Officer Federation of Parents and Citizens Associations of NSW (Sydney: 3 May 1996)
<b>Ms Jo-Anne Kelly</b>	Aboriginal Development Manager North Coast Institute of TAFE (Taree: 9 May 1996)
<b>Ms Helen Kerr-Roubicek</b>	Chief Education Officer Guidance and Student Welfare (Sydney: 29 November 1995)
<b>Mr Bill Kyrios</b>	Director of Legal Services Department of School Education (Sydney: 29 November 1995)

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<b>Ms Helen L'Orange</b>	Former Director Women's Co-ordination Unit and Safety Commission (Sydney: 22 April 1996)
<b>Ms Kerry Lannoy</b>	Manager, Legislation Review Department of Community Services (Sydney: 3 May 1996)
<b>Ms Megan Latham</b>	Director Criminal Law Review Division (Attorney-General's Department) (Sydney: 22 April 1996)
<b>Ms Janet Loughman</b>	Solicitor Youth Justice Coalition (Sydney: 29 April 1996)
<b>Mr Robert Ludbrook</b>	Director National Children's & Youth Law Centre (Sydney: 9 November 1995)
<b>Ms Shireen Malamoo</b>	Official Visitor (Sydney: 29 November 1995)
<b>Mr Andrew Marsden</b>	Executive Officer Youth Action and Policy Association (NSW) Inc. (Sydney: 3 May 1996)
<b>Mr Tim Matthews</b>	Executive Officer Department of Juvenile Justice (Sydney: 29 November 1995)
<b>Mr Laurie Matthews</b>	Co-ordinator, Caretakers Cottage Youth Action and Policy Association (NSW) (Sydney: 3 May 1996)
<b>Ms Heather McGregor</b>	Community Advocate, ACT (Sydney: 19 April 1996)
<b>Ms Agnes McMillan</b>	Child and Adolescent Mental Health Team (Sydney: 29 April 1996)

<b>Ms Leonie Miller</b>	Solicitor (Sydney: 22 April 1996)
<b>Ms Gwenn Murray</b>	Coordinator Queensland Youth Advocacy Centre (Sydney: 19 April 1996)
<b>Dr Victor Nossar</b>	Service Director Department of Community Paediatrics (Sydney: 29 April 1996)
<b>Mr Andrew O'Brien</b>	Coordinator State Network of Young People in Care (Sydney: 19 April 1996)
<b>Ms Bernadette O'Reilly</b>	Solicitor Macquarie Legal Centre (Sydney: 22 April 1996)
<b>Mr Laurie O'Reilly</b>	New Zealand Commissioner for Children (Sydney: 19 April 1996)
<b>Ms Theresa O'Sullivan</b>	Youth Justice Coalition (Sydney: 29 April 1996)
<b>Ms Amanda Parry</b>	Co-ordinator, Foster Care Service Biripi Medical Service (Taree: 9 May 1996)
<b>Ms Clare Petre</b>	Manager - Policy and Review Unit Community Services Commission (Sydney: 29 November 1995)
<b>Mr Brian Porter</b>	Public Guardian and Protective Commissioner Office of the Public Guardian (Sydney: 29 April 1996)
<b>Ms Katrina Poulsen</b>	State Network of Young People in Care (Sydney: 19 April 1996)

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Ms Suzanne Riley	Manager Community Development Employment Project, sponsored by the Kempsey Local Aboriginal Lands Council (Kempsey: 8 May 1996)
Ms Leanne Robinson	Detention Centre Solicitor Legal Aid Commission (Sydney: 22 April 1996)
Ms Judith Ryan	Manager, Family Law Legal Aid Commission (Sydney: 22 April 1996)
Ms Jane Sanders	Solicitor The Shopfront Youth Centre (Sydney: 22 April 1996)
Ms Isobel Seidel	Riverina Representative State Students Representative Council (Sydney: 9 November 1995)
Ms Jan Shier	Director, Care and Protection Department of Community Services (Sydney: 3 May 1996)
Mr Chris Sidoti	Commissioner Human Rights and Equal Opportunity Commission (Sydney: 29 April 1996)
Ms Julie Sinclair	Acting Executive Officer NSW Child Protection Council (Sydney: 9 November 1995)
Mr Tom Sines	CDEP Participant Community Development Employment Project, sponsored by the Kempsey Local Aboriginal Lands Council (Kempsey: 8 May 1996)
Ms Jenny Speed	Senior Policy Advisor Health Care Complaints Commission (Sydney: 29 November 1995)

