

# **The rights, interests and well-being of children and young people**

**Report Number 3**

Standing Committee on Community Services and Social Equity

August 2003

Legislative Assembly for the Australian Capital Territory



## **Committee membership**

Mr John Hargreaves MLA (Chair)

Ms Roslyn Dundas MLA (Deputy Chair)

Mrs Helen Cross MLA

Mr Greg Cornwell MLA (appointed 21 November 2002)

Secretary: Ms Jane Carmody

Ms Judith Henderson (until 30 November 2002)

Administration: Mrs Judy Moutia

## **Resolution of appointment**

(1) The following general purpose standing Committees be established and each Committee to inquire into and report on matters referred to it by the Assembly or matters that are considered by the Committee to be of concern to the community: ...

(e) a Standing Committee on Community Services and Social Equity to examine municipal, family and youth services, services for older persons, housing, poverty, children at risk and multicultural and indigenous affairs;<sup>1</sup> ...

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<sup>1</sup> Legislative Assembly for the ACT, *Minutes of Proceedings, No 2*, Fifth Assembly, p 12.

## **Terms of reference**

Inquire into and report on the rights, interests and well-being of children and young people in the ACT with particular reference to:

- children's and young people's understanding of the law and their rights;
- the promotion and protection of the rights, interests and well-being of children and young people in the ACT;
- the participation of and consultation with children and young people in the development of laws, policy and practices that have the potential to impact on them;
- the role and impact of the care and protection system on children and young people;
- the role and impact of the administration of justice for children and young people; and
- any other related matter.



## **Preface**

It is often said that ‘children are our future’. We look at the children of today knowing they become the adults of tomorrow – adults who will, hopefully, be well rounded members of the community.

During this inquiry, we have focused on what must change to ensure that here in the ACT, children and young people do have the best chance of entering adulthood confident in themselves and the community around them.

The Committee met with a wide range of stakeholders who advocate for the rights, interests and well-being of children and young people.

Importantly, the Committee also spoke directly with a range of young people and it was very clear to the Committee that young people are looking for dialogue and have opinions on a wide range of issues.

While many issues of concern were raised during this inquiry perhaps the most consistent theme to have emerged is that the time for ‘review’ and ‘consultation’ on a number of important issues must now give way to a time of action.

Previous Assembly inquiries, evidence provided to the Committee and the Government’s own submission all point to there having been many, many reviews in recent years on issues related to the rights, interests and well-being of children and young people.

The number of reviews that have recommended there be a psychiatric inpatient unit for adolescents is a disturbing case in point. We hope this is the last inquiry that, yet again, recommends the establishment of such a unit.

On this and other very important issues it is difficult to see where progress has been made and members of the community may legitimately ask how many recommendations, from how many reviews does it take for action to occur?

The Committee had no desire to produce yet another report that simply sits on someone’s shelf collecting dust.

We sincerely hope that the careful manner in which the Committee has deliberated on its recommendations will result in an appropriate and timely response by the Government. The children and young people of this community deserve no less.

Finally, although this like other committee reports is a report from the Committee to the Assembly, it is also a report for the community. At the end of the day it is the community that elects governments and entrusts them with the task of prioritising limited resources. Children are indeed the future and we must ensure that we provide for the future by adequately addressing the present, having learnt the lessons of the past.

John Hargreaves  
Chair  
19 August 2003

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## **Summary of recommendations**

### **RECOMMENDATION 1**

**4.10. The Committee recommends that the Government provide funding to First Stop in 2003 to enable an independent evaluation to be conducted of the service.**

### **RECOMMENDATION 2**

**4.14. The Committee recommends that in the context of the evaluation of First Stop, the Government:**

- i. seek the views of the Aboriginal Justice Advisory Council and the Aboriginal Legal Service about whether or not there is a need for a specific indigenous youth legal officer; and**
- ii. assess whether the needs for information about the law and their rights of children and young people at risk of abuse are being met adequately.**

### **RECOMMENDATION 3**

**4.21. The Committee recommends that the Government develop model legal rights and responsibilities units and include them as part of the core curriculum for ACT high schools and colleges.**

### **RECOMMENDATION 4**

**5.21. The Committee recommends that the Government provide funding for a psychiatric inpatient facility for young people from the 2004-2005 budget onwards. The Committee further recommends that it be co-located with the day program and be specifically resourced to manage patients with dual diagnosis of mental health and substance abuse problems.**

## **Recommendation 5**

**5.29. The Committee recommends that the Government publish and implement the findings of the Intensive Youth Support review as a matter of priority and adopt a “wrap around” approach to service delivery for youth with intensive support needs.**

## **RECOMMENDATION 6**

**5.36. The Committee recommends that the Government investigate and report on the feasibility of a secure residential treatment facility for young people engaging in sexually offending behaviour, with specialist staffing, by March 2004.**

## **RECOMMENDATION 7**

**5.42. The Committee recommends that the Government:**

- i. review its contractual arrangements with non-government providers of youth services to ensure data sharing across government and non-government agencies;**
- ii. develop, for all providers, a protocol for informing young people about the type of information being kept about them as well as information sharing arrangements;**
- iii. advise the Assembly of the protocols that currently exist regarding the protection of confidential or sensitive information, which prevent either the accidental or deliberate misuse of records;**
- iv. investigate and implement solutions to any information technology infrastructure and other data management issues that would prevent the effective sharing of information (e.g., incompatible software, lack of shared protocols for record keeping); and**
- v. broaden the focus of the drug and alcohol program within Community Care to include children and young people under the age of 18 years.**

## **RECOMMENDATION 8**

**5.58. The Committee recommends that the Government provide funding from the 2004-2005 budget onwards for a dedicated position within the Domestic Violence Crisis Service that would deliver programs and outreach to children and young people who have witnessed/been subjected to domestic violence and/or who are using violence in their family relationships.**

## **RECOMMENDATION 9**

**5.68. The Committee recommends that the Government consult with relevant stakeholders on appropriate legislative amendments to enable the well-being of children covered by protection orders to be considered when they are to be revoked, and that the Government implement these amendments at the earliest opportunity recognising that the current situation is not acceptable.**

## **RECOMMENDATION 10**

**5.72. The Committee recommends that the Government address the recommendations put forward by CYCLOPS to this inquiry.**

## **RECOMMENDATION 11**

**5.81. The Committee recommends that the Government take the proposal of changing social security legislation to enable court ordered deductions to maintain tenancies of families with children who are at risk of eviction to the Housing Ministerial Council, with a view to making a combined State/Territory approach to the Commonwealth on this matter.**

## **RECOMMENDATION 12**

**5.86. In relation to the youth supported accommodation sector, the Committee recommends that the Homelessness Strategy provide for:**

- i. Additional services in the Belconnen region;**
- ii. Separate funding for outreach in services;**

- iii. The development of, and funding for participation in, a structured training program for workers in the sector; and
- iv. A new proposal on a youth night shelter for consultation with stakeholders.

### **RECOMMENDATION 13**

6.63. The Committee recommends that the Government consult with key stakeholders regarding the adequacy of existing performance measures for care and protection services with a view to amended measures for the 2003-2004 Annual Report.

### **RECOMMENDATION 14**

6.72. The Committee recommends that in relation to foster and kinship carers the Government:

- i. increase the level of the basic subsidy by December 2003;
- ii. adopt a system of payments as outlined in Chapter 6 of this report by December 2003;
- iii. guarantee foster carers access to respite care;
- iv. develop, with stakeholders, a training program for carers consistent with the principles outlined in Chapter 6 of this report by March 2004; and
- v. develop an accreditation process for carers as soon as possible.

### **RECOMMENDATION 15**

6.76. The Committee recommends that the Government consider, as part of the review into outsourcing arrangements for substitute care:

- i. the need for Family Services staff to undertake training on working with volunteers;
- ii. the need for Family Services staff, care agencies and carers to *regularly* receive training and have discussions on the provisions in the Act and how this translates into respective roles and responsibilities; and

**iii. the need for all parties (i.e., care agencies and the children if appropriate) to participate in case management conferences.**

#### **RECOMMENDATION 16**

**6.83. The Committee recommends that the Government:**

**i. develop, with key stakeholders, a template for Annual Review Reports by March 2004; and**

**ii. amend the Act to require Family Services to convene a meeting of the parents, carers, carer agency and child (if age appropriate) to discuss a draft of the Annual Review Report prior to its finalisation.**

**6.84. Further, the Committee does not support amending the Act to allow Annual Review Reports to be prepared on the anniversary of the last variation of the order.**

#### **RECOMMENDATION 17**

**6.101. The Committee recommends that the Government develop a new internal complaints policy for Family Services as outlined in Chapter 6 of this report by March 2004.**

#### **RECOMMENDATION 18**

**7.12. The Committee recommends that the Government investigate the feasibility (including the cost) of consolidating the current resources allocated to court assessments to provide for an independent unit near to the Children's Court.**

#### **RECOMMENDATION 19**

**7.23. The Committee recommends that the Government investigate alternative remand options for young people and report back to the Assembly by September 2004.**

#### **RECOMMENDATION 20**

**7.30. The Committee recommends that the Government consult with staff at the Department of Education, Youth and Family Services regarding the appropriateness of increasing pay and condition parity across units in juvenile justice.**

## **RECOMMENDATION 21**

**7.34. The Committee recommends that the Government fund an onsite, daily drug and alcohol counselling service at Quamby from the 2004-2005 budget onwards.**

## **RECOMMENDATION 22**

**8.12. The Committee recommends that, to improve outcomes for children and young people in both the care and protection and juvenile justice systems, the Government:**

- i. fund the establishment of an electronic database which would contain information about children and young people who are known to Family Services and/or Youth Services; and**
- ii. establish a clear protocol that children and young people in these circumstances have one caseworker or manager from Family Services.**

## **RECOMMENDATION 23**

**9.9. The Committee recommends that the Government amend the *Children and Young People Act 1999* so that:**

- i. the evidentiary requirements for care and protection cases are not in doubt; and**
- ii. the state can act to protect children without having to prove cases beyond a reasonable doubt, but rather on the balance of probabilities.**

## **RECOMMENDATION 24**

**9.16. The Committee recommends that the Government simplify and shorten the *Children and Young People Act 1999* taking on board the views expressed by key stakeholders including, in particular, the Children's Magistrate and ACT Legal Aid.**

## **RECOMMENDATION 25**

- 9.22. The Committee recommends that the Government:**
- i. investigate ways to streamline the procedural mechanisms for mandatory reporting;**
  - ii. develop and implement a protocol for responding to instances where mandated persons have failed to report abuse; and**
  - iii. review the penalty within the Act for the offence of failing to report a suspected case of abuse.**

## **RECOMMENDATION 26**

- 9.28. The Committee recommends the Government amend the *Children and Young People Act 1999* to require mandatory reporting of suspected cases of serious neglect.**

## **RECOMMENDATION 27**

- 9.52. The Committee recommends that the Government establish a working group to develop a comprehensive and risk based screening system, based on the NSW model, for persons wishing to work or volunteer with children and young people in the ACT.**

## **RECOMMENDATION 28**

- 9.56. The Committee recommends that the Government expand the “official visitor role” to all children and young people in residential facilities and consult with stakeholders, in particular children and young people in these facilities, about a more appropriate name for this role.**

## **RECOMMENDATION 29**

- 9.65. The Committee recommends that the Government consider quarantining a proportion of child protection staff to focus on responding to “lower level” or less serious reports in order to provide early and intensive support to families before they reach crisis point.**

## **RECOMMENDATION 30**

**9.72. The Committee recommends that the Government require the Department of Education, Youth and Family Services to provide in its Annual Report:**

- i. general information on programs and pilot programs which focus on early intervention; and**
- ii. specific information regarding their funding status and evaluations of their efficacy.**

#### **RECOMMENDATION 31**

**9.85. The Committee recommends that the Government fund a universal home visiting scheme by community health nurses for families with new babies, to provide support to families during children's early years.**

#### **RECOMMENDATION 32**

**9.91. The Committee recommends that the Government fund an additional position dedicated to conferencing care cases, at an appropriately senior level, from the 2004-2005 budget onwards.**

#### **RECOMMENDATION 33**

**9.116. The Committee recommends that the Government actively support improving the quality of child representatives by providing ongoing funding to the ACT Law Society and ACT Legal Aid to develop and implement a training package on being a child representative in the ACT.**

#### **RECOMMENDATION 34**

**9.122. The Committee recommends that the Government provide additional funding to ACT Legal Aid from the 2004-2005 budget onwards for the express purpose of increasing remuneration for solicitors representing children and young people.**

### **RECOMMENDATION 35**

**9.133. The Committee recommends that the Government engage in a consultation process on the issue of a “guardian *ad litem*” or “court friend” for children and young people in conjunction with the release of the discussion draft of the ACT Law Society’s draft standards for child representatives in the ACT.**

### **RECOMMENDATION 36**

**9.145. The Committee recommends that the Government amend the *Community Advocate Act 1991* to refer simply to children and young people and remove references to a legal disability due to age.**

### **RECOMMENDATION 37**

**9.149. The Committee recommends that the Government review how Departments consult with young people, with a view to improving the extent and effectiveness of young people’s involvement in the development of government policy and programs.**

### **RECOMMENDATION 38**

**9.150. The Committee recommends that the Government provide additional resources to the Minister’s Youth Council to enable the development and publicisation of a work plan.**

### **RECOMMENDATION 39**

**9.155. The Committee recommends that the Government ensure all performance contracts with senior staff in the Department of Education, Youth and Family Services require compliance with statutory obligations in order to obtain a satisfactory appraisal.**

#### **RECOMMENDATION 40**

**10.51. The Committee recommends that the Government establish a commission for children and young people with the appropriate powers to enable the full investigation of complaints and to allow the commission to act effectively. This is to ensure definite outcomes as well as the capacity to review decisions previously made which affect the health and well being of a child or young person. The Committee recommends the commission be established as outlined in Chapter 10 of this Report.**

#### **RECOMMENDATION 41**

**11.8. The Committee recommends that the Government consult with the community regarding the issue of jurisdiction for criminal and welfare matters relating to children and young people, with a view to raising this issue at the Standing Committee of Attorneys' General.**

# Introduction

## Background

1. On 4 April 2002 the Committee resolved to inquire into the rights, interests and well-being of children and young people in the ACT.

## Scope of the inquiry

2. The terms of reference for this inquiry were extremely broad. An exhaustive investigation of all aspects would take years and was clearly beyond the resources of the Committee.

3. The Committee's intention in drawing up such broad terms of reference was that it would allow it to cast the net wide and then narrow its focus on those issues that were consistently being raised as matters of concern.

4. This is not to suggest that there aren't "success stories" or areas where there have been considerable improvements, rather that in the Committee's view, the role of this inquiry was to assess what more can and must be done.

5. As noted in the preface, there have been a large number of reviews and inquiries regarding children and young people over the last decade in the ACT. This inquiry has in a sense conducted a stock take of many of the issues canvassed in those earlier reviews and inquiries.

6. In addition the Committee was aware that the Standing Committee on Health was also inquiring into the health of school-age children. Its report *'Looking at the health of school-age children in the ACT'* was handed down in April 2003. Accordingly this inquiry did not focus on many health related issues in the context of investigating the well-being of children and young people.

## Definition

7. The Committee notes the definition of child and young person as set out in the *Children and Young People Act 1999* whereby a child is a person under 12 years of age and a young person is a person who is 12 years or older but not yet an adult (that is not yet 18 years old).<sup>2</sup>

8. The Committee notes that it is necessary in a legal sense to have these definitions, however, the Committee also recognises that these definitions are not always helpful. For example the Committee is concerned at the assumption that all young people may be considered “adults” at 18 – and therefore cease to require particular supports or services.

