

## CHAPTER EIGHT

## FUTURE DIRECTIONS

## 8.1 INTRODUCTION

Recent public Inquiries have heightened community awareness about the powerlessness of many children, their vulnerability to abuse and exploitation, and their voicelessness in so many decisions that impact upon their lives. This Report has confirmed much of the evidence and findings of those Inquiries. The Committee's evidence has revealed that public support for addressing the needs of children and young people, and giving them a voice, has never been greater.

To date, children's advocacy has been ad hoc and inconsistent, representing more of a reaction to a crisis or immediate situation. The Committee firmly believes that advocacy for children must be proactive. Advocacy for children, according to Committee witness Dr Victor Nossar (Evidence, 29 April, 1996), should not be about:

*simply improv(ing) the administrative grievance procedures ... there needs to be some sort of broader framework which says that the interests of children are important, not just important vis a vis the current political situation, not just important vis a vis a particular scandal or problem that has arisen, but important because Australians need to think about the next generation.*

The Community Services Commission explained in its submission:

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

That same submission observes that:

*It is also notable that while the state government is advised by a Department of Ageing and Disability and a Department of Women, there is no comparable Office*

*on Children. While the Child Protection Council has a role in advising government and coordinating portfolios, this is only in relation to child protection matters.*

In undertaking this Inquiry the Committee has examined numerous child advocacy models at a **systemic** level. Among them have been the Children's Commissioner in New Zealand, the Children's Ombudsman in Norway and Sweden and the Parliamentary groups such as exist in Denmark and, to a lesser extent, in England. It has also examined the model of the former New South Wales Women's Coordination Unit as a possible basis for a similar children's unit.

The Committee has also investigated a range of **independent advocacy services**, both in Australia and overseas. These have included the National Children's and Youth Law Centre in Sydney; the Youth Advocacy Centre in Brisbane; the UK Children's Legal Centre in Essex; the Children's Rights Office and the National Children's Bureau in London; the Children's Defense Fund in Washington, DC; and the Children's Rights Project in New York. All take on a range of issues, including juvenile justice, welfare, housing and education, both through the courts or other forums, and through policy and education work.

The Committee is aware of the announcements of funding by the Government for abused children and children in care totalling \$13 million over three years. In announcing the package, the Premier stated that "the protection of children is the greatest priority of my Government". Mention has been made throughout the Report of the components of that funding, including \$300,000 to the State Network of Young People in Care for three years; \$300,000 for foster carer support for three years; \$1.2 million annually for three years for leaving care and after care services and \$2.5 million over the next three years to install closed circuit television systems in all major locations across New South Wales and in the Children's Courts. The Committee also notes that the Government has established a Ministerial Advisory Committee on Substitute Care, to provide advice to the Government on suitable standards for care and to establish an independent monitoring system.

The Committee commends these initiatives. Nevertheless, it is concerned that there is still a lack of proper coordination among agencies and organisations that deal with children's issues. It considers that whilst these initiatives will greatly assist in service provision to disadvantaged and abused children and young people, there needs to be some coordinated body that can direct and advise on children's policy.

The following discussion will firstly examine the United Nations Convention on the Rights of the Child and its role in relation to children's advocacy in Australia. It will also look at the issue of systems advocacy and propose a model which it considers to be suitable for New South Wales. The discussion will then examine the issue of individual children's advocacy and peer advocacy.

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

The Committee has dealt extensively with the issue of the United Nations Convention on the Rights of the Child throughout the Report. It recognises that many of the articles in the Convention are not being adhered to by governments and in some instances are being flagrantly breached, for example Article 25 which concerns the periodic review of children in care. Australia has agreed to be bound by the articles contained within the Convention - so the Convention is important to our society and the Committee acknowledges its significance.

The Committee considers that there needs to be a body that would promote the implementation of the United Nations Convention on the Rights of the Child and would ensure that governments meet their obligations arising from the Convention. It therefore recommends that a position of Children's Commissioner be established within the Human Rights and Equal Opportunity Commission to undertake this role.