<b>Ms Marian Steele</b>	Association for the Welfare of Child Health (Sydney: 29 April 1996)
<b>Ms Rhonda Stien</b>	Chief Executive Officer Burnside (Sydney: 3 May 1996)
<b>Ms Ro-anne Sterling</b>	Youth Worker Durri Medical Service (Kempsey: 8 May 1996)
<b>Father John Usher</b>	Director Centacare (Sydney: 3 May 1996)
<b>Ms Louise Voigt</b>	CEO and Director of Welfare Barnardos Australia (Sydney: 3 May 1996)
<b>Ms Merrilyn Walton</b>	Commissioner Health Care Complaints Commission (Sydney: 29 November 1995)
<b>Mr Roger West</b>	Commissioner Community Services Commission (Sydney: 29 November 1995)
<b>Ms Jane Woodruff</b>	Director-General Department of Ageing and Disability (Sydney: 3 May 1996)
<b>Mr Morri Young</b>	Executive Director Association of Children's Welfare Agencies (Sydney: 9 November 1995)
<b>Mr Andrew Zaw</b>	Metropolitan West Representative State Students Representative Council (Sydney: 9 November 1995)





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BRIEFINGS/VISITS

<b>Ms Virginia Anthony</b>	Executive Director American Academy of Child and Adolescent Psychiatry (Washington: 1 February 1996)
<b>Ms Susan Ball</b>	Policy Officer Children's Services, Department of Health (London: 15 January 1996)
<b>Ms Cynthia Beatty</b>	General Counsel Child Welfare League of America (Washington: 2 February 1996)
<b>Ms Phyllis Benner</b>	Specialist Consultant The Children's Foundation (Washington: 1 February 1996)
<b>Dr Marilyn Benoit</b>	American Academy of Child and Adolescent Psychiatry (Washington: 1 February 1996)
<b>Ms Gina Blackwood</b>	Manager - Special Needs Aboriginal & Islander Child Care Agency Forum Inc (Adelaide: 1 December 1995)
<b>Ms Gunilla Bodin</b>	Administrative Director The Office of the Children's Ombudsman (Stockholm: 18 January 1996)
<b>Ms Ulla Broen</b>	International Coordinator Ministry of Social Affairs (Copenhagen: 22 January 1996)
<b>Ms Sheena Burgess</b>	Manager Family and Children's Services Islington Council (London: 16 January 1996)

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- Ms Anya Campbell** Team Leader  
Family and Children's Services  
Islington Council  
(London: 16 January 1996)
- Mr Leigh Carpenter** Executive Director - Field Services  
Department of Family & Community Services  
(Adelaide: 1 December 1995)
- Ms Leonie Casey** Field Manager  
Aboriginal & Islander Child Care Agency Forum Inc  
(Adelaide: 1 December 1995)
- Ms Sally Castell-McGregor** Director  
Children's Interest Bureau  
(Adelaide: 30 November 1995)
- Dalaigur Preschool** Janet Haig, Childcare Director  
Jacqueline Bradshaw  
Gail Mabo  
Tania Pacey  
Jeanine Sines  
Natalie Smith  
Margaret Thiedy  
Edward Vale  
Rosemary Vale  
Shirley Vale  
Loretta Williams  
Patricia Wright  
(Kempsey: 8 May 1996)
- Ms Chris Daly** Voluntary Children's Services Worker  
The Children's Legal Centre  
University of Essex  
(Colchester: 17 January 1996)
- Mr Kym Davey** Executive Officer  
Youth Affairs Council  
(Adelaide: 30 November 1995)
- Mr Howard Davidson** Director  
American Bar Association  
Centre on Children and the Law  
(Washington: 1 February 1996)