9. The Committee has kept an open mind on how young people, in particular, should be defined. During the course of the inquiry it received evidence about issues facing young people aged up to 25 years old. This accords with the definition from the United Nations General Assembly, which defines ‘youth’ as those persons falling between the ages of 15 and 24 years inclusive. (All United Nations statistics on youth are based on this definition.)<sup>3</sup>

## Conduct of the inquiry

10. The Committee advertised the inquiry in *The Canberra Times* and *The Chronicle* in April 2002. In addition, letters inviting input were sent to organisations expected to have an interest in the inquiry.

11. A total of 20 submissions were received. A list of submissions received is at Appendix 1.

12. The Committee conducted public hearings and the details of those who appeared are at Appendix 2. The Committee also heard from a number of people in camera.

13. The findings of this inquiry would be worth little if the Committee had not spoken directly with children and young people. The Committee was extremely pleased at the number of young people who were willing to appear before the Committee.

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<sup>2</sup> *Children and Young People Act 1999*, Section 8.

<sup>3</sup> <http://www.un.org/esa/socdev/unyin/qanda.htm> accessed 22/07/03.

14. The Committee also went to children and young people where they are and:

- organised a “Have your say” BBQ at the Civic Youth Centre;
- visited Quamby Detention Centre to speak with young people who are incarcerated; and
- visited the Bay Program at the Woden campus of the Canberra College to speak with college age students.

15. Appendix 3 contains the views of young people at the ‘Have your say’ BBQ as transcribed, unedited, from graffiti boards. The views of young people the Committee met with at the Bay have also been summarised and included in this Appendix.

16. The Committee wishes to thank the various organisations, both government and non-government, with whom it consulted interstate. The capacity to have frank and informal discussions with players in other jurisdictions about what does and doesn’t work was extremely useful in assessing options for the ACT.

17. The Committee would like to thank all who participated in this inquiry. Many organisations and individuals gave generously of their time.

18. Lastly, in relation to the conduct of this inquiry, the Committee was mindful that it is not its role to micro manage the Government’s budget. The Committee acknowledges that the recommendations in this report have financial implications and that it is *the choice of Government* whether recommendations, if accepted, are to be funded through additional appropriations or the re-prioritisation of existing resources.



# 1. The rights of all children and young people under the United Nations Convention on the Rights of the Child

1.1. All nations, except the United States and Somalia, have ratified the United Nations Convention on the Rights of the Child.<sup>4</sup>

1.2. By ratifying this Convention, Australia, including its states and territories, has agreed to protect and promote the human rights of all children (defined as a person under 18) without discrimination.

1.3. In the context of the findings of this inquiry, the Committee draws the following Articles of the Convention to the Government and community's attention:<sup>5</sup>

## Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

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<sup>4</sup> Australia ratified the Convention on 17 December 1990. The Committee notes that like many countries, Australia ratified the Convention with reservations. Further information on the ratification status of the Convention is available at: <http://www.unhchr.ch/pdf/report.pdf> accessed 6/5/03.

<sup>5</sup> Excerpts taken from the Convention as cited at: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

## Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

## Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

## Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

## Article 29

States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

#### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

#### Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

#### Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

## **2. Legislative framework for promoting and protecting the rights, interests and well-being of children and young people in the ACT**

2.1. The Government advised that the *Children and Young People Act 1999* (administered jointly by the Department of Education, Youth and Family Services and the Department of Justice and Community Safety) provides the framework for Government action to promote and protect the rights, interests and well-being of children and young people. The objectives of the Act are to:

- serve the best interests of children and young people;
- provide for and promote the care and protection and well-being of children and young people;
- recognise that children and young people have the right to be protected from abuse;
- ensure that children and young people are provided with safe and nurturing environments;
- ensure that services directed at children and young people promote their health, education and developmental needs; and
- seek to prevent abuse and neglect through the provision of assistance to families.

### **Promotion and protection mechanisms under the *Children and Young People Act 1999***

2.2. There are several mechanisms under the *Children and Young People Act 1999* that support and protect children and young people's rights. These are described below.

#### **Office of the Community Advocate (OCA)**

2.3. The Office of the Community Advocate (OCA) is a statutory agency established under the *Community Advocate Act 1991*. The OCA has a range of statutory powers and responsibilities primarily to promote and protect the best interests of adults with disabilities and children.

2.4. For example a key function of the OCA is to monitor and foster the provision of services and facilities for the protection of children and young people and to advocate for their rights. The OCA undertakes a range of individual and systemic advocacy functions on behalf of children and young people who are in need of protection from abuse, exploitation or neglect. In doing this the OCA gives priority to those children and young people who have had their freedoms or rights restricted by direct state intervention, and those for whom there remains an unacceptable risk of abuse, exploitation or neglect despite state obligations or interventions.<sup>6</sup>

2.5. The OCA reported that in undertaking advocacy on behalf of children and young people - from both an individual or systemic basis - it operates from a best interests perspective.

2.6. The OCA defines best interests as:

That course of action which maximises what is best for the child or young person, and which includes consideration of the least intrusive, most normalising and least restrictive course of action possible given the needs of the person. There is an emphasis on safety, quality of life and overall well-being, including the potential long-term outcomes of any proposed course of action.<sup>7</sup>

2.7. The Community Advocate also has powers under a number of legislative frameworks, including the *Children and Young People Act 1999*, the *Guardianship and Management of Property Act 1991*, the *Protection Orders Act 2001*, and the *Mental Health (Treatment and Care) Act 1994*.

2.8. Examples of these powers and functions include:

- to receive from the Chief Executive, ACT Family Services, certain information regarding allegations of abuse or neglect of children or young people for whom the Chief Executive has parental responsibility (Section 162, *Children and Young People Act 1999*);
- to receive from ACT Mental Health Services notifications of children and young people detained within an approved health

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<sup>6</sup> Submission 12, Office of the Community Advocate, p 1.

<sup>7</sup> *ibid.* p 2.

facility (Section 42, *Mental Health (Treatment and Care) Act 1994*); and

- to apply for a protection order as the next friend of an aggrieved child or young person (Section 11, *Protection Orders Act 2001*).<sup>8</sup>

2.9. As part of its role, the OCA regularly visits the Quamby Youth Detention Centre (Quamby), which is administered by the Department of Education, Youth and Family Services. The OCA considers that the residents of Quamby are among the most vulnerable of young people, having had their rights curtailed by the state and having a limited voice for their concerns.<sup>9</sup>

2.10. Until 30 June 2002, the OCA was heavily involved in individual court matters regarding care and protection orders made by the ACT Children's Court. However with the introduction of new legislation the *Children and Young People Act 1999*, in May 2000 this role changed allowing the OCA greater autonomy in determining individual advocacy matters and enabling it to re-focus priorities and resources to issues of a systemic nature rather than individual advocacy. Since 1 July 2002 the OCA has not been involved in individual advocacy to the same extent.<sup>10</sup>

2.11. The OCA operates under legislation that is similar to the legislation governing agencies in some other states that provide statutory representation of children and young people's interests. The NSW Commission for Children and Young People, the Queensland Commission for Children and Young People and the Tasmanian Office for the Commissioner for Children and Young People undertake similar functions to those undertaken by the OCA. However there are some important differences, which will be discussed later in this report in the Chapter about whether or not the ACT needs a commission for children and young people.

## **Official Visitor**

2.12. The Official Visitor's role (as set out in *The Children and Young People Act 1999*) is to monitor conditions and receive complaints from children and young people who are in a shelter (Marlow Cottage) or

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<sup>8</sup> *ibid.* p 2.

<sup>9</sup> Roy, A 1999, *Individual and systemic advocacy within a youth detention centre*, Paper presented at the Children and Crime: Victims and Offenders Conference, Australian Institute of Criminology, Brisbane, June 1999.

<sup>10</sup> *op. cit.* pp 3-5.

institution (Quamby) or to monitor and receive complaints from a child who is receiving therapeutic protection.

2.13. In broad terms the difference between the OCA and the Official Visitor is that the Official Visitor's role focuses on the individual child or young person and the facility, while the OCA focuses more on the overall system of service provision.

2.14. The Official Visitor must provide a copy of any report to the Chief Executive and the Community Advocate. A copy, or part of the report, may also be provided to the Minister and the complainant.

2.15. A number of participants raised the issue of the need for the role of the Official Visitor to be expanded to include visits to, and monitoring of, other residential facilities for adolescent care such as youth refuges.<sup>11</sup> This issue is addressed later in the report in Chapter 9.

## **Children's Services Council**

2.16. The Council is established under *The Children and Young People Act 1999*. Its role includes:

- to consider matters related to children's welfare referred to it by the Minister and any other matter related to children's welfare; and
- to make recommendations concerning children's welfare to a Minister, body, authority or agency, and to prepare issues papers and statistics.<sup>12</sup>

## **Regulation of Child Care**

2.17. Children's Services Branch through the Office of Child Care is responsible for licensing 230 children's services under the *Children and Young People Act 1999*. Licensed services include centre-based children's services, school age care, independent preschools, play schools and family day care schemes.

2.18. Licensing is an important way to ensure that care is provided for young children in such a way that their best interests are paramount and that care is safe, positive and nurturing and that children's educational, social and developmental well-being is catered for.

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<sup>11</sup> Transcript of evidence, 10/10/02, p 39 & p 64.

<sup>12</sup> Submission 15, ACT Government, p 20.

## **Protection measures under other legislation**

### **Ombudsman**

2.19. The Ombudsman has two major roles:

- i. To improve government administration, for example assisting government agencies in developing internal review and complaint procedures; and
- ii. To consider and investigate complaints from people who believe they have been treated unfairly or unreasonably by an ACT Government department or agency (including the Australian Federal Police (AFP) in their community policing role).

2.20. The Ombudsman receives complaints from children and young people as well as complaints made on their behalf. One of the major areas of complaint is the interaction between young people and the AFP.

2.21. Complaint investigations are carried out impartially and independently. Where actions complained about are found to be defective the Ombudsman has the power to make, but not enforce, recommendations to achieve fair outcomes. The Ombudsman cannot override the decisions of agencies or issue directions to their staff. Instead, they try to resolve disputes by negotiation and persuasion, and if necessary, by making formal recommendations to the most senior levels of government.

### **Community and Health Services Complaints Commissioner**

2.22. The Commissioner handles complaints about services provided to the aged, people with a disability and their carers and consumers of any health services provided in the ACT. Children and young people (or their carers) can therefore go to the Commissioner if they have complaints about any health or disability services they receive.

2.23. Complaints are handled impartially and in the first instance assessed to see whether they can be resolved informally. Where they are not resolved at the assessment stage (or referred to a more appropriate body) they are either conciliated or investigated further.

2.24. The aim of the conciliation process is for parties to reach mutually agreeable solutions. Where agreements are reached and put in writing

then they are legally binding. Conciliation is often used as an alternative to going to court for claims of negligence or personal injury.

2.25. When conciliation and other voluntary approaches to the resolution of a complaint prove to be unsuccessful or are inappropriate, the complaint is investigated. Once an investigation has been completed a report is written which includes findings and conclusions. The report may also include recommendations for action by the service provider. If so, the provider is required to respond to recommendations within 45 days. The Commissioner may also recommend that Registration Boards or other authorities take further action.

## **ACT Human Rights Office**

2.26. The ACT Human Rights Office administers the *Discrimination Act 1991*. The Office's main functions are:

- delivering education programs about rights and responsibilities under the Act;
- investigating and resolving formal complaints of discrimination, sexual harassment and racial vilification under the Act; and
- providing information about discrimination and related matters and where necessary referring people to other services/forums for their concerns.

2.27. As with the Ombudsman, complaints are carried out impartially and the majority of complaints are conciliated in private and resolved by a legally-binding agreement.<sup>13</sup>

2.28. Examples of complaints resolved in relation to children and young people include sexual harassment between students at a school, discrimination of a student with a disability by a school, and sex-based harassment directed at a young female employee.<sup>14</sup>

2.29. The Human Rights Office also has a role in relation to the protection of the rights of children and young people through input into government policy making and in relation to the right of the Discrimination Commissioner to address the Mental Health Tribunal in

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<sup>13</sup> Submission 13, ACT Human Rights Office, p 6.

<sup>14</sup> *ibid.* Attachment B.

regards to the rights of a young person under the *Discrimination Act 1991*.<sup>15</sup>

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<sup>15</sup> *ibid.* pp 6-7.



### **3. Observations about the interests and well-being of children and young people in the ACT**

3.1. While the following Chapter deals specifically with children’s and young people’s understanding of the law and their rights, the Committee makes the following general observations about the interests and well-being of children and young people in the ACT.

#### **Romanticising childhood**

3.2. The Committee notes that the majority of children and young people probably do have reasonably healthy and happy childhoods. In today’s “self help” jargon, they have “good enough parents” even if they’re not the “best” parents.

3.3. However not all children have what might be termed healthy and happy childhoods – irrespective of the quality of the parenting they experience. As a result a significant number of children here in the ACT will emerge into adulthood without a strong sense of self worth and without the ability to relate well to the world around them.

3.4. For some, simply surviving childhood may be their greatest challenge.

3.5. If as a community and public policy makers we romanticise childhood and work from the assumption that basically everyone will be alright, we risk having “blinkers” on when looking at the resources required to ensure children and young people have healthy and happy childhoods and become confident, happy and well adults.

3.6. For example, it can contribute to the false belief that children and young people do not suffer from serious mental health problems or that young people who are addicted to drugs are “bad children” requiring punishment, rather than young people requiring help.

3.7. Such beliefs can contribute to the community’s unwillingness to spend scarce resources on services that would address these issues holistically.<sup>16</sup> It can also mean failing to make the connections between how we treat parents, and the impact that has on their children. For

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<sup>16</sup> The Committee notes that Community Education and Training asserted that funding for youth services has not kept up with the costs and as a result demand is not being met (Transcript of evidence, 9/10/02, p 14).

example parents who can't access adequate mental health or drug and alcohol services will likely have difficulties raising their children.

3.8. The Committee believes that while it is important to remember that the majority of children and young people will be all right, it is equally important to avoid romanticising this critical period in a person's life. Ensuring the well-being of children and young people is at least as complex a task, if not more so, than that for adults.

## **Defining the interests of children and young people**

3.9. The Committee notes that it is actually very difficult to define the "interests" as such of children and young people.

3.10. This is for a number of reasons. The first reason is that as with adults, every child is an individual. It is therefore virtually impossible to canvass in any meaningful way the "interests" of *all* children and young people.

3.11. However it can probably be safely assumed that the interests of children and young people – as defined by them - will often be different to what adults and decision makers assume them to be.

3.12. The Committee experienced this first hand when it spoke with young people. A good illustration of this was the responses put on the graffiti boards at the "Have Your Say" BBQ (see Appendix 3). To the Committee's surprise there was a reasonable level of interest in the current state of federal politics.

3.13. Although it is difficult to know the interests of all children and young people, it is possible to gain insights into what some children and young people may be thinking, or the views of particular groups through targeted consultation.

3.14. This issue of consulting with young people can present a real challenge to policy makers and is discussed in greater detail in Chapter 9.

## **The "mainstream kids"**

3.15. This inquiry has focused significantly on kids who are at risk – whether it be because of their exposure to the care and protection and juvenile justice systems or a range of other difficulties such as substance abuse or mental health problems. This focus is essentially the result of the evidence brought before the Committee.

3.16. However the Committee is not unaware, as noted above, that the majority of children and young people in the ACT might be classified as “mainstream kids”, that is to say the majority of children and young people are either doing well, or have a limited set of concerns or issues.

3.17. While “mainstream kids” may not require extra supports or interventions, there would be few who would argue against providing children and young people, as a class within society, more systems level advocacy aimed at enhancing their lives and participation in the community.

3.18. This issue of broad or system wide advocacy for children and young people is addressed in Chapter 10 in the discussion about whether or not the ACT needs a commission for children and young people.



## 4. Children and young people's understanding of the law and their rights

4.1. A consistent theme the Committee heard is that children and young people do not have a good understanding of the law and their rights.