### RECOMMENDATION 30

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

## 8.3 SYSTEMS ADVOCACY

The Committee considers that advocacy for children at a systemic level is necessary for a number of reasons. It believes that children are vulnerable to having their needs, wishes and rights ignored, both as individuals and collectively, since they cannot express their views and opinions through the normal democratic or political channels available to adults. Moreover, they often lack the skills, knowledge or confidence to express their views, assert their rights, negotiate for their needs to be met, or seek redress when their rights have been infringed. A cohesive advocacy system for children is also required to evaluate the impact of measures on children who may be affected by policies or decisions of which they may not be the direct individual subject.

It was submitted to the Committee that the best way to ensure that children's needs and rights are recognised and met is through a Minister for Children. The Committee understands that there is such a Minister in Ireland and the Opposition Labour Party in Great Britain has a Member who is designated as a shadow minister for Children's Affairs. Although the Committee recognises that the position of Minister for Children would **theoretically** provide children with a representative with considerable authority, it

considers that this may not be the case in practice. It has heard and concedes that such a position could become marginalised and relegated to a junior rank.

It further considers that major children's issues, such as health, education and care and protection, which would come within the portfolio of the Minister, would therefore be given a low priority. The Committee does not consider that a Minister for Children should be appointed before any proper government structures are put in place and have been given time to enhance the status of children's issues within government.

A number of witnesses and submissions were very supportive of the position of a state-based Children's Commissioner or Children's Ombudsman. Such a position, it was argued, would provide children with a powerful representative whose primary role would be to uphold, protect and advocate for children's needs and rights. This position would have a statutory base and, although funded by government, would remain independent. A Children's Commissioner or Ombudsman would not be solely grievance or complaints based. The role would require more proactive intervention in issues affecting children.

After careful consideration the Committee considers that a Children's Commissioner/Ombudsman at the state level is not the most appropriate avenue to pursue in respect of children's advocacy in New South Wales. The Committee is concerned that the position of Children's Commissioner would, in reality, have a limited opportunity for a proactive role. It considers that the position may be marginalised and isolated from real policy influence as has been the situation for the New South Wales Child Advocate.

The Committee is of the view that the position of Children's Commissioner may not be broad enough or have the scope to bring together the many different organisations and systems which affect children. Whilst a number of submissions and testimony supported the idea of a Children's Commissioner others felt that its functions would be limited and that a more broad based organisation needed to be established. Committee witness, Ms Helen L'Orange explained in evidence:

*... [a Children's Commissioner] is a statutory office holder and ... they do not get to know what is actually going on because it has not got that critical mix of both being simultaneously within government, at the heart of government and with a capacity to advocate. I also think it is a situation where naming is quite important. The Children's Commissioner or the Children's Ombudsperson ... has, to me, a bit of an air that this is all happening around a personality. The fact is that strong advocacy occurs around a government and it occurs around the head of government than some ... charismatic and seemingly powerful person. (Evidence - 22 April, 1996).*

The Committee concurs with this view. **It considers that an effective model for children's advocacy at the systemic level is to place children's issues squarely within the domain of government decision-making.** This is also an approach supported by the

President of the Community Services Appeals Tribunal. In her submission, President Robin Gurr proposed to the Committee that:

*As a first step towards developing services and policies designed to address the disadvantages of children and young people in New South Wales it is recommended that:*

*An appropriately resourced Children's Coordination Unit (along the lines of the Women's Coordination Unit or the Federal Office for the Status of Women) be established within the New South Wales Government Administration.*

*Ministerial responsibility for the Unit be located initially with the Premier or Deputy Premier (Submission 39).*

Further, the submission from Dr John Yu of the New Children's Hospital and Secretary of the Children's Forum strongly supported children's advocacy at the systemic level and considered that:

