

## 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

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

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*.

- **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

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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*

*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).*

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.

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**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.