4.2. In terms of poor understanding of the law, a common example reported to the Committee is their lack of understanding of the laws related to cannabis use. As one witness recounted:

... I have spent years explaining the cannabis laws to young people. I explain to them that cannabis has not been legalised. I explain the difference, because there is a fine distinction. The other issue is this: I ask, "Who, in this room, is under 18?" Most of those in colleges and high schools put their hands up. I say, "Well, forget the law, because you are under 18. The reality is that a police officer has a discretion. If you get caught with cannabis, he has discretion whether to haul you in and charge you."

I have gone to police stations where many young people have had that experience because they were under 18. They did not understand that the law was speaking to adults, not to them.<sup>17</sup>

4.3. This lack of knowledge about the law is despite the fact that there are a number of resources for youth about the law including dedicated internet sites<sup>18</sup>, the ACT Legal Aid book "When Can I?" that covers the legal rights of young people in relation to a range of issues affecting them and the innovative booklet produced by the Richmond Fellowship which explains to young people what to expect if called to be a witness.<sup>19</sup>

4.4. There are also a number of general free legal services which cover most, if not all, of the issues facing young people (e.g., Legal Aid ACT, Welfare Rights and Legal Centre, Women's Legal Service, Environmental Defender's Office, Legal Advice Bureau, Consumer Law Centre).

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<sup>17</sup> Transcript of evidence, 9/10/02, p 19.

<sup>18</sup> For example the Government's youth website 'pogo' has a designated area 'busted' that has information on young people's legal rights and responsibilities as well as details of local services that can assist young people with a variety of legal information and support.

<sup>19</sup> Submission 8, Child, Youth and Family Agencies of the ACT, p 1.

4.5. Given these resources, the question is what else would be useful to increase children and young people's understanding of the law and their rights?

4.6. In addressing the needs of children and young people for information about the law, the Committee is mindful of the following key issues:

- there are limits to the extent to which the law and in particular advice about the law can be simplified. This is both because the law itself is complex and also because the circumstances of a particular case are often just as important as the law per se. This means that information provided in booklets and brochures which has to be simplified/condensed, can have limited use;
- information for children and young people needs to be delivered in an age/developmentally appropriate fashion. This can also place limitations on using written materials as the primary source of information for children and young people. It is arguable that providing information and advice that is tailored to their particular stage of development may require "real time" dialogue;
- young people can find it difficult to navigate their way around general/adult services and the law in many cases is different for young people than for adults (i.e., it requires special expertise);
- indigenous young people (who are over represented in both the juvenile justice and care and protection areas) have particular and possibly unmet needs in terms of access to the law; and
- information and advice on the law is often required in a crisis.

## **A youth legal service**

4.7. A number of participants raised the need for a specific youth legal service.<sup>20</sup> The Government also acknowledged that while there are a number of sources where children and young people can get information on their rights, they are not always aware of them. The Government further noted in its submission that children and young people need a well

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<sup>20</sup> For example, transcript of evidence, 9/10/02, pp 16-18; Submission 11, Youth Coalition of the ACT, pp 4-5.

known, focused source or sources of information regarding their rights, responsibilities and law as it concerns them.<sup>21</sup>

4.8. A twelve-month pilot of a specific youth legal service – *First Stop* – is currently underway. This is a collaboration between Legal Aid ACT, Clayton Utz, the Youth Coalition and the ANU Law Student’s Society. First Stop does not receive any government funding.

4.9. The Committee believes this pilot represents a unique opportunity to test whether or not a specific youth legal service is needed, and if so, how such a service should operate. A proper evaluation of the pilot would enable the Government to determine whether or not a specific service is necessary in the longer term and what level of funding it may require.

### **Recommendation 1**

**4.10. The Committee recommends that the Government provide funding to First Stop in 2003 to enable an independent evaluation to be conducted of the service.**

4.11. The Government advised that health workers at the Child at Risk Assessment Unit reported that children and young people seen at the unit seem generally to have only an anecdotal knowledge of the law and their rights and that an opportunity exists to better inform and support children and young people at risk of abuse of the law and their associated rights.<sup>22</sup>

4.12. The Government also acknowledged that:

Aboriginal and Torres Strait Islander children and young people’s understanding of the Common Law and their rights, the impact of service provision, and administration of justice is a complex issue that presents a number of challenges.<sup>23</sup>

4.13. The Government advised that it is committed to improving this situation through improved consultation and a new regime for service delivery to Aboriginal and Torres Strait Islander people in the ACT.

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<sup>21</sup> Submission 15, ACT Government, p 18.

<sup>22</sup> *ibid.* p 17.

<sup>23</sup> *ibid.* p 17.

## **Recommendation 2**

### **4.14. The Committee recommends that in the context of the evaluation of First Stop, the Government:**

- i. seek the views of the Aboriginal Justice Advisory Council and the Aboriginal Legal Service about whether or not there is a need for a specific indigenous youth legal officer; and**
- ii. assess whether the needs for information about the law and their rights of children and young people at risk of abuse are being met adequately.**

## **Children and young people understanding both rights and responsibilities**

4.15. The other major area of concern that has been brought to the Committee's attention is the perception that children and young people have an over exaggerated sense of their rights combined with a diminished sense of their responsibilities.<sup>24</sup>

4.16. Some have suggested that there would be real value in implementing integrated "legal rights & responsibilities"/social values programs throughout the various levels of the school system.<sup>25</sup>

4.17. The Committee notes that in the recently released report of the Standing Committee on Health 'Looking at the health of school-age children in the ACT', the Committee recommended that a 'human values' or philosophy program such as the successful program at Mawson Primary School be developed for implementation in all ACT primary schools.<sup>26</sup>

4.18. The Committee strongly supports this recommendation.

4.19. The Committee also supports "legal rights and responsibilities" education throughout high school and college. When the Committee

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<sup>24</sup> See for example Submission 4, Woden Community Service.

<sup>25</sup> For example Submission 4, Woden Community Service; Transcript of evidence, 9/10/02, p 19 & 5/12/02, p 130.

<sup>26</sup> 'Looking at the Health of school-age children in the ACT', Report Number 4, Standing Committee on Health, April 2003, pp 53-55.

raised this issue with young people they supported the idea of mandatory education about the law, noting that:

- it was just as important to know how the law worked as it was to be “job ready” or “road ready”;
- the format of this type of education would ideally be peer based i.e., other young people could be trained to deliver information/facilitate workshops etc amongst their peers; and
- it would need to be progressive throughout high school and college e.g., there may be a term unit in Year 9 with a follow up term unit in Year 11 (this would enable Year 10 and Year 12 students to facilitate the units).

4.20. From its discussions with the NSW Commission for Children and Young People the Committee is aware that the Commission aims to develop a primary school package on children’s rights in the next couple of years based on the UN Convention. The Committee draws this to the attention of the Government as a possible future resource.

### **Recommendation 3**

**4.21. The Committee recommends that the Government develop model legal rights and responsibilities units and include them as part of the core curriculum for ACT high schools and colleges.**

4.22. Children and young people understanding the law and their rights is of course only one aspect of their experiences of the legal system. The quality of their legal representation, their right to be heard in proceedings and their participation in the development and amendment of laws are other important elements. These issues are addressed in Chapter 9.



## **5. Whose rights, interests and well-being are not being adequately protected or promoted?**

5.1. The evidence before the Committee indicates that there are some groups of children and young people who are systematically falling through the cracks. In assessing all the evidence provided to the Committee it appears that often the part of the system responsible for meeting their needs fails to do so thereby creating pressure on other parts of the system. This inevitably leads to extremely poor outcomes for the children and young people concerned, as well as the community.

5.2. The particular groups of children and young people who have come before the Committee's attention during this inquiry are:

- children and young people with acute mental illnesses requiring inpatient care;
- children and young people with intensive support needs – including young people engaging in sexually offending behaviour;
- children and young people with drug and alcohol issues or dual diagnosis;
- children and young people at risk because their parents have drug and alcohol issues, mental health issues or both;
- children and young people experiencing or engaging in domestic violence;
- young carers; and
- children and young people who are homeless or at risk of homelessness.

(Children and young people subject to state intervention, such as involvement in the care and protection or juvenile justice systems, are considered separately in the following Chapters.)

5.3. The sections below deal with each of the above groups.

5.4. While the Committee believes that the Government should respond to all the concerns noted below as a matter of priority, it recognises that it would be very difficult, in terms of resources, to address them all simultaneously. The Committee has therefore listed the issues in order of

descending priority. This was an extremely difficult thing to do, however it was something that the Committee believed it was important to do in an environment of scarce resources and countless other recommendations over the years about the plight of children and young people that have never been acted upon by any government.

5.5. The priority has been determined by a number of factors including:

- the number of children and young people concerned;
- the impact of the issue/system failure on a child or young person's life;
- the impact on others in the community (e.g., family members); and
- the impact on the rest of the system (e.g., flow on effects to juvenile justice, demands for mental health resources).

## **Children and young people with acute mental illnesses requiring inpatient care**

5.6. The Committee has heard evidence that there is an urgent and critical need in the ACT for a designated inpatient unit for young people with acute mental illnesses.

5.7. Currently young people (aged under 18) with acute mental illnesses requiring inpatient care are placed in the adult psychiatric ward at Canberra Hospital (PSU). Those who require "little or no supervision" but still require inpatient care are placed in the adult psychiatric ward at Calvary Hospital (Ward 2N) or occasionally the adolescent medical ward at the Canberra Hospital (usually those with eating disorders).<sup>27</sup>

5.8. In the period from July to December 2002 alone, 37 young people were in hospital with a principal diagnosis of mental illness. Of those, 18 were in PSU with a total combined length of stay of 258 days.<sup>28</sup>

5.9. The Committee is strongly of the view that the placement of young people in adult psychiatric wards is inappropriate and unacceptable.

5.10. Every witness before the Committee asked about this issue expressed serious concerns about the welfare of, and therapeutic

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<sup>27</sup> Correspondence from the Minister for Health dated 19/02/03.

<sup>28</sup> Correspondence from the Minister for Health dated 1/04/03.

outcomes for, young people in adult psychiatric wards – particularly those placed at PSU.

5.11. In its submission to the inquiry the Child and Adolescent Mental Health Service (CAMHS) stated:

A mental health inpatient unit for adolescents is essential if we are to respect the rights and well-being of these young people with high support needs.<sup>29</sup>

5.12. Even the Minister for Health admitted:

In PSU, some adolescents require admission to the high dependency unit, for the protection of themselves or others. Those admitted to the low dependency area mix with other PSU staff and patients on a daily basis. The adult patients in PSU are usually severely ill, and can be aggressive and, on occasions, exhibit extremely antisocial behaviours, which could threaten young adolescent girls.

The staff on PSU provide a very good service but are not trained to work with seriously ill adolescents, who require specialist treatment and care.<sup>30</sup>

5.13. The Committee also notes the following recommendations from the Royal College of Psychiatrists in London regarding acute inpatient psychiatric care for young people with severe mental illness:

A child and adolescent mental health service cannot be considered safe or adequately resourced if it does not have guaranteed access to specialist adolescent in-patient facilities offering same-day admission for patients with symptoms of acute severe mental illness.<sup>31</sup>

5.14. The issue of an adolescent inpatient facility for the ACT is not new. The Committee was deeply disturbed to discover that over the past 9 years there have been at least 6 independent reports expressing significant concern that the ACT does not have such a facility. A summary of those reports is at Appendix 4.

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<sup>29</sup> Submission 5, Child and Adolescent Mental Health Service, p 2.

<sup>30</sup> Correspondence from the Minister for Health dated 19/02/03.

<sup>31</sup> 'Acute in-patient psychiatric care for young people with severe mental illness: Recommendations for commissioners, child and adolescent psychiatrists and general psychiatrists', Council Report CR106, Royal College of Psychiatrists, London, June 2002, p 8.

5.15. Two of those reports were commissioned by the Government of the day and conducted by Professor Barry Nurcombe. The Committee notes that while some of Professor Nurcombe's recommendations have been taken up – such as the establishment of an adolescent day program – this has not, in any way, ameliorated the need for an inpatient facility.<sup>32</sup>

5.16. The Minister for Health has stated that:

The recommendations made by Professor Barry Nurcombe for the establishment of a 6-8 bed adolescent unit are confirmed in the National Mental Health Report 2002, by statistical data which allocates 5.4 child and adolescent beds per 100,000 of the population per age group.<sup>33</sup>

5.17. The question remains why has this not been addressed to date?

5.18. The Committee acknowledges that such a facility does have significant resource implications. However the Committee has heard sufficient evidence to suggest that regardless of these implications, the cost to individuals and the community at large is likely to be as, if not more, significant. It is also arguable that placing young people in PSU breaches obligations under Article 18.2 and 19.1 of the UN Convention on the Rights of the Child.

5.19. In the absence of a designated psychiatric inpatient facility, these seriously unwell young people are either being treated inappropriately or placed at risk in adult psychiatric facilities, or, not being treated at all. This can result in:

- young people “self medicating” with drugs or alcohol;<sup>34</sup>
- young people ending up in the juvenile justice system because they have engaged in offending behaviour due to their illness;
- young people with acute mental illnesses becoming adults with acute mental illnesses when early intervention and treatment might have ameliorated the severity and length of their illness; and
- refugees being expected to cope with young people experiencing psychosis or acute self-harming behaviour who are a risk not only to themselves but other clients.

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<sup>32</sup> Transcript of evidence, 21/02/03, p 159.

<sup>33</sup> Correspondence from the Minister for Health dated 1/04/03.

<sup>34</sup> *op. cit.* p 172.

5.20. No part of the system that is designed to protect vulnerable young people can be expected to continue to function adequately without an adolescent inpatient facility.

#### **Recommendation 4**

**5.21. The Committee recommends that the Government provide funding for a psychiatric inpatient facility for young people from the 2004-2005 budget onwards. The Committee further recommends that it be co-located with the day program and be specifically resourced to manage patients with dual diagnosis of mental health and substance abuse problems.**

### **Children and young people with intensive support needs**

5.22. Despite numerous reviews in the past three years into the needs of children and young people with intensive support needs, the Committee has received evidence that there is still a lack of effective and coordinated service provision for this highly at risk group.

5.23. These children and young people have not just one or two problems but a complex range of issues affecting their well-being and the well-being of those around them. They are the children and young people who may have a mental illness and an intellectual disability, who are also in need of care and protection at the same time as engaging in offending behaviour.

5.24. The Committee acknowledges that finding solutions for these children and young people is not an easy task. However the Committee believes that there is considerable scope for improvement in service delivery and outcomes for these young people.

5.25. The Committee notes the Government intentions in relation to this area:

The Intensive Youth Support review undertaken during 2002 researched the development of individualised and integrated 'wrap around' case management approaches. The Youth Services Program review also considered the issue of service system integration.

In addition, considerable further research and development work has been undertaken within government to increase the

effectiveness of case management at an individual and systemic level. The outcomes of the Intensive Youth Support review, the Youth Services Grants Program review, and further research work will be used as a basis for a further public discussion paper on the importance of case management approaches, including future policy development proposals.<sup>35</sup>

5.26. The Committee wonders why a further “discussion paper” is necessary or why people in the field would need convincing about the importance of case management or “wrap around” approaches.

5.27. There have been a number of reviews and papers here in the ACT on this issue as well as significant work in other jurisdictions and overseas piloting innovative approaches. It is well known that “wrap around” services are one of the best means of making a difference in these young people’s lives. For example, Wraparound Milwaukee, a service in the United States for similar kinds of youth has yielded the following results:<sup>36</sup>

- 60% decrease in the use of residential treatment;
- 80% decrease in inpatient psychiatric hospitalisation; and
- a drop in the average overall cost of care per child from more than \$5,000US/month to less than \$3,300US/month – the savings have been reinvested so that nearly double the number of young people are being helped with the same fixed child welfare/juvenile justice monies that had been allocated for youth placed in residential treatment centres.

5.28. The Committee is concerned that the solution of successive governments to these issues has been to invest in research and consultation without ever delivering and implementing a concrete plan of action.