*this would best be achieved by the establishment of an Office for Children, preferably attached to the Premier's Department, which would represent the interests of children where legislation is being proposed and regulations are being formulated. This would require the Office to have access to legislation in the drafting stage (Submission 5).*

Commenting on the value of this type of model for children, former head of the New South Wales Women's Coordination Unit and the Federal Office of the Status of Women, Ms Helen L'Orange, told the Committee in evidence:

*What I identify as the key components for success are being in a powerful hub position and having access to Government decision-making, including budgetary processes, and also having linked from that empowered central point in Government to the community and professional sectors and actually encouraging the interchange and connection ... A very significant example of this sort of approach was in respect of law reform where, although the Women's's Coordination Unit had no carriage of legislation, the Premier said he wanted law reform for women and children to be led from this point. Attorney General's participated but would hand over the leadership of those exercises to the Women's Coordination Unit, and the subsequent consultation, community consultation papers, reports to Government, budget funding proposals, Cabinet submissions on legislation, all went from the Premier, rather than from the responsible Minister .... I would reiterate, it is being a central point, having the authority of that central point and having the support of the Premier and the Prime Minister for that work (Evidence, 22 April, 1996).*

The Committee strongly supports and endorses this approach to children's advocacy at the systemic level.

As the Committee recognised in Chapter Seven, a Youth Branch currently exists within the Cabinet Office. However, given that the Youth Branch was not mentioned during the Inquiry as an appropriate child advocacy forum, the Committee considers that its role and status are limited. Unlike the model proposed above, it appears that the role of the Youth Branch is not broad enough to participate in government decision making regarding children and youth.

The Committee, therefore, recommends the establishment of an Office of the Status of Children and Young People to be based within the Premier's Department. The Office would lead government efforts to ensure that government and community resources create positive outcomes for children.

The Committee further recommends that the Office of the Status of Children and Young People be provided with adequate staff and resources to properly fulfil its role and functions. A major task of the Office of the Status of Children and Young People should be to pursue the findings of this Report, to develop relevant policies, and to promote effective cooperation between government and non-government organisations which are engaged in the provision of services to children.

The Committee recommends that the NSW Child Protection Council and the Child Death Review Team be re-located to the Office of the Status of Children and Young People. The Committee further recommends that the Youth Branch in the NSW Cabinet Office be disbanded and/or incorporated into the Office of the Status of Children and Young People (See section 7.11).

The Office of the Status of Children and Young People should pursue specific objectives including:

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

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

These objectives would ensure a whole of government approach to the delivery of programs for children and young people.

The Committee acknowledges that a major part of the role of the Office of the Status of Children and Young People would be to liaise with a wide range of organisations and, in particular, young people, in order to coordinate positive action for children and young people. It therefore recommends that the Office of the Status of Children and Young People regularly meet and consult with the following independent bodies and agencies:

- the Children's Advocacy Network (see Recommendation 36);
- the State Network of Young People in Care;
- the Youth Justice Coalition;
- the Association of Children's Welfare Agencies;
- the Association for the Welfare of Child Health;
- the New South Wales Council for Intellectual Disability;
- the Juvenile Justice Advisory Council;
- Aboriginal groups and agencies;
- the Article 12 Committee (See Recommendation 37);
- the New South Wales Students Representative Council; and
- any other organisation that it deems appropriate.

The operation of the Office of the Status of Children and Young People should be reviewed after three years.