Judge Christine Dawe	Youth Court (Adelaide: 30 November 1995)
Ms Barbara H. Dildine	Director, Appeals Bureau The Legal Aid Society Juvenile Rights Division, Juvenile Service Unit (New York: 26 January 1996)
Ms Tina Dolgopol	Lecturer Faculty of Law Flinders University (Adelaide: 30 November 1995)
Ms Julie Drury-Hudson	Manger, Care and Protection Unit Courts Administration Authority (Adelaide: 30 November 1995)
Ms Simone Ek	Policy Officer Save the Children Fund (Stockholm: 19 January 1996)
Ms Tabatha Abu El-Haj	Intern The Children's Legal Centre (Colchester: 17 January 1996)
Ms Lucy Ellis	Advice Worker The Children's Legal Centre (Colchester: 17 January 1996)
Ms Lynne Fender	Consultant Centre for the Support of Children (Washington: 31 January 1996)
Ms Deborah M. de Fina	Staff Attorney The Legal Aid Society Juvenile Rights Division, Juvenile Service Unit (New York: 26 January 1996)
Dr Michael Fischman	American Academy of Child and Adolescent Psychiatry (Washington: 1 February 1996)

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- Ms Julie Francis** Child Advocate  
South Australian Children's Interest Bureau  
(Adelaide: 30 November 1995)
- Ms Sandra Gellert** Program Director  
The Children's Foundation  
(Washington: 1 February 1996)
- Ms Ann Glover** Senior Lecturer, Early Childhood Studies  
University of South Australia  
(Adelaide: 30 November 1995)
- Green Hill Public School** Ms Jane Johnson, Principal  
Ms Caroline Bradshaw, Teacher  
Ms Robyn Rose, Teacher  
Richard Davis  
Raymond Griffin  
Kimbaley Kershaw  
Tanya Roberts  
Robert Wright  
  
(Kempsey: 8 May, 1996)
- Ms Carolyn Hamilton** Director  
The Children's Legal Centre  
University of Essex  
(Colchester: 17 January 1996)
- Ms Jennifer Harvey** Child Advocate  
South Australian Children's Interest Bureau  
(Adelaide: 30 November 1995)
- Ms Leonie Hewitt** Donor Insemination Support Group  
(Sydney: 4 September 1996)
- Mr Warren Hewitt** Donor Insemination Support Group  
(Sydney: 4 September 1996)
- Ms Elizabeth E. Hibberd** Supervising Social Worker  
The Legal Aid Society  
Juvenile Rights Division, Juvenile Service Unit  
(New York: 26 January 1996)

<b>Ms Rachel Hodgkin</b>	Policy Officer National Children's Bureau (London: 16 January 1996)
<b>Ms Kay Hollestelle</b>	Executive Director The Children's Foundation (Washington: 1 February 1996)
<b>Mrs Elizabeth Hunter Johnston</b>	Department Head Children's Services, Department of Health and Social Services (London: 15 January 1996)
<b>Ms Anne Marie Lancour</b>	Assistant Staff Director American Bar Association Centre on Children and the Law (Washington: 1 February 1996)
<b>Ms Gerison Lansdown</b>	Director Children's Rights Office (London: 16 January 1996)
<b>Ms Eva Learner</b>	Social Worker and Guardian ad Litem (London: 16 January 1996)
<b>Mr Allan Levy QC</b>	Barrister-at-Law (London: 16 January 1996)
<b>Ms Pam Linke</b>	National Vice-President Australian Early Childhood Association (Adelaide: 30 November 1995)
<b>Ms Gaye Liparts</b>	Residential Services Manager Aboriginal & Islander Child Care Agency Forum Inc (Adelaide: 1 December 1995)
<b>Ms Caroline Lorbach</b>	Donor Insemination Support Group (Sydney: 4 September 1996)
<b>Mr Ned Loughran</b>	Executive Director Robert Kennedy Foundation (Boston: 24 January 1996)