### **Recommendation 5**

**5.29. The Committee recommends that the Government publish and implement the findings of the Intensive Youth Support review as a**

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<sup>35</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/02/03.

<sup>36</sup> Kamradt, B., (2000), ‘Wraparound Milwaukee: Aiding Youth With Mental Health Needs’, *Juvenile Justice Journal*, Volume VII, Number 1, pp 19-20.

**matter of priority and adopt a “wrap around” approach to service delivery for youth with intensive support needs.**

## **Young people engaging in sexually offending behaviour**

5.30. One subset in the group of young people with intensive support needs, who are of particular concern, are those engaging in sexually offending behaviour. The lack of coordinated care - including housing and treatment - is a critical issue for these young people as well as the community.

5.31. While some of these young people will end up in Quamby, others are being placed at Marlow Cottage. (Marlow Cottage is a designated shelter under the *Children and Young People Act 1999*.)

5.32. Child Youth and Family Agencies of the ACT (CYFAACT) and the Community Advocate raised the issue of placements at Marlow Cottage. CYFAACT reported in its submission that of the six residents accommodated at Marlow Cottage in July 2002, three were sexual offenders. Marlow Cottage is consequently unable to accept referrals of young women. It was further noted that of the six residents three had been there for over 130 days (the generally accepted length of stay is 21 days).<sup>37</sup>

5.33. What this means is that due to the nature of some of the young people placed there and their extended length of stay, Marlow is not able to operate at full capacity or to fulfil fully its role as a shelter.<sup>38</sup>

5.34. According to CYFAACT and the Community Advocate the establishment of appropriate treatment options, including residential facilities for young people who sexually offend is a priority.<sup>39</sup>

5.35. The Committee believes that young people engaging in sexually offending behaviour must be given greater priority in terms of their treatment. Quite apart from the principles of justice applying to young people – that they should be given assistance to change their behaviours - failure to do so can result in these young people becoming adult sexual

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<sup>37</sup> Submission 8, Child, Youth and Family Agencies of the ACT, p 7.

<sup>38</sup> *ibid.* p 7.

<sup>39</sup> Submission 8, Child, Youth and Family Agencies of the ACT, p 7; Submission 12, Office of the Community Advocate, p 11.

offenders. The impact on society when this occurs is well documented. Every effort should be made to prevent this from happening.

### **Recommendation 6**

**5.36. The Committee recommends that the Government investigate and report on the feasibility of a secure residential treatment facility for young people engaging in sexually offending behaviour, with specialist staffing, by March 2004.**

## **Children and young people with drug and alcohol issues/dual diagnosis**

5.37. The committee investigated the level of support available for young people with a substance abuse problem and those young people with a dual diagnosis (both mental health and substance abuse issues). As noted above, young people with a mental illness may “self medicate” through alcohol or other drugs.

5.38. The Committee heard evidence that the Government alcohol and drug program is “adult focused” and has no counsellors who specifically work with young people under the age of 18.<sup>40</sup> (Young people needing rehabilitation can however access the non Government Ted Noffs Foundation, which provides both detox and rehabilitation programs.)

5.39. The Committee notes that adults with a dual diagnosis can be case managed more effectively because the Government provides both mental health and drug and alcohol services to adults. This means there are no issues around ownership of data – databases from one sector can be crosschecked with another, and an inter-agency approach adopted.

5.40. While the Committee was pleased to hear that CAMHS and the Ted Noffs Foundation are working towards a memorandum of understanding that will enable both organisations to support each other’s work, it is concerned that the public/private split in service delivery in the case of young people could be jeopardising their treatment.

5.41. The Committee also notes that it is unlikely that this is the only area where the public/private split is impacting on outcomes for young people.

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<sup>40</sup> Transcript of evidence, 21/02/03, p 171.

## **Recommendation 7**

**5.42. The Committee recommends that the Government:**

- i. review its contractual arrangements with non-government providers of youth services to ensure data sharing across government and non-government agencies;**
- ii. develop, for all providers, a protocol for informing young people about the type of information being kept about them as well as information sharing arrangements;**
- iii. advise the Assembly of the protocols that currently exist regarding the protection of confidential or sensitive information, which prevent either the accidental or deliberate misuse of records;**
- iv. investigate and implement solutions to any information technology infrastructure and other data management issues that would prevent the effective sharing of information (e.g., incompatible software, lack of shared protocols for record keeping); and**
- v. broaden the focus of the drug and alcohol program within Community Care to include children and young people under the age of 18 years.**

5.43. On the preventative front, the Committee notes the discussion on drug and alcohol education in the report of the Standing Committee on Health ‘Looking at the health of school-age children in the ACT’ and the Committee endorses Recommendations 15 – 17 in that report.<sup>41</sup>

### **Children and young people at risk because their parents have drug and alcohol issues, mental health issues or both**

5.44. The Committee heard evidence from a number of people who were concerned about the care and protection of children of drug-affected

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<sup>41</sup> ‘Looking at the Health of school-age children in the ACT’, Report Number 4, Standing Committee on Health, April 2003, pp 40-44.

parents, particularly children under three. The Committee is also aware that similar concerns exist in relation to parents who have moderate to severe mental illnesses or a dual diagnosis.

5.45. One witness, a foster carer, with many years' experience told the Committee that he believed there is an over riding priority within Family Services to return children to drug affected parents or to other parents unable to cope.<sup>42</sup>

5.46. Another witness argued for a tightening of the legal framework surrounding child protection to ensure that drug affected parents of young children are required to participate in specific programs and to make specific progress in dealing with the issues related to their addiction that are affecting the well-being of their young child. It was proposed that child protection workers and other significant professionals needed to be empowered to intervene in cases where a person gives birth to a drug addicted baby to ensure that the mother accesses the support services necessary for the well-being of the baby. If after intensive follow up the mother demonstrates an inability to meet the needs of the child for safe and appropriate care then a decision must be made about their suitability as a parent. It was put to the Committee that it is not the right of the parent in such cases to decide whether or not they will give the baby good enough parenting – it is what we as a community say our children *will* have.<sup>43</sup>

5.47. While there are of course differences between a parent who has a mental illness and one that has drug and/or alcohol problems – the issue around getting treatment in order to be able to look after one's children arguably applies to both. For example, it may be asked what is the role of the state when it becomes aware that a parent is not staying on their medication and this is seriously compromising the care of a child.

5.48. In broad terms the argument being put to the Committee by these and other witnesses (in camera) was that there is a need to move away from what was perceived as “parents' rights” to the rights of the child to a safe and secure home, in order to act in accordance with the best interests of the child as set out in the *Children and Young People Act 1999*.

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<sup>42</sup> Transcript of evidence, 9/10/02, p 2.

<sup>43</sup> *ibid.* p 32.

5.49. This issue of determining a child's best interests and the role of Family Services in such cases is discussed in more detail in the following chapter.

5.50. The Committee also notes that the provisions of the *Children and Young People Act 1999* are being reviewed this year. Chapter 9 of this report provides further discussion of these and other issues in the context of areas of the Act that may need to be amended.

## **Children and young people experiencing or engaging in domestic violence**

5.51. Witnessing or being subject to domestic violence and/or abuse has a significant impact on the lives of children and young people.<sup>44</sup>

5.52. The Committee is concerned that there are insufficient resources devoted to dealing with the impact of domestic violence, which specifically focus on children and young people.

5.53. Like the need for a psychiatric inpatient facility for young people, this is not a new concern. The evidence to this inquiry essentially reiterates that given before numerous inquiries in the past and more recently the Select Committee Inquiry into the Status of Women in the ACT<sup>45</sup> and this Committee's Inquiry into Accommodation and Support Services for Homeless Men and their Children.

5.54. In its report on accommodation and support services for homeless men and their children, the Committee recommended that the ACT Government:

provide ongoing funding for intervention programs for boys aimed at preventing the perpetuation of domestic violence.<sup>46</sup>

5.55. The Government agreed to this recommendation and stated:

This recommendation appears to relate to the provision of intervention programs in supported accommodation services.

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<sup>44</sup> Submission 9, Domestic Violence Crisis Service.

<sup>45</sup> See for example Submission 19 to the Inquiry into the Status of Women in the ACT.

<sup>46</sup> 'Accommodation and support services for homeless men and their children', Report Number 2, Standing Committee on Community Services and Social Equity, August 2003, p 18.

A number of supported accommodation services currently, and will continue to, receive funding to provide such programs.

The additional risk factors associated with witnessing and/or experiencing domestic violence are well documented. The Needs Analysis report confirmed the occurrence of second generation homelessness in the ACT, the incidence of family violence in these circumstances is highlighted for action.

The Government will continue to ensure that front line providers are adequately informed and resourced to respond to the complex needs of these vulnerable children and young people.<sup>47</sup>

5.56. In its submission to this inquiry the Domestic Violence Crisis Service (DVCS) identified a service delivery model that would focus on two target groups:

- children who are subjected to and/or witness domestic violence, with a particular focus on boys between the ages of 8-12 years; and
- boys and young men (aged 12-18 years) who are using violence in their family relationships.

5.57. The Committee supports this model and notes that the DVCS has contact with children who are otherwise out of the system i.e., they are a unique service in terms of having access to these children and young people. DVCS crisis workers spent time with 232 children in the period from January to December 2001.<sup>48</sup>

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<sup>47</sup> ACT Government Response to 'Accommodation and support services for homeless men and their children', Report Number 2, Standing Committee on Community Services and Social Equity, authorised by the Minister for Disability, Housing and Community Services, 21 November 2002.

<sup>48</sup> Submission 9, Domestic Violence Crisis Service.

## **Recommendation 8**

**5.58. The Committee recommends that the Government provide funding from the 2004-2005 budget onwards for a dedicated position within the Domestic Violence Crisis Service that would deliver programs and outreach to children and young people who have witnessed/been subjected to domestic violence and/or who are using violence in their family relationships.**

5.59. The DVCS also raised the issue of the protection of children included in a domestic violence order. They asserted that the safety needs of children are generally not taken into account when a decision is made by the Court to revoke a domestic violence order that includes children.<sup>49</sup>

5.60. Protection Orders can be revoked if the Magistrates Court is satisfied that the order is no longer necessary, or if the applicant requests that it be revoked.<sup>50</sup> In the latter circumstance, the needs of children covered by those orders are not automatically considered because they are not the applicant.<sup>51</sup>

5.61. The DVCS proposed that this issue could be addressed by changes to the *Protection Orders Act 2001* to require consideration of the best interests of any children covered by the order in the section that deals with revoking an order. It was also suggested that in cases where children are included and a revocation application is lodged, a third party, such as the Community Advocate, should be appointed to act in the best interests of the child.<sup>52</sup>

5.62. The Committee asked the current Children's Magistrate and the ACT Law Reform Commission for their advice on the appropriateness of amending the Act to ensure that revocation cannot occur without consideration by the Court of the best interests of any children covered by the order. The Committee also sought advice on were that to occur, whether it would be necessary for there to be third party representation for any children covered by Orders when a revocation application is lodged.

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<sup>49</sup> *ibid.*

<sup>50</sup> *Protection Orders Act 2001*, Section 31 (3).

<sup>51</sup> Submission 19, Children's Magistrate, p 7.

<sup>52</sup> Submission 9, Domestic Violence Crisis Service.

5.63. Neither the Children’s Magistrate nor the ACT Law Reform Commission supported amending the Act in the manner proposed by the DVCS. In rejecting the proposal one of the key issues pointed out to the Committee was that these are civil orders and it would be inappropriate to require a party to maintain an order unwillingly.<sup>53</sup>

5.64. Instead the Children’s Magistrate suggested that it may be appropriate for there to be an obligation upon the Magistrates Court to forward automatically the matter to the OCA in these circumstances and for them to investigate and consider whether a separate order ought to be sought on behalf of the child.<sup>54</sup>

5.65. The ACT Law Reform Commission favoured the creation of a more general power that would enable the Court to order separate representation in any civil case that might impact upon the rights or welfare of children.<sup>55</sup>

5.66. The Committee notes the concerns put forward by the Children’s Magistrate and the ACT Law Reform Commission in relation to the proposed amendments by the DVCS. However it was not in a position to determine which of the two alternatives noted above may be more appropriate.

5.67. The Committee is of the view that the status quo is not adequate and believes further work is necessary to find solutions to the underlying concerns put forward by the DVCS. The Committee notes that the resolution of this issue must be consistent with the right of children under the UN Convention on the Rights of the Child to be provided with the opportunity to be heard in any judicial and administrative proceedings affecting them, either directly, or through a representative or an appropriate body (Article 12).

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<sup>53</sup> Submission 19, Children’s Magistrate, p 7; Submission 20, ACT Law Reform Commission, paragraph 39.

<sup>54</sup> Submission 19, Children’s Magistrate, p 7.

<sup>55</sup> Submission 20, ACT Law Reform Commission, paragraph 40.

## **Recommendation 9**

**5.68. The Committee recommends that the Government consult with relevant stakeholders on appropriate legislative amendments to enable the well-being of children covered by protection orders to be considered when they are to be revoked, and that the Government implement these amendments at the earliest opportunity recognising that the current situation is not acceptable.**

## **Young carers**

5.69. The Committee received a submission from CYCLOPS ACT outlining the needs of young carers but more importantly heard from young carers themselves. (The recommendations from CYCLOPS are at Appendix 5.)

5.70. The members of the Committee would like to state publicly how impressed they were by these young people and that hearing first hand what their lives were like was invaluable in terms of understanding the issues they were facing.

5.71. The Committee notes the Standing Committee on Health in its report 'Looking at the health of school-age children in the ACT' also discussed the circumstances of young carers.<sup>56</sup>

## **Recommendation 10**

**5.72. The Committee recommends that the Government address the recommendations put forward by CYCLOPS to this inquiry.**

## **Children and young people who are homeless or at risk of homelessness**

5.73. The provision of safe, secure, affordable and accessible housing affects the interests and well-being of all children and young people.

5.74. The Committee notes that 93 children (from a total of 52 families) were evicted from ACT Housing properties during the financial year 2001-2002. All but one of these families was evicted due to rental

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<sup>56</sup> 'Looking at the Health of school-age children in the ACT', Report Number 4, Standing Committee on Health, April 2003, pp 84-85.

arrears. In addition, 37 young people aged 16 - 25 were evicted from their ACT Housing – all due to rental arrears.<sup>57</sup>

5.75. According to a 2001 national census of homeless school students, 324 (or 14 out of every 1000) school children in the ACT were homeless. Only the Northern Territory and Queensland had higher rates of homelessness for school students.<sup>58</sup>

5.76. While the Committee accepts the Government's assurances that evictions are only sought as a last resort<sup>59</sup>, it is nevertheless concerned at the number of children and young people being evicted from public housing.

5.77. Evictions from public housing only lead to more hardship and a greater drain on the public dollar. This is both in the immediate term with the cost of emergency housing and the longer term via the personal impact of being homeless in terms of educational, health and other social outcomes. In short, it makes for good social and economic policy to avoid evicting families and young people.

5.78. The Executive Director of ACT Housing advised the Committee that the vast majority of families who are at risk of losing their public housing due to arrears are on statutory incomes (i.e., social security payments). It was further advised that a court ordered deduction from those social security payments could be one means of avoiding evictions. To enable this to occur this would require amendments to the Commonwealth social security legislation.<sup>60</sup>

5.79. While Committee members had mixed views about the general concept of mandatory deductions from social security payments, it believes that it can be justified in those cases where children and young people are being placed at risk of homelessness because a tenant (their parent or guardian) faces eviction. In these circumstances the state arguably has a compelling obligation to the welfare of the child/children that over rides the right of a parent/carer to have absolute access to statutory entitlements.

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<sup>57</sup> Correspondence from the Department of Disability, Housing and Community Services dated 6/02/03.

<sup>58</sup> Submission 7, ACT Shelter.

<sup>59</sup> Transcript of evidence, 27/02/03, p 230.

<sup>60</sup> *ibid.* p 241.