### RECOMMENDATION 31

**That:**

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

**RECOMMENDATION 32**

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

**RECOMMENDATION 33**

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

**RECOMMENDATION 34**

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

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

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



## RECOMMENDATION 35

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

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

## 8.4 INDIVIDUAL ADVOCACY

The Committee received a range of submissions and oral testimony which emphasised the importance of individual children's advocacy as well as systemic advocacy. The Committee recognises that parents can often fulfil the role of the best individual advocate for their child. As the Report revealed earlier, this was supported by testimony and submissions. However, as the Committee acknowledges, children and young people may require external independent advocacy services where a parent cannot or will not advocate on their behalf. Furthermore, independent child advocacy services can assist children and parents or carers alike, in accessing systems and processes. (See also Recommendation 15)

The submission from the State Network of Young People in Care (Submission 41) stated that:

*there needs to be a range of better systems advocacy for children in which decisions are made with children and young people actively participating in the process as well as a system of individual advocacy for those who need support or cannot express their views. It is the view of SNYPIC that systems need to change to become more 'user friendly' for children. As this occurs, the need for individual advocacy will reduce. It will not, however, eliminate the need for individual advocacy altogether, which is why individual advocates are needed .... Whilst the Department of Community Services funds advocacy services for people with disabilities there has been no provision of funding for a specialist advocacy service for children and young people who are at risk or are in care.*

Further, Dr Judy Cashmore explained in her submission (Submission 45):

*children need independent advocacy services that give them a voice, both individually and as a class, and that encourage a child-oriented approach.*

The submission from the Department of Ageing and Disability (Submission 58) also noted that an effective model of advocacy should include both an individual and systems function. Similarly, the Community Services Commission stated in its submission:

*there is a need for advocacy to be provided in a range of forms for children including:*

- *individual level advocacy and support, or group/class advocacy and systemic advocacy;*
- *under the auspice of statutory bodies or through non-government agencies and in legal and non-legal contexts;*
- *peer support and education or self-advocacy;*
- *advocacy may be provided on a professional basis (e.g. lawyers, complaints advocates) or by unpaid volunteers (e.g. citizen advocates) (Submission 37).*

*It should be stressed that these different forms of advocacy are not mutually exclusive but complementary, and that a range of programs is required to ensure that the needs and views of children are considered in a comprehensive way and in a wide variety of forums.*

In her evidence to the Committee, Ms Helen L'Orange stated (Evidence 22 April, 1996) that advocacy models which are attached to government and are at the hub of decision making can, through their community component:

*empower the independent advocates and give them very good connections.*

The Committee understands that the model it has recommended above largely will be dealing with children and young people as a collective group. It recognises that there are, and will, be children who, because of vulnerabilities, including an inability to articulate their views, wishes and concerns, require advocates at an individual level. **It notes that this is especially the case for children in the care and protection system.**

The Committee accepts the point made by SNYPIC that as systems change and there is a greater acknowledgment of the rights of children at a systemic level, the need for individual advocacy will diminish. Nevertheless, it recognises that this will take time. Many children will, in the meantime, need someone to assist them in legal and grievance processes and in a range of forums that in some way require their participation. Matters before or with the Community Services Commission; the Children's Courts; the Police Service; the Office of the Ombudsman; the Department of School Education; the

Department of Housing; and the Department of Community Services, are some of the areas in which children may need an independent advocate.

The Youth Justice Coalition has pointed to the need for an independent child advocacy service for children and young people in the State's care and protection system who the Committee has already identified as being one of the most vulnerable and silent groups within the community. The role of the service would be to undertake individual advocacy, community legal education and information, policy development and law reform work (Submission 34).

A submission from Marrickville Legal Centre and the National Children's and Youth Law Centre has been presented to the Minister for Community Services to fund an independent advocacy centre. Support for that centre has been given by the State Network of Young People in Care and the Community Services Commission.