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<b>Ms Marcia Lowry</b>	Executive Director Children's Rights Project (New York: 26 January 1996)
<b>Ms Mie Melin</b>	Policy Officer Save the Children Fund (Stockholm: 19 January 1996)
<b>Ms Liz Miles</b>	Donor Insemination Support Group (Sydney: 4 September 1996)
<b>Ms Sandy Miller</b>	Director - Aboriginal Services Division Department of Family & Community Services (Adelaide: 1 December 1995)
<b>Mr John Mudd</b>	Acting Executive Director Massachusetts Advocacy Centre (Boston: 24 January 1996)
<b>Ms Petra Oakes</b>	Advice Worker The Children's Legal Centre (Colchester: 17 January 1996)
<b>Ms Charlotta Olsson</b>	Legal Officer Save the Children Fund (Stockholm: 19 January 1996)
<b>Ms Carol Lee Pepi</b>	Executive Director CORE (Boston: 24 January 1996)
<b>Ms Anne-Marie Persson</b>	Head of Swedish Section Save the Children Fund (Stockholm: 19 January 1996)
<b>Mr Oskar Ploughmand</b>	Psychologist Division of Policy and Children and Family Ministry of Social Affairs (Copenhagen: 22 January 1996)
<b>Mr John Rea Price</b>	Director National Children's Bureau (London: 16 January 1996)

<b>Dr Elizabeth Puddy</b>	Chairperson Action for Children (Adelaide: 30 November 1995)
<b>Mr Steve Ramsey</b>	Director Office for Families and Children (Adelaide: 30 November 1995)
<b>Ms Tracy Ritchie</b>	Foster Care Manager Aboriginal & Islander Child Care Agency Forum Inc (Adelaide: 1 December 1995)
<b>Ms Nanette Schrandt</b>	Director The Legal Aid Society Juvenile Rights Division, Juvenile Service Unit (New York: 26 January 1996)
<b>Ms Heather Southcott</b>	President United Nations Association of Australia (SA) Inc (Adelaide: 30 November 1995)
<b>Mr Bob Stark</b>	American Academy of Child and Adolescent Psychiatry (Washington: 1 February 1996)
<b>Ms Ruth Summers</b>	Manager - Field Services Support Department of Family & Community Services (Adelaide: 1 December 1995)
<b>Ms Louise Sylwander</b>	Children's Ombudsman (Stockholm: 18 January 1996)
<b>Taree High School</b>	<b>Year 8</b> Anthony Alexopoulos Monique Evans Lucas Higgins Hannah Stanley  <b>Year 9</b> Atua Parkinson Nathan Royan Renee Smith Carl Trevaskis

**Year 10**

Gavin Austin  
Ben Bailey  
Wade Death  
Hanna Deer  
Koia Parkinson  
Jessica Stone

**Year 11**

Ben Clark  
Kirrell Condon  
Claire Deak  
Ian Gates  
Belinda Gilfillan  
Andrew Haigh  
Trudi Hopkins  
Kris Munro  
Andrew Stephens

**Year 12**

Natalie Alexopoulos  
Leanne Davy  
Luke Johnston - School Captain  
Natasha Mawby - School Captain  
Tully McGuire  
Michael Mercer  
Anna Stone - School Vice Captain  
Ben Webster - School Vice Captain  
Chris Westely  
Dylan Wood

(Taree: 9 May 1996)

**Ms Lena Thorn**

Librarian  
Save the Children Fund  
(Stockholm: 19 January 1996)

**Ms Gunilla Torstendahl**

Senior Social Worker  
Family Unit - Botkyrka Local Authority  
(Stockholm: 18 January 1996)

**Ms Fiona Underwood**

Member, Management Committee  
Youth Affairs Council  
(Adelaide: 30 November 1995)



**Mr Jim Weill**

General Counsel  
Children's Defense Fund  
(Washington: 31 January 1996)

**Ms Carol Williams**

Associate Commissioner - Children's Bureau  
Department of Health and Human Services  
Administration for Children, Youth and Families  
(Washington: 31 January 1996)

**Dr Helen Winefield**

Deputy Chairperson  
South Australian Children's Interest  
Bureau Advisory Committee  
(Adelaide: 30 November 1995)