5.80. The Committee would therefore support a very limited measure, aimed specifically at sustaining the tenancies of families who have children that are facing eviction. Such a measure would enable mandatory deductions from social security payments following a court/tribunal process. The Committee notes that such a measure must have a built in review mechanism (e.g., after 12 months) and also be complemented with enhanced access to training geared towards improving budgeting skills.

### **Recommendation 11**

**5.81. The Committee recommends that the Government take the proposal of changing social security legislation to enable court ordered deductions to maintain tenancies of families with children who are at risk of eviction to the Housing Ministerial Council, with a view to making a combined State/Territory approach to the Commonwealth on this matter.**

5.82. The Committee notes that more broadly access to suitable and affordable public and community housing for young people over 16 years has become increasingly limited. Access to the private rental market is almost impossible for young people on youth allowance as the Canberra costs are extremely high – the shortage of rental houses as a result of January’s bushfires has only exacerbated the situation.

5.83. Table 1 provides a snapshot of the number of young people under 25 years on the ACT Housing waiting list. Of note:

- 145 young people are in the category “EAC1” – these are young people who are deemed as either homeless, at risk of homelessness or in supported accommodation.
  - Of those young people, 31 are less than 18 years old.
- Approximately 65% of young people waiting for public housing are young women.

5.82. Extremely limited housing options for young people, a lack of crisis accommodation in the Belconnen region, combined with evictions from public housing continue to add to the already significant pressure facing refugees. In short, more young people are requiring emergency accommodation in refuges, and these young people generally have highly complex needs. They are homeless, possibly affected by drugs, they may have been abused and they often have a mental illness.

5.84. Staffing resources are scarce in refuges.<sup>61</sup> For example there is usually only one staff member on duty over night that may have to cope with 5 clients – all with either mental health or drug and alcohol issues (or both). Staff usually also only receive ad hoc training. The picture then is of staff who are overworked and under resourced. It is little wonder then that so many young people go in and out of refuges because there is such limited capacity to work with clients towards resolving the underlying issues contributing to their homelessness.

5.85. There is a critical need to fix the system so that young people get the help they need once they access a supported accommodation service and are then supported with appropriate outreach once they exit the service.

### **Recommendation 12**

**5.86. In relation to the youth supported accommodation sector, the Committee recommends that the Homelessness Strategy provide for:**

- i. additional services in the Belconnen region;**
- ii. separate funding for outreach in services;**
- iii. the development of, and funding for participation in, a structured training program for workers in the sector; and**
- iv. a new proposal on a youth night shelter for consultation with stakeholders.**

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<sup>61</sup> See for example the Youth Coalition of the ACT Submission to the ACT Budget 2003-04, <http://www.youthcoalition.net/publications/YCBS03-04.pdf>, p 83.

**Table 1: Breakdown of youth on ACT Housing waiting list  
as at 11am on 28 February 2003**

*Breakdown of youth on ACT Housing waiting list as at 11am on 28 February 2003*

<i>Wait list category type</i>	<i>Less than 16 years old</i>		<i>From 16 years to less than 18 years old</i>		<i>From 18 years to less than 20 years old</i>		<i>From 20 years to less than 23 years old</i>		<i>From 23 years to less than 25 years old</i>		<i>Total of all less than 25 years old</i>		
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>
<i>EAC1</i>	1	0	11	19	12	19	14	33	16	20	54	91	145
<i>EAC2</i>	0	0	0	1	5	7	6	33	4	14	15	55	70
<i>SAC3</i>	0	0	11	13	33	56	84	114	48	74	176	257	433
<i>SAC4</i>	0	0	1	0	3	14	14	42	11	26	29	82	111
<i>Total</i>	1	0	23	33	53	96	118	222	79	134	274	485	759



## **6. How well is the government protecting and promoting the rights, interests and well-being of children in care?**

6.1. Perhaps the most contentious issue brought before this inquiry has been the operation of Family Services with regard to the care and protection of children.

6.2. The Committee would like to state clearly that the discussion that follows is in no way intended to be a criticism of the front line workers in this field. The Committee appreciates that these workers are often under considerable pressure and it can be assumed that they are generally doing the best that they can in the circumstances.

6.3. The Committee's concerns are focused on the decisions of the senior managers and the policy/program framework of Family Services i.e., the decision makers creating the environment in which the day-to-day work of Family Services takes place.

6.4. In considering these matters the Committee believes that:

1. the intervention of the state in anyone's life is a very serious matter.
  - Paradoxically it usually involves the loss of some of an individual's rights and responsibilities in order to protect that individual or the community.
2. in a democratic society great care must be taken when these rights and responsibilities are removed. When it does occur there must be a system of checks and balances to ensure that it is only done in appropriate circumstances.
  - An example of such "checks and balances" is when the state wishes to place someone under an involuntary detention order because of a mental illness. They must put the case for this intervention before an independent tribunal. At the hearings the OCA has a role in ensuring that the views of the person concerned are clearly explained to the tribunal as well as to provide a "best interests" perspective to the tribunal.
3. the Committee is of the view that when the state intervenes in any respect, the principle governing appropriate action is not simply

one of “do no harm”, but rather that any intervention should result in a better outcome for the person concerned. If not, the intervention should not occur.

6.5. In assessing the evidence brought forward regarding Family Services, the Committee notes that:

- it was advised in February of this year that Family Services was “engaged in a significant Re-Focus process to enhance service delivery” which included the themes of “improvement in case management and service provision to children and young people in care”, “partnerships/ collaboration” and “staffing”.<sup>62</sup> The majority of submissions to the inquiry were received in 2002;
- inevitably, no one came forward to say that they have had positive experiences in a care and protection matter with Family Services – it is the nature of these inquiries that generally only those who have had negative experiences come forward;
- in relation to people’s individual experiences, the Committee acknowledges that it is only ever hearing one side of the story and is not in a position to come to purely objective conclusions about Family Services based on any one individual experience; and
- A balanced assessment of the evidence necessarily involves hearing from a diverse group of stakeholders including Family Services, the legal profession, advocacy and support groups as well as individuals who have experienced the system. Most of this evidence is on the public record. However because of the nature of the issues concerned, some evidence was taken in camera or deemed confidential.

6.6. Lastly, the Committee notes the role and impact of the care and protections system was only one of five terms of reference for this inquiry. Other jurisdictions have had Royal Commissions or independent reviews just on care and protection matters. South Australia, for example, has recently completed an independent Review of Child Protection chaired by Ms Robyn Layton QC.<sup>63</sup> The final report includes a State

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<sup>62</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/02/03.

<sup>63</sup> The Report of the Review of Child Protection in South Australia entitled ‘Our Best Investment: A State Plan to Protect and Advance the Interests of Children’ produced

Plan, based on best practice and evidence, to assist the South Australian Government to address more effectively the prevention of child abuse and neglect in the community and ensure improved outcomes for those children and young people who have been abused and neglected, and their families.

6.7. The focus on these issues across Australia in recent years illustrates two important points. Firstly, these issues are not confined to any one jurisdiction - they are systemic in the broadest sense and secondly, the issues raise matters of grave concern, which warrant both close examination and then action by governments.

6.8. This Chapter discusses the key concerns brought to the Committee's attention under a number of sub-headings and in the 'Where to from here' section of this Chapter, the Committee makes a number of recommendations for change. Readers should note that the Chapter on whether or not the ACT needs a commission for children and young people also considers the broader issue of the adequacy of oversight mechanisms for decisions being made for or about children – including those by Family Services.

### **When to act? – The operation of the “best interests” principle in care and protection cases**

6.9. Foster carers and relatives of children and young people at risk expressed a high level of concern about what they perceived as an over emphasis on the rights of parents to maintain custody of their children at the expense of the safety and long term well-being of the child. It was put to the Committee on more than one occasion that it was difficult to see how the “best interests” principle was properly being applied.

6.10. It was clear to the Committee that at times there may be competing imperatives for permanency and stability (being provided in a care arrangement) versus making every effort to reunite children with their biological parents. Equally the desire for permanency and stability can see children remain with their biological parents when other “best interests” considerations might see them in substitute care.

6.11. The Community Advocate expressed this dilemma well in saying:

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by Ms Robyn Layton QC, was released on 26/03/03. See <http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp> for more information.

Where we, as a concerned community, draw the line between leaving children with their parents and removing them for safety is an incredibly complicated and vexed issue. It is a judgment that needs to be formed according to very rigorous and comprehensive standards and decision-making principles, and it is of course an area where people will make a judgment that will, in hindsight, be open to criticism.<sup>64</sup>

6.12. It is also a judgement that is made in the context of research indicating poor outcomes for children and young people who are removed from their families. The Community Advocate advised the Committee that:

my understanding of the research is that we cannot feel very confident about removing children and placing them in alternative care and hoping that their lives will get better.<sup>65</sup>

6.13. The *Children and Young People Act 1999* does not “define” best interests, but provides guidance as to the sorts of things that should be considered in drawing conclusions about the best interests of a child.

6.14. Given the level of concern about what constitutes a child’s best interests the Committee sought advice from the Children’s Court Magistrate and the ACT Law Reform Commission about whether or not the concept of “best interests” ought to be more clearly defined in the Act, or at the very least, whether the issues which are to be taken into account in determining the best interests of the child should be prioritised.

6.15. Neither the Children’s Magistrate nor the ACT Law Reform Commission was of the view that such amendments would be either practical or lead to better outcomes.<sup>66</sup>

Suggested reforms sometimes seem to be predicated upon the assumption that a balancing exercise of the kind referred to earlier would be enhanced by the adoption of what might be described as an ordinal ranking of priorities, with one principle always having priority over another. The problem with this approach is that it fails to take into account that the weight that should properly be given to particular principles will vary according to the circumstances of a particular case...

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<sup>64</sup> Transcript of evidence, 27/02/03, p 211.

<sup>65</sup> *ibid.* p 212.

<sup>66</sup> Submission 19, Children’s Magistrate, p 5 & Submission 20, ACT Law Reform Commission, paragraphs 12-20.

For example, the evidence in one case may reveal that, having regard to the child's age and the nature of competing emotional attachments, removing him or her from a custodial parent would be unlikely to cause any lasting emotional distress. In another case, the evidence might reveal that the emotional attachment to the custodial parent is so profoundly important to the child's emotional security that its abrupt severance would create a substantial risk of causing real psychological harm. In each case, the relevant factor would be the desirability of maintaining the parent/child relationship but the weight of that factor would obviously be much greater in the second case than in the first. The fact that the weight that should properly be given to a single factor may vary so greatly from one case to another makes it difficult, if not impossible, to envisage any manner in which issues could be "prioritised" in a predetermined order.<sup>67</sup>

6.16. The Children's Magistrate also made the fairly fundamental point that:

For justice to be justice it must be individual. This is just as true in the Children's Court as it is in an adult court.<sup>68</sup>

6.17. If providing clearer guidance as to what should be considered with regard to the best interests of the child is not appropriate, and the best interests of children are generally served by remaining within the family unit, the question remains what more needs to be done to support the family unit to ensure that children are safe?

6.18. It is the Committee's view that adequate funding for support services and an enhanced focus on early intervention and prevention are critical. The Committee's recommendations on early intervention are contained in Chapter 9 of the Report.

6.19. Lastly, in relation to the issue of "best interests", the Committee has observed that there may be a fairly fundamental and common misunderstanding about the legislative basis for the removal of children from the family unit.

6.20. It is the Committee's understanding that the *Children and Young People Act 1999* only provides for the removal of children where that removal is proved to be necessary for their safety and well-being. That

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<sup>67</sup> Submission 20, ACT Law Reform Commission, paragraphs 13-14.

<sup>68</sup> Submission 19, Children's Magistrate, p 5.

another person, for example a grandparent, could provide what may be deemed as significantly “better care” is not sufficient grounds for a child’s removal.<sup>69</sup> In this sense, the threshold for action is quite high.

6.21. The Committee notes that this may not accord with community beliefs about when Family Services should take action, or the appropriateness of individual decisions made by the Children’s Court.

6.22. The Committee commends to the attention of the Government this issue of the possible mismatch between community expectations and what the law actually provides. It may be beneficial to have a community education strategy to avoid misunderstandings in this area.

## **Family Services compliance with statutory obligations**

6.23. The Committee is extremely concerned at reports Family Services has failed to comply with its obligations under the Act.

6.24. For example, the OCA in its Annual Report notes that the Chief Executive is out of compliance with the Act for not forwarding on to OCA reports of abuse and neglect about children in care.

it must be noted that, since the introduction of the Act in 2000, the Chief Executive has consistently failed to meet her statutory requirements pursuant to Section 162 – despite a number of written requests by the OCA to do so, and despite a number of commitments on behalf of the Chief Executive to do so.<sup>70</sup>

6.25. The OCA’s Annual Report also notes that the Chief Executive is not complying with the requirement to provide Annual Review Reports for all children on care and protection orders.<sup>71</sup>

Not only does it appear as if case workers (those within the regional offices of Family Services who write the Review Reports) remain either unaware or unimpressed by both statutory and policy obligations, however that the managers of these workers (who co-sign each Review Report) appear to have little capacity or will to change this situation.<sup>72</sup>

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<sup>69</sup> Transcript of evidence, 15/05/03, p 297.

<sup>70</sup> Office of the Community Advocate, Annual Report 2001-2002, p 65.

<sup>71</sup> *ibid.* p 61.

<sup>72</sup> *ibid.* p 66.

6.26. These reports are a means by which the activities of the Chief Executive are transparent and accountable to the court, children and young people, their parents and their carers, and the OCA. More importantly though, they provide the only real narrative for that period of the child's life.

6.27. It is disturbing that the OCA had to make 45 applications to the Children's Court in 2001-02 for an order that a report be provided. No less disturbing is the statement that the Chief Executive responded to just 3% of all letters written by the OCA in regard to concerns over Review Reports.<sup>73</sup>

6.28. While the Committee acknowledges that Family Services is now in the middle of a Re-Focus, and that there are some measures now in place to prevent these issues from occurring in the future, the Committee is very concerned that the situation as described above by the OCA (and other witnesses) occurred in the first place.

6.29. In the Committee's view, the fact that Family Services could operate in such a manner and be so unresponsive to the concerns of the OCA - which is the key statutory authority responsible for overseeing Family Services' actions - suggests that serious consideration needs to be given to the effectiveness of the oversight regime for Family Services.

### **Staffing/continuity of case workers**

6.30. A long standing problem in child protection is the difficulty the system has in retaining and recruiting staff.<sup>74</sup>

6.31. The Committee heard that it was common for a child to have five caseworkers over a two year period.<sup>75</sup>

6.32. The OCA, in its 2001-2002 Annual report notes that there are difficulties for Quamby staff and residents with the high turnover of case managers within Family Services and the absence of allocated Family Services Caseworkers. The MOU explicitly commits Family Services caseworkers to weekly contact with their clients while they are in Quamby - but this is not being maintained.<sup>76</sup>

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<sup>73</sup> *ibid.* pp 61 & 67.

<sup>74</sup> Transcript of evidence, 21/02/03, p 215; Correspondence from Minister for Education, Youth and Family Services dated 20/02/03.

<sup>75</sup> Transcript of evidence, 10/10/02, p 42.

<sup>76</sup> Office of the Community Advocate, Annual Report 2001-2002, p 85.

6.33. Again the Committee notes that measures to address these issues, such as amending recruitment practices, increased staff supervision and training, are being implemented as part of Family Services' Re-Focus. The impact of these measures remains to be seen.

## **Record management and record keeping**

6.34. The Committee heard evidence that there needs to be a "one file approach" for children and young people at risk.<sup>77</sup>

6.35. The Community Advocate provided the Committee with a recent example, brought to light during a coronial inquiry, of the potential impact of failing to keep accurate and coordinated records (within and across agencies).