In its submission to this Inquiry the Community Services Commission attached an extract from a letter to the Minister for Community Services regarding the establishment of an independent advocacy centre for children. The extract states that:

*in the work of the Commission to date we have identified a serious lack of advocacy services for children. We agree with the submission that the needs of children and young people in terms of advocacy have traditionally been narrowly defined as relating to child welfare and juvenile justice matters before the Children's Courts and more recently the Family Court. However, their advocacy needs extend to all areas of young people's lives that are regulated either directly or indirectly by the law. It is our view that many instances of 'systems abuse' of children result partly from children not having someone to stand by their side and support them as they move between different services such as community services, education and juvenile justice. The multi-disciplinary service ... would play a significant role in providing individual support for children across services.*

*It is our experience of such centres ... that they are extremely cost effective and efficient, for example:*

- through specialisation, the centre can raise the profile of children's issues within the community in a positive way;*
- from a relatively small recurrent funding base, they are often able to attract additional resources, eg federal funding, pro bono work from solicitors and barristers, other voluntary input;*
- the multidisciplinary approach provides a flexibility of service to children which is not generally available, i.e. lawyers, social workers, peer advocates;*

- *they become part of a strong community network, and work closely with other services, e.g. SNYPIC, to strengthen complementary roles and avoid duplication of work (emphasis added).*

Although the Committee generally supports the establishment of an independent advocacy service it is concerned about its location and therefore its accessibility to children and young people. Should it be located in Sydney, for instance, it is likely that many children from rural and remote areas would be denied access to the service. Further, a Sydney-city location could be problematic for those living in outer suburbs.

### 8.4.1 Children's Advocacy Network

The Committee believes that effective advocacy services for children and young people should be state-wide. It also considers that such services should be responsive to the particular needs of children and young people in each community. The Committee therefore recommends that a Children's Advocacy Network be established. The Network would operate as independent advocacy services for children and young people with 20 workers to be initially employed and based in non-Government agencies, such as Community Legal Centres and child welfare agencies, throughout New South Wales. The Committee further recommends that the services be located in areas of disadvantage and where there is a high child and youth population. The 20 workers would not only provide independent advocacy to children and young people but also provide independent policy advice to Government. Consideration should also be given to teleconferencing to maximise accessibility by children and young people.

The Committee considers that the advocacy services should meet, liaise and consult with each other on a regular basis. It therefore recommends that the Office of the Status of Children and Young People be responsible for convening conferences among the services.

The Committee envisages that the services would provide advocacy assistance in relation to a range of areas. Whilst legal advocacy (such as criminal and care work) may be a function of the services, it would not be limited to such work. The Committee recognises that the Legal Aid Commission's primary role in relation to children and young people is in the criminal, care and family law jurisdictions. The advocacy services which it is proposing would assist children and young people in other areas such as housing, education, health, social security and in lodging complaints with relevant bodies. They would also offer community education on children and youth issues and undertake any relevant policy work.

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**RECOMMENDATION 36**

**That:**

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

## **8.5 PEER ADVOCACY**

The Committee firmly supports the notion of children and young people advocating for and on behalf of each other. It considers that the State Network of Young People in Care is an excellent example of the success and importance of peer advocacy.

The Committee has been informed of a type of peer advocacy being established in the United Kingdom. Known as the Article 12 Committee, and based on Article 12 of the United Nations Convention on the Rights of the Child, which concerns the obligation of State Parties to give effect to children's views and opinions, this advocacy group is made up of children and young people, up to the age of 18 years. Its aim is to meet and discuss relevant issues and provide advice to agencies and departments on matters affecting children and young people. Although initially to begin in the United Kingdom the plan is for Article 12 Committees to be established throughout Europe.

The Committee considers that, as a means of promoting peer advocacy for children in New South Wales, the Office of the Status of Children and Young People should establish an Article 12 Committee in New South Wales.

RECOMMENDATION 37

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

8.6 CONCLUSION

The Committee recognises that fundamental to effective advocacy for children is the proper functioning of government departments and their non-government partners which deliver services to children and young people.

Government has an obligation to protect society's most vulnerable children - the abused, neglected and marginalised children whose needs and interests have for too long been ignored. In order to fulfil this obligation properly, the Government must ensure that there are adequate resources available to the departments and organisations which deliver services and programs to children.

The Committee considers that full recognition of the rights of children and a commitment to uphold and protect these rights is the foundation on which advocacy systems for children can be built and which will secure a just society for all its members.

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