There was information about the injuries and the risk to that child in a range of different places, including the notes of all the professionals I have just told you about. But there was no comprehensive collation of that information; there was no comprehensive overview of it; it was not all in the one file. Had it been, and had the information that was available been properly managed and properly responded to, I feel quite confident that the decision would not have been taken for that child to return home. The environment in which she had been living would have been seen to be far too dangerous to her.<sup>78</sup>

6.36. Proper record management is also important for other reasons. Accurate reporting of action taken facilitates an evidence based decision-making framework. For example, if the details (including the results) of interventions for a child are not recorded properly (i.e., accurately and in some detail), how can Family Services know what is in a child's best interests? This is especially important in an environment of outsourcing where Family Services are now several steps removed from real contact with children in care.

6.37. The Committee is also of the view that improving record keeping could assist Family Services to obtain appropriate levels of funding. By way of example, the Committee asked the Minister what counselling had actually been provided to children who had been abused and what support had been offered to their parents. The Committee's intention in asking for this information was to test claims that children who are known by

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<sup>77</sup> Transcript of evidence, 30/04/03, p 275.

<sup>78</sup> Transcript of evidence, 27/02/03, p 214.

Family Services to have been abused have difficulty accessing counselling – a concerning claim if as a community we are serious about the ongoing welfare of these children and stopping the cycle of abuse in families.

6.38. In response to this request the Minister indicated that “this information is not readily accessible without conducting a review of individual case files” and instead the Minister provided the Committee with a list of all the services that regularly receive referrals from Child Protection Services.<sup>79</sup> This suggests that there are no centralised records of purchased services – on what basis then does Family Services seek or allocate a budget for these services?

## **Substitute care**

6.39. The Committee has received evidence that there is a crisis in the ACT in relation to substitute care.

6.40. The OCA advised that the provision of substitute care services is inadequate. There are insufficient substitute care options, most of the substitute care agencies have difficulty recruiting and maintaining a sufficient pool of foster carers, and the level of financial reimbursement and support for foster carers provided is inadequate.<sup>80</sup>

6.41. More generally, a long standing problem has been finding placements for those children and young people who have challenging behaviours or who need some flexibility from potential carers. Such children and young people can also have mental health issues or an intellectual disability, or be involved in substance misuse. These are the children and young people with intensive support needs referred to earlier in Chapter 5 of this Report.

6.42. The Committee asked the Minister to provide data on the numbers of available carers as well as children and young people requiring care for the ACT over the past five years. This data was sought to assist the Committee in determining whether there is a shortfall, and if so, whether it is due to a decline in available carers, an increase in the number of children and young people requiring care, or both.

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<sup>79</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/2/03.

<sup>80</sup> Submission 12, Office of the Community Advocate, p 49.

6.43. The Minister advised the Committee that in February 2003 there were 177 authorised foster carers and 68 authorised kinship carers (a total of 245 carers). In contrast there were 493 children in at least one placement during 2001-2002. As the Minister noted, the demand for foster care outweighs the foster care resources currently available.<sup>81</sup>

## **The role of the extended family**

6.44. The Committee also heard concerns from family members about how they have been treated by Family Services in relation to children in their family who they considered at risk and had reported/or were in the care of Family Services. These concerns included:

- the failure to take seriously initial reports by members of the family that a child was at risk from abuse or neglect;
- the failure to respond to subsequent reports of abuse about a child;
- the failure to respond to reports that care orders were being breached (for example, unsupervised access instead of supervised access);
- the failure to notify all relevant parties of care proceedings or decision making processes; and
- the lack of accessible and appropriate complaints mechanisms about the outcomes of care decisions and how they were treated by Family Services.

6.45. The Committee notes that these family members generally gave evidence in camera – often because they feared retribution and a subsequent impact on the children if they were seen by Family Services to be “complaining”.

6.46. However one person did put on the public record some of her concerns. It was submitted that Family Services refused to intervene until after a second life threatening incident and then closed the case without a proper assessment and investigation – only to become involved again after the death of the child’s sibling (who had previously been subject to Family Services’ intervention).<sup>82</sup>

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<sup>81</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/2/03.

<sup>82</sup> Submission 18.

6.47. It was also submitted that Family Services had little appreciation of the importance of good communication practices, which impacts on their capacity to achieve the best outcomes for children and their families. The Committee was disturbed to hear that:<sup>83</sup>

- phone calls and correspondence would not be responded to;
- there was no one to speak to because staff were at meetings/on leave and it was not possible to speak to someone else unless it was an emergency i.e., inadequate “back up” arrangements;
- if it was an emergency, it is not possible to speak to someone – it is only possible to leave a message; and
- information gathering interviews by Family Services were conducted in an abrupt and distressing manner.

6.48. One would assume that, all things being equal, members of the extended family who have regular contact with children who are at risk/in care would be important sources of information regarding the welfare of those children. It is incongruous then that they (and indeed foster carers) should routinely have these sorts of experiences with Family Services staff.<sup>84</sup>

6.49. The Committee acknowledges that staffing deficiencies (e.g., lack of staff) would likely contribute to these sorts of problems. However the Committee is also concerned that there may exist a culture within Family Services that views members of the extended family as a hindrance rather than a valuable resource.

6.50. The Committee also notes that a concern has been raised about inequitable practices whereby one parent and their extended family appear to be treated preferentially by Family Services without any valid justification. For example, requiring both parents to attend a service but only providing financial assistance to one of them to do so, failing to keep both parents (and their families) aware of meetings and consulting them both equally, or providing flexibility to one family and not the other in relation to contact arrangements.<sup>85</sup>

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<sup>83</sup> *ibid.*

<sup>84</sup> Confidential evidence to the Committee suggests that these are not isolated or once off experiences.

<sup>85</sup> *op. cit.*

6.51. Again, all things being equal, one assumes that it is better for both parents to be involved in the life of their child. There is a real problem then when only one parent, for whatever reason, is provided with support.

## **Where to from here?**

### **Monitoring improvements**

6.52. The Committee was greatly encouraged to hear that Family Services is engaged in a Re-Focus. It also notes the confidence placed in the Director of Family Services by the OCA who regard her as a person who has acknowledged that things need to change and is committed to change. That confidence however has caveats:

...my view is that this reform agenda developed by Barbara Baikie [Director, Family Services] is a very commendable one and, if the commitment remains, if the resources are there and if her individual expert oversight is there, then I would have confidence that the reforms that are needed will occur.<sup>86</sup>

6.53. The issues that have been brought to the Committee's attention regarding the operations of Family Services are so serious that the Committee does not believe it would be appropriate to simply put down its report and assume that things will improve significantly.

6.54. While the Committee is not recommending, at this stage, an inquiry into ACT Family Services or an inquiry solely on care and protection, it does believe it is necessary for the Government to report back to the community on the implementation of the Committee's recommendations, as well as progress on Family Services' Re-Focus agenda, within a set period of time.

6.55. The Committee expects the Government to respond to this report in the November 2003 sitting period. Having reviewed the Government's response, the Committee intends to seek regular updates, to the Assembly, on the implementation of the recommendations.

### **Meaningful reporting – developing appropriate performance indicators**

6.56. During the inquiry, in the course of seeking information from the Minister about Family Services, it became apparent to the Committee that

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<sup>86</sup> Transcript of evidence, 27/02/03, p 214.

important information is not being recorded appropriately. This ranges from basic information about the rates of staff turnover (which the Committee considers important to know in order to measure the efficacy of new measures to enhance staff retention) to the Annual Review Reports for children in care, which are mentioned above.

6.57. Information that is not recorded properly can obviously not be reported on (i.e., there is a transparency and accountability issue), nor can it be used to evaluate the efficacy of measures being implemented. The Committee views this as a serious problem that needs to be addressed.

6.58. The Committee notes that in the 2003-04 Budget, significant new funding was made available to improve the assessment, intervention and case management of children and young people at risk of abuse and neglect. This is to occur through the implementation of a centralised intake system, improved data collection standards and strengthened quality assurance mechanisms within child protection services.<sup>87</sup>

6.59. The Committee is of the view however that what is also needed are improved performance indicators in the Annual Report i.e., Family Services needs to report in a more meaningful way to the community and the Assembly about both the nature and efficacy of its programs. As one organisation put it:

Data needs to be made available which provides a clear indication of trends and the effectiveness of system practices. At this stage there seems to be little understanding of the overall protection system itself, other than fragmented pieces of knowledge.<sup>88</sup>

6.60. The Committee also heard evidence that the Department is “strapped financially”.<sup>89</sup> The Committee believes that to ensure adequate levels of funding it is in Family Services’ best interests to develop a better reporting framework.

6.61. While the Committee would not presume to provide a definitive list of what those performance indicators should be – this would require consultation between Family Services and key stakeholders such as the OCA, CREATE and CYFAACT - it does believe that it would be useful to include some of the performance indicators that are already used for

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<sup>87</sup> Paper Number 3 – Budget Overview, ACT Budget 2003-2004, p 175.

<sup>88</sup> Submission 4, Woden Community Services.

<sup>89</sup> Transcript of evidence, 30/04/03, p 275.

the Productivity Commission's annual report on government services (e.g., the re-abuse rate, continuity of case workers/managers and substantiation rate after a decision not to substantiate). The Committee believes there should also be measures indicating compliance with statutory obligations and client satisfaction.

6.62. It may also be useful to report rates of staff turnover, the number of authorised foster and kinship carers and average weekly payments to carers.

### **Recommendation 13**

**6.63. The Committee recommends that the Government consult with key stakeholders regarding the adequacy of existing performance measures for care and protection services with a view to amended measures for the 2003-2004 Annual Report.**

### **Improving substitute care**

6.64. The Committee believes that one of the immediate solutions to the crisis in substitute care is addressing the inadequate rates of remuneration for foster and kinship carers. Potential carers should not be dissuaded from becoming carers because of the cost.

6.65. For at least the past six months, Family Services has been reviewing foster care subsidies with the Committee being advised that progress on this issue had been delayed due to the involvement of staff in the bushfire recovery effort.<sup>90</sup>

6.66. The Committee is firmly of the view that carers need to be paid more as a basic subsidy, particularly when one takes into account recent estimates indicating the costs of raising children in care are on average 52% higher than the costs of children not in care.<sup>91</sup>

6.67. The system of payments to carers must take into account:

- *annual* changes to the cost of living (e.g., indexing the subsidy to the CPI);

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<sup>90</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/02/03.

<sup>91</sup> McHugh, M., (2002), The Costs of Caring: A Study of Appropriate Foster Care Payments for Stable and Adequate Out of Home Care in Australia, Executive Summary, [http://www.fcaact.org.au/costs\\_caring\\_2.html](http://www.fcaact.org.au/costs_caring_2.html) accessed 16 July 2003.

- insurance costs for carers;
- the differential costs of children according to their age and complexity;
- a realistic allowance (rather than contingency payments) for the participation of children in care in normal “life” activities (e.g., adequate funding for the child to purchase birthday presents to maintain links with the birth family, to go on holidays with their carers and participate in sporting/recreational programs); and
- the *assumed* need for payments for professional services, such as counselling or tutoring (i.e., a presumption that children in care are likely to require additional supports rather than payment on a “contingency” basis).

6.68. While it is important that there is proper accountability for public money, the Committee believes that no one in the broader community would wish to see carers having to come “begging” to Family Services for these sorts of payments. The system needs to be resourced to minimise the number of “contingency payments” and instead look at providing realistic allowances. Where contingency payments are appropriate, the system needs to provide for prompt assessment and payment of claims.

6.69. Increased remuneration alone, however, will not solve the crisis. It is clear that carers need access to more support and training.

6.70. The Committee supports registration and accreditation of carers as a means to facilitate ongoing training and support and as a quality safeguard for the welfare of children and young people in care. Training should be:

- coordinated and provided by Family Services who are the body with statutory responsibility for children and young people in care;
- accessible – child care needs to be available;
- flexible – for example incorporating a range of modes such as distance learning, small groups, videos, workbooks;
- ongoing – with regular training throughout the year (i.e., a philosophy of continuous learning); and

- affordable – carers should not be out of pocket for participating in training.

6.71. In relation to the general support of carers, the Committee is strongly of the view that respite care needs to be a “given” for carers. All carers need access to respite care and some carers, depending on the special needs of the child in care, may need significantly more respite care than others.

#### **Recommendation 14**

**6.72. The Committee recommends that in relation to foster and kinship carers the Government:**

- i. increase the level of the basic subsidy by December 2003;**
- ii. adopt a system of payments as outlined in Chapter 6 of this Report by December 2003;**
- iii. guarantee foster carers access to respite care;**
- iv. develop, with stakeholders, a training program for carers consistent with the principles outlined in Chapter 6 of this Report by March 2004; and**
- v. develop an accreditation process for carers as soon as possible.**

6.73. The Committee would also like to note its perception that the relationship of Family Services with substitute care agencies and carers is fairly poor. For example, evidence from carers and the agencies suggests that Family Services routinely make significant decisions without consultation.<sup>92</sup> This practice, of excluding those who have to implement the outcomes of decisions from the decision making process, is dangerous in terms of the potentially poor outcomes for the children concerned, as well as extremely damaging to the ongoing relationship between Family Services and carers.

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<sup>92</sup> Submission 8, Child, Youth and Family Agencies of the ACT, pp 4-6.

6.74. The Government has indicated its intention to conduct a review of outsourcing arrangements in the second half of 2003.<sup>93</sup> This provides an opportunity for an honest appraisal of what is and isn't working and the chance to breathe new life in what appear to be extremely strained relationships – relationships that are critical to the welfare of some of our most vulnerable children.

6.75. The Committee does not wish to pre-empt the outcomes of this review but believes there are a number of areas that should be considered as part of the review.

### **Recommendation 15**

**6.76. The Committee recommends that the Government consider, as part of the review into outsourcing arrangements for substitute care:**

- i. the need for Family Services staff to undertake training on working with volunteers;**
- ii. the need for Family Services staff, care agencies and carers to *regularly* receive training and have discussions on the provisions in the Act and how this translates into respective roles and responsibilities; and**
- iii. the need for all parties (i.e., care agencies and the children if appropriate) to participate in case management conferences.**

6.77. Another facet of substitute care that has already been touched on in this Report, and which requires attention, are the Annual Review Reports for children in care. The Act requires the Chief Executive to provide an annual review report to a child or young person, parents, carer, the Community Advocate and the Court when a child or young person is on a final care and protection order.

6.78. It was noted earlier that the OCA has been highly critical of Family Services for its approach to Annual Review Reports for children in care. The Committee is of the view that this annual review process provides an ideal opportunity for children (as appropriate), carers, agencies, birth

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<sup>93</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/2/03.

families and Family Services to all come together to review how substitute care arrangements are working in a particular case.

6.79. The Committee does not believe this would be onerous requirement given the importance of bringing together all the key parties to review what has happened over the year, and the presumption that to do so would be considered integral to case management anyway. This is in fact meant to occur, according to Family Services own manual, but anecdotal evidence suggests that it is not.<sup>94</sup> As a result, the OCA notes that:

...it continues to be unclear what processes exist to allow children and young people, parents, and carers to either respond to Review Reports, or to seek clarity on a particular issue or to rectify mistakes before the Review Report is filed with court as 'a true and accurate record'.<sup>95</sup>

6.80. In light of the above it may be necessary to make such consultation a statutory requirement, compliance of which must itself be reported on.

6.81. To enhance the quality and meaningfulness of these Reports, the Committee believes that a template should be developed that assists Family Services in drafting the Reports and ensures that detailed and specific information is recorded. This template (or a revision of any current one) should be developed with representatives of key stakeholder groups such as the OCA, CREATE, CYFAACT and its affiliates.

6.82. Finally the Committee notes that in the recent Review Report into the Operation of the *Children and Young People Act 1999* it was suggested that the Act be amended to enable these Reports to be prepared on the anniversary of the last variation of the order.<sup>96</sup> The Committee does not support such an amendment. This could lead to a situation where well over 12 months has passed before an "annual" report is prepared. For example, if a final order were made in June 2003, with an interim variation put in place from September 2003 (which is then a finalised variation in March 2004), assuming no further variations are made, an annual review report would not be required until March 2005. That would be 20 months since the original final order.

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<sup>94</sup> Office of the Community Advocate, Annual Report 2001-2002, p 67.

<sup>95</sup> *ibid.* p 67.

<sup>96</sup> Review Report of the *Children and Young People Act 1999*, tabled in the ACT Legislative Assembly, June 2003, by authority of the Minister for Education, Youth and Family Services.

## **Recommendation 16**

**6.83. The Committee recommends that the Government:**

- i. develop, with key stakeholders, a template for Annual Review Reports by March 2004; and**
- ii. amend the Act to require Family Services to convene a meeting of the parents, carers, carer agency and child (if age appropriate) to discuss a draft of the Annual Review Report prior to its finalisation.**

**6.84. Further, the Committee does not support amending the Act to allow Annual Review Reports to be prepared on the anniversary of the last variation of the order.**

### **General oversight of Family Services**

6.85. The issues brought forward during this Inquiry about Family Services and care and protection cases were chiefly about:

- the lack of external review of decisions (i.e., the capacity to review whether the best interests of children are being put first - *case outcomes*); and
- the treatment by the department of individuals (e.g., how children, foster carers, extended family are treated within the departmental *processes*).

6.86. Accordingly, a critical issue for the Committee has been determining whether there are in fact sufficient mechanisms currently in place which oversee Family Services' decision making processes and practices in care and protection cases.

#### **External review of case outcomes**

6.87. To a certain extent, the OCA undertakes the role of reviewing case outcomes. They are unique in being the only body vested with the power to keep a "watching brief" on Family Services and children and young people at risk - although others, such as the Children's Court, may play a part in the process of review. As the Children's Magistrate noted:

...it is not easy for the court to maintain any supervisory role of Family Services. The court is dependent upon Family Services or some other party bringing an application before the court for the court to adjudicate upon.

If the children's representative, or the child—him or herself— or some other party to the proceedings raises in the proceedings before me some alleged deficiency in the way Family Services has gone about conducting its responsibilities, I have no difficulty investigating that and calling upon Family Services to explain what they have done. As I have said, I am dependent upon somebody bringing the issue to my attention.<sup>97</sup>

6.88. Apart from individual stakeholders, that “somebody” is the OCA. The OCA conducts some individual advocacy where it believes that the best interests of a child or young person in care are not being met and where, as a result, they are at imminent and serious risk. However as noted earlier, after many years of individual advocacy - which has resulted in little systemic change within Family Services – the OCA is now more focused on systemic advocacy in an attempt to reduce the amount of individual advocacy that is required.

6.89. The real question is how successful is the OCA in providing the “external review”/monitoring function for the system that protects children and young people at risk?

6.90. The Committee is of the view that for external review/monitoring mechanisms to work, the body vested with this role needs to have sufficient power to affect real outcomes.

6.91. The Committee notes that while the OCA has some power – for example the power to “name and shame” in its Annual Report or to become a party to a proceeding – the evidence provided to the Committee suggests that this power is not sufficient. The ongoing disregard by Government for the serious concerns raised by the OCA (as outlined in their Annual Report) is particularly telling.

6.92. The Chair of the ACT Law Reform Commission noted that:

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<sup>97</sup> Transcript of evidence, 15/05/03, p 301.

sometimes the way in which things are done needs to be addressed and that one simply needs to try and look for better standards than one is getting at the moment.<sup>98</sup>

6.93. In light of all the evidence about Family Services and the care and protection system more broadly, the Committee believes that it would be appropriate for an independent body to be responsible for developing, and monitoring the compliance with, standards applying to all stakeholders involved in the care and protection system.

6.94. There is an argument that OCA should be that independent body and its legislation amended to give it these additional responsibilities and powers i.e., a formalised role in systemic advocacy through a standards role, as well as the capacity for individual advocacy. As noted earlier, the OCA is the only body in the ACT that currently has the skills and expertise in this area and it is independent from Government. There would also be cost savings associated with enhancing an existing agency versus establishing a new one.

6.95. While enhancing the OCA's role is one option, the Committee believes that this function should be considered as part of the integral functions of a commission for children and young people in the ACT. The Committee is of the view that although enhancing the OCA's current role might address some of the issues, the status and focus provided by a dedicated commission for children and young people would more likely achieve results. A model for such a commission in the ACT is presented in Chapter 10.

### Complaints about departmental processes

6.96. The other major area of concern that has been raised regarding Family Services during this inquiry is the way individuals are treated by the department. In particular, foster carers and members of the extended family have provided evidence to the Committee that Family Services routinely fails to take seriously their concerns, treat them with respect or involve them appropriately in decision making.<sup>99</sup>

6.97. Sometimes this treatment and lack of good process compromises the best interests of the child – in which case the OCA may step in as an advocate for the child. However there are many instances where it is not

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<sup>98</sup> Transcript of evidence, 30/04/03, p 272.

<sup>99</sup> See also letters to the editor of the Canberra Chronicle 'Fostering debate' 15/07/03 and 'Carers not valued' 22/07/03.

so much a case of it affecting the child as affecting the carers of the child. Many of these people feel they have no means of redress within the system.

6.98. Many of the sorts of complaints that have been raised with the Committee appear to be the sorts of complaints that need to be resolved quickly. Common sense indicates that these sorts of issues should not go through a formal external complaints process that will, by virtue of the need to be impartial, potentially take a considerable amount of time to resolve. These sorts of complaints should be able to be resolved through proper *internal* complaints procedures.

6.99. The Committee is of the view that what is desperately needed in the first instance is an improved complaints policy within Family Services that is transparent about the rights and responsibilities of all parties and one which is also responsive. i.e., it allows a person to move up the chain of command if more junior officers fail, or are unable to resolve issues. A revised complaints policy must also be accessible i.e., the sort of thing all new carers are given as a matter of course and included in any basic training for carers, staff working in Family Services and care agencies. i.e., there is shared knowledge about the policy.

6.100. To revise the current complaints policy, the Committee believes it is necessary for Family Services and all relevant stakeholders such as the OCA, Foster Carer's Association, care agencies and other interested parties to come together. Given that the subject for discussion is Family Services' practices, it would be preferable to draw on an independent facilitator (that all parties are happy with) to ensure that the final policy is "owned" by all parties.

## **Recommendation 17**

**6.101. The Committee recommends that the Government develop a new internal complaints policy for Family Services as outlined in Chapter 6 of this Report by March 2004.**

6.102. While establishing better processes within Family Services is an important first step, the Committee is also of the view that there needs to be an *external* complaints body equipped to investigate complaints that can not be resolved internally.

6.103. The only agency currently within the ACT with the “jurisdiction” to investigate these complaints is the Ombudsman’s Office. (The Community and Health Care Complaints Commissioner can only investigate complaints about services provided to the aged, people with a disability and their carers and consumers of health services.)

6.104. It is not clear to the Committee that the Ombudsman’s Office considers investigating complaints about Family Services as “core business” or that it necessarily has the skills and expertise in care and protection / community services that would enable it to carry out this function effectively.

6.105. The Committee is therefore of the view that there is in fact a gap that needs to be filled for the care and protection system to work effectively. The Committee believes that it would be appropriate for this role of complaints investigation to be given to a commission for children and young people, and that it would complement a standards setting/monitoring role. The Committee notes that complaints could be about process as well as “outcomes” related. In this way while systemic issues are being addressed through improved standards there is still a safeguard in relation to individual cases.

6.106. Recommendations on a commission with these functions are contained in Chapter 10.



## 7. Children and young people involved in the justice system

7.1. Children and young people are both victims and perpetrators of crimes and have a wide range of experiences within the justice system.

7.2. Getting a broad picture of young people's involvement in the ACT, compared with other jurisdictions, is quite difficult because there is a high volatility in statistics for Canberra because of the much lower population.<sup>100</sup> For example, one or two additional young people being incarcerated can lead to dramatic increase in the rate of incarceration at any given point in time. Accordingly care does need to be taken in drawing comparisons with rates in other jurisdictions.

7.3. In terms of juvenile crime, in 2001-2002, 51% of all people charged in the ACT were aged between 12-25 years old and this broadly mirrors national trends.<sup>101</sup> Rates of juvenile detention in the ACT are also generally similar to the national average.<sup>102</sup>

7.4. Like other jurisdictions, indigenous youth are grossly over represented in justice crime statistics for the ACT. For example, an evaluation of ethnicity of young people on remand and committals in the ACT showed that approximately one in five (i.e., 20%) were identified as Aboriginal.<sup>103</sup> To put this in perspective – indigenous people constitute less than 1% of the Canberra population.<sup>104</sup>

7.5. While the above level of juvenile crime may be disturbing to some, the other side of the equation is that young people are also usually the *victims* of crime and violence within the community.<sup>105</sup> For example in 2000, there were approximately 700 assaults against people aged between 10 and 24 reported to the police. This is over 40% of the total reports to the police.<sup>106</sup>

7.6. While the ACT may be considered fairly “average” compared to other jurisdictions, there are areas where aspects of the justice system

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<sup>100</sup> ACT Chief Minister's Department, (2002), *Youth in the ACT- A social and demographic profile*, ACT, p 136.

<sup>101</sup> Submission 17, ACT Policing, p 2.

<sup>102</sup> *op. cit.* p 136.

<sup>103</sup> *ibid.* pp 137-8.

<sup>104</sup> *ibid.* p 142.

<sup>105</sup> *ibid.* p 141.

<sup>106</sup> *ibid.* p 127.

could and should be improved for children and young people. Some of these areas are discussed below. They are:

- mainstreaming psychological assessments for juvenile offenders;
- improving Quamby – the juvenile detention centre; and
- improving the management and prosecution of child abuse cases.

7.7. Other areas that impact on children and young people’s experience of the justice system which were brought to the Committee’s attention, such as the quality of legal representation, are addressed in Chapter 9. The Committee also notes that in its upcoming Inquiry into Support Services for Families of People in Custody, one of the terms of reference is:

The availability and effectiveness of services to assist young people in the transition from Quamby into the community with particular emphasis on:

- co-ordination and co-operation between the government and non-government sectors in the provision of relevant programs; and
- co-ordination and co-operation within and between the government agencies in the provision of relevant programs.

7.8. The Committee therefore expects to continue investigating, in greater detail, a number of aspects of juvenile justice during that inquiry.

## **Psychological assessments for juvenile offenders**

7.9. The Committee understands that unless a Magistrate orders a Forensic Assessment through the Mental Health Tribunal, only young people who are currently being case managed by CAMHS are psychologically assessed prior to appearing before the Court. The Committee has heard concerns that this can impact on the administration of justice for those young people with perhaps more mild to moderate social and behavioural issues who are not assessed, and whose full circumstances are therefore not then known to the Court.<sup>107</sup>

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<sup>107</sup> Submission 5, Child and Adolescent Mental Health Service.

7.10. Conducting assessments on young people appearing before the Court enables all those involved in the process to be fully aware of any underlying conditions or circumstances that may be contributing to offending behaviour. As such it provides one of the key mechanisms for preventing ongoing contact with the juvenile justice system.

The important consideration is that they are dedicated units directly attached to the Childrens Court able to provide continuity for children in need in respect of assessments and referrals. Such continuity is vital to understanding what forms of intervention have been attempted in individual cases, which have succeeded and which failed.<sup>108</sup>

7.11. If as a community we are serious about restorative justice and upholding the rights of children as provided by the UN Convention on the Rights of the Child (see in particular Article 40 quoted in Chapter 1 of this Report), then it is important that the current court assessment system is reviewed to ensure that all young people before the Court have timely and consistent access to these services.

### **Recommendation 18**

**7.12. The Committee recommends that the Government investigate the feasibility (including the cost) of consolidating the current resources allocated to court assessments to provide for an independent unit near to the Children's Court.**

### **Life in Quamby**

7.13. The Committee is of the view that it would not be possible to inquire into the role and impact of the administration of justice for children and young people without visiting Quamby. The Committee thanks Mr Frank Duggan, Director of Youth Services, and the staff at Quamby for allowing the Committee to visit the facility in March this year.

7.14. From that visit, a number of serious issues emerged in relation to Quamby and young people's experiences of the juvenile justice system. The Committee notes that the previous Standing Committee on Education, Community Services and Recreation explored many of these same issues in 2001 via its inquiry into the Government's response to

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<sup>108</sup> Submission 19, Children's Magistrate, p 5.

recommendations 1 and 3 of Coroner Some's inquest into a death at Quamby (Report Number 10 – August 2001).

## **The young people who should not be in Quamby**

7.15. In theory, putting young people into Quamby is an action of last resort. Section 68 (c) of the *Children and Young People Act 1999* states:

A young person may only be detained in custody for an offence (whether on arrest, in remand or under sentence) as a last resort.

7.16. The Committee was therefore extremely concerned to hear from witnesses that young people were ending up in Quamby for short stays (up to three nights) because they were considered “at risk” and there was no where else to put them.<sup>109</sup>

7.17. The Committee requested clarification from the Government on this issue<sup>110</sup> and was informed that all young people placed in Quamby in the last 12 months had committed an offence/s or were in breach of their bail. While the Committee accepts that formally this is the case, the data provided by the Government for the 2002 calendar year suggest that the story is far more complex (see Graph 1). It gives credence to the evidence that some young people end up in Quamby as a result of relatively minor criminal activities, because there is no where for the police to place them once they are picked up and assessed as at risk.

7.18. For example, the data provided by the Government indicates that in relation to the young people remanded at Quamby for one night, two nights or a weekend:

- *every one* of them was subsequently released on bail following their respective court appearances.
  - If they were not remanded for a further period was that because they were not really considered a threat to the community and alternative “secure/safe” arrangements could be found?
- 23 young people were there for theft.

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<sup>109</sup> See for example the transcript of evidence, 9/10/02, pp 15-16.

<sup>110</sup> Transcript of evidence, 21/02/03, pp 193-4; Correspondence from the Minister for Education, Youth and Family Services dated 20/02/03 & 6/04/03.

- Is theft such a serious crime that it warrants incarceration for a 13 year old for the night?
- 33 (or approximately a quarter of the young people) were there for “against justice procedures” which includes breaches of bail or failing to appear first instant warrant.
  - This category of offence is particularly troubling. Children as young as 11 years old have been placed in Quamby for the night for this offence. What does an 11 year old learn about society from such an experience? How does putting young people into Quamby for a couple of nights if they’ve breached their bail address the underlying reasons why they breached it in the first place?

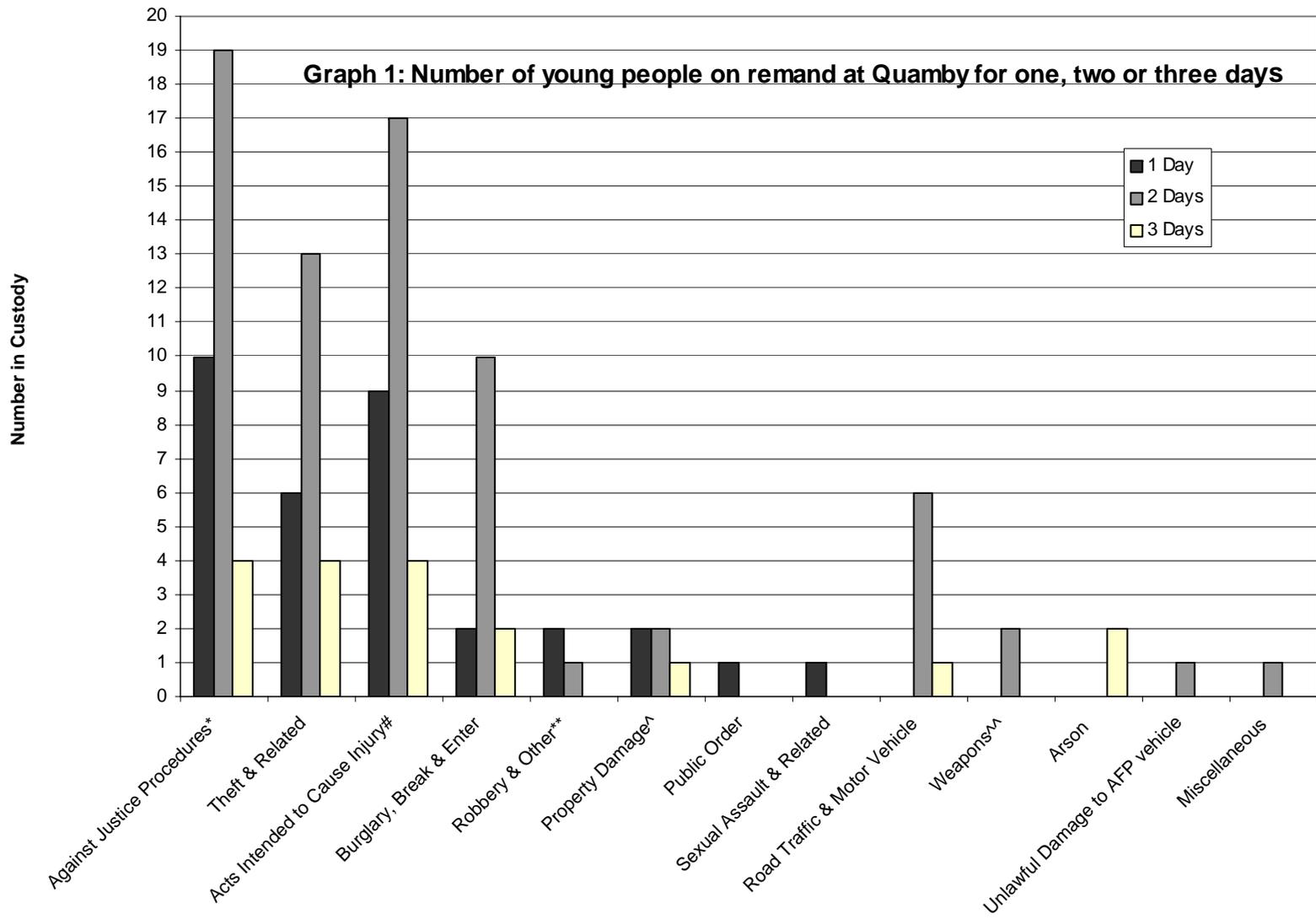
7.19. The Committee agrees with the observation from ACT Policing that:

it can be counter productive for both policing services and the community to arrest people when many offences are prompted not by an inherent criminality but by health and social factors.<sup>111</sup>

7.20. The totality of the evidence provided to the Committee suggests that the principle of utilising Quamby as a last resort is not being followed because at times there is a lack of other appropriate alternatives, such as an adolescent mental health facility. The Committee is particularly concerned that a large proportion of these young people may have acute mental health needs e.g., psychosis or severe depression which is leading to anti-social/criminal behaviour.

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<sup>111</sup> Submission 17, ACT Policing, p 6.



**Graph Key:**

\* Category includes: Against Justice Procedures/Breach of Bail; Failed to appear first instant warrant

# Category includes: Common Assault/or other

\*\* Category includes: Robbery, Extortion & Related

^ Category includes: Property Damage & Environmental Pollution

^^ Category includes: Weapons & Explosives

Note:

There appears to be a discrepancy between the table and the narrative to the table provided by the Minister in her response of 6 April 2003.

The table of information provided by the Minister which shows Days in Custody, Age on Induction, Magistrate/Police, Offence & Disposal Action results in a total of 124 instances of individuals who have committed an offence and have been remanded. Of these, 33 spent 1 night, 72 spent 2 nights, and 18 spent 3 nights.

However, according to the narrative only 28 young people were remanded for 1 night, 47 for 2 nights, and 18 for 3 nights – a total of 93 individuals.

An explanation of the differentiation in the supplied information could be that a single individual may have spent multiple occasions in remand, but regardless of multiple instances of remand was regarded as a single individual in the narrative. However this same individual may have appeared as multiple remand instances in the table.

7.21. As the Chair of the ACT Law Reform Commission asked:

...are we sufficiently focused upon the special needs of people who are psychiatrically ill and addressing them in a rational sort of way? What tends to happen is that we simply allow them to fall into the criminal justice system. We then use sentencing powers, or other provisions, that were intended to deal with people who have knowingly committed a crime. We use those as a means of trying to funnel them out for some sort of therapeutic intervention. It seems to me that, both conceptually and practically, it's a pretty poor way to approach things.<sup>112</sup>

7.22. The Committee reiterates the importance of its earlier recommendation regarding the need for a psychiatric inpatient facility for young people. In addition, the Committee is of the view that there may be a need for an alternative remand option to Quamby such as a bail hostel. Such a place could accommodate at risk young people who cannot be placed easily within a refuge or at Marlow Cottage, and if appropriately staffed, could provide an opportunity for timely and intensive intervention.

### **Recommendation 19**

**7.23. The Committee recommends that the Government investigate alternative remand options for young people and report back to the Assembly by September 2004.**

### **The impact of structural deficiencies**

7.24. The Committee observed that it is very difficult to house detainees appropriately due to structural deficiencies and the small numbers of 'types' of detainees (e.g., the number of girls at any particular point in time).

7.25. For example, currently young people first arriving at Quamby go to the same "high needs secure" section as those residents who may have been violent or are at risk and need to be placed in a secure environment. Staff at Quamby also told the Committee that it can be difficult to segregate sex offenders (who may be victimised by other residents) and girls can sometimes be placed with young sex offenders.

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<sup>112</sup> Transcript of evidence, 30/04/03, p 290.

7.26. The Committee was also extremely concerned at the “time out” room in the high needs secure section. This room has no padding on the walls or floor. This means that young people can end up running backwards and forwards hitting their heads against the cement walls.

7.27. The Committee was pleased that in the 2003-2004 capital works budget the Government has allocated \$13.2 million to upgrade Quamby.<sup>113</sup> The Committee will monitor this work to ensure that the issues noted above and in the previous Standing Committee on Education, Community Services and Recreation’s Inquiry into the Government’s Response to Recommendations 1 and 3 of Coroner Some’s Inquest into a Death at Quamby are addressed.

### **Staff retention**

7.28. In its discussions with Quamby staff, the Committee was told that officers at Quamby are often paid at lower levels than their counterparts in other areas of juvenile justice. They are also required to do shift work. It was suggested that this difference in pay and conditions results in good officers leaving Quamby to do less intensive work in other areas of juvenile justice.

7.29. The Committee believes that it is important to have high quality staff at Quamby in order to maximise the opportunity of working with young people who are incarcerated and thereby reduce the likelihood of re-offending behaviour.

### **Recommendation 20**

**7.30. The Committee recommends that the Government consult with staff at the Department of Education, Youth and Family Services regarding the appropriateness of increasing pay and condition parity across units in juvenile justice.**

### **Drug and alcohol counselling**

7.31. Many of the young people committed to Quamby have drug and alcohol issues. Some will go through detox during their incarceration.

7.32. While the Committee notes that there is some drug and alcohol counselling available at Quamby, it is not an on-site service. In contrast,

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<sup>113</sup> See 2003-04 Budget Paper No.3, p 206.

the Committee is aware that at the Belconnen Remand Centre there is a drug and alcohol service on site that works with individuals to address their drug and alcohol issues.<sup>114</sup>

7.33. The Committee is of the view that it is just as important to address the drug and alcohol issues affecting young offenders, as it is adult offenders. Failure to do so only increases the likelihood of re-offending. The Committee also notes that the provision of an onsite drug and alcohol counselling service would complement the mental health service services that it now understands are being provided onsite at Quamby.

### **Recommendation 21**

**7.34. The Committee recommends that the Government fund an onsite, daily drug and alcohol counselling service at Quamby from the 2004-2005 budget onwards.**

## **Children and young people who are victims of crime**

### **Prosecution of child abuse cases**

7.35. Many commentators are of the view that the justice system is failing when it comes to prosecuting and convicting people who abuse children and young people. While it is important that there is sufficient emphasis on preventing abuse, a system that does not also punish those who abuse children and thereby prevent further abuse is inherently flawed.

7.36. During the previous Assembly, the Standing Committee on Justice and Community Safety recommended “an Assembly committee inquiry into and report on the reasons for the low conviction rates for those accused of child sexual assault in the ACT.”<sup>115</sup>

7.37. In making this recommendation the Committee on Justice and Community Safety noted:

The committee has been concerned for some time about problems related to child sexual assault prosecutions. *The Canberra Times* recently reported that ACT courts have not made any convictions for child sexual assault cases in the last

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<sup>114</sup> Transcript of evidence, 21/02/03, p 174.

<sup>115</sup> ‘The Commission for Integrity in Government Bill 1999’, Report Number 18 of the Standing Committee on Justice and Community Safety, August 2001, p 8.

year. In the last year, the Director of Public Prosecutions has failed to obtain a conviction for seven consecutive cases.

The committee is concerned that this apparent low conviction rate may be attributable to problems with either the practices of the Australian Federal Police or with problems with the current laws and procedures.

The committee urges the Government to investigate the reasons for the low conviction rates for those accused of child sexual assault.

It would also be appropriate for an Assembly committee to investigate this matter in the next Assembly in consultation with the police, advocates for child complainants, Canberra Rape Crisis, the Director of Public Prosecutions, magistrates and judges and lawyers. It would be useful if such an inquiry compared ACT conviction rates with those in other jurisdictions to help identify problems peculiar to the ACT.<sup>116</sup>

7.38. The Committee notes that the AFP and the Director of Public Prosecutions have received funding from the Government in the 2003-2004 budget to develop a program of action for implementing best practice management of child assault and sexual assault cases in the ACT. The Committee will monitor the outcomes of this project with great interest.

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<sup>116</sup> *ibid.* p 16.



## **8. Children and young people in both the care and protection and juvenile justice systems**

8.1. Concerns about the provision of co-ordinated intervention and support, to clients of both Family Services and Youth Justice Services, have been raised in a number of inquiries over the last few years. They have been raised again during this inquiry.

8.2. For example, the Office of the Community Advocate (OCA) reported that even though Family Services and Youth Justice Services are now both located within the Department of Education, Youth and Family Services, there continues to appear to be an element of confusion regarding which agency is responsible for which aspects of the case management of a child or young person, who is on both a care and protection order and a youth justice order.

8.3. The OCA provided two scenarios where there is confusion about responsibility for case management.<sup>117</sup>

8.4. The first relates to a child or young person on both a residential and/or supervision order (care and protection) and a residential and/or supervision order (youth justice) - both of which allow the Chief Executive, Department of Education, Youth and Family Services, to undertake a range of case management functions relating to that child or young person. In practice that authority is delegated to officers within Family Services and Youth Justice Services with an accompanying debate regarding who makes the decisions relating to the child or young person and who pays for them. Sometimes the consequence of these debates is that no one makes the decisions and no one pays.

8.5. The second relates to confusion that often accompanies the case management of children and young people who are not on a care and protection order, but who:

- are beginning to experiment with increasing levels of criminal activity;
- are homeless or transient (at risk of becoming homeless);
- have drug and alcohol issues;

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<sup>117</sup> Submission 12, Office of the Community Advocate, pp 46-47.

- have a mental health disability;
- have an intellectual disability; and/or
- are out of, or at risk of becoming out of, the education system.

8.6. In both scenarios the OCA asserted that the primary responsibility for case management for such children and young people lies with Family Services as it does in many other circumstances.

8.7. Earlier in the Report it was noted that there are difficulties for Quamby staff and residents due to the absence of allocated Family Services caseworkers - despite an MOU explicitly committing Family Services caseworkers to weekly contact with their clients while they are in Quamby.<sup>118</sup>

8.8. Quamby staff also reported that only limited information about Family Services' clients (who enter Quamby) is given to them. An example of the impact this lack of information sharing can have is described in the following scenario:

When a girl (or anyone) comes to Quamby for the first time she has to go through a non-invasive search that includes removing her clothing. Some of these girls are known by Family Services to have been sexually abused. If Quamby officers knew this then they would be prepared for the likely re-traumatisation of the girl with the entry process. What can also happen is that the first person to turn up at Quamby to visit the girl may be the person known or suspected of abusing the girl.

8.9. The Committee understands that this lack of information sharing is partly because there are no shared databases between Family Services and Youth Services and possibly because of misplaced privacy concerns regarding information sharing within different areas of the Department of Education, Youth and Family Services.

8.10. The Committee strongly believes that if as a community we are to assist these most vulnerable children and young people then it is imperative that agencies vested with looking after their welfare work collaboratively. Achieving a collaborative approach necessitates a

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<sup>118</sup> Office of the Community Advocate, Annual Report 2001-2002, p 85.

common understanding of the issues and at the most basic level this requires enhanced infrastructure, such as shared databases.

8.11. In creating systems to share information it is important that young people are informed about how information about them is being kept and shared among agencies. Earlier in the Report the Committee has recommended that the Government develop, for all service providers including the Government, a protocol for informing young people about the type of information being kept about them as well as information sharing arrangements (see Recommendation 7).

### **Recommendation 22**

**8.12. The Committee recommends that, to improve outcomes for children and young people in both the care and protection and juvenile justice systems, the Government:**

- i. fund the establishment of an electronic database which would contain information about children and young people who are known to Family Services and/or Youth Services; and**
- ii. establish a clear protocol that children and young people in these circumstances have one caseworker or manager from Family Services.**



## **9. How to improve the rights, interests and well-being of children and young people**

9.1. The focus of this Chapter is exploring what improvement could be made to enhance the rights, interests and well-being of children and young people at the systemic or ‘framework’ level.

9.2. The key areas addressed are:

- the adequacy of current provisions in the *Children and Young People Act 1999*;
- the appropriateness of the current framework for working with children checks;
- the level of access to complaints mechanism for young people in alternative care (e.g., refuges, Quamby);
- fostering early intervention consistent with a developmental pathways approach;
- diversionary approaches to juvenile justice and care and protection matters;
- the quality of legal representation for children and young people and their right to be heard in proceedings;
- enhancing the participation of children and young people in the development of laws, policy and programs that impact on them; and
- enhancing accountability.

### **Review of the *Children and Young People Act 1999***

9.3. The Committee is aware that the *Children and Young People ACT 1999* (the Act) is currently being reviewed. The Committee recommends that as part of this review, the Government address the issues outlined below.

## Protection afforded by the Act

9.4. In November 2002, the Children’s Magistrate stated:

If I am correct in my opinion about the correct interpretation of paragraph 156(1)(a) of the Act, the consequence is that the Children’s Court has less power to protect children from a real risk of harm than the Family Court. I commend this point to the attention of the Legislative Assembly.<sup>119</sup>

9.5. The Committee was gravely concerned by the above comments made by the Children’s Magistrate. The issue the Magistrate was referring to is the standard of proof required under the *Children and Young People Act 1999* to make orders for the care and protection of a child. At question is the application of the “*Briginshaw* principles” – principles derived from a 1938 High Court case dealing with whether the standard of proof of adultery for a divorce was the criminal standard (beyond reasonable doubt) or the civil standard (balance of probabilities).<sup>120</sup>

There is an apparent tension between the application of the *Briginshaw* principles to proof of serious allegations of abuse or neglect of children and the application of the best interests principle. It is never in the best interests of a child to be placed at real risk of loss of life or the infliction of serious harm and yet it would be precisely in those cases that the court would be obliged to be most circumspect about making a finding.<sup>121</sup>

9.6. The Committee also notes the views of the Community Advocate who stated that a focus on “evidence gathering” is very different from a focus on asking “is the child safe?”

...a concern about whether something is going to hold up in court can act as a fatal distraction to child protection decision making.<sup>122</sup>

9.7. The level of protection afforded children under the Act is a serious issue and is inextricably linked to determinations about the “best interests” of a child. While the Committee acknowledges the need for

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<sup>119</sup> Order in respect of KM and XM (CE 1159 & CE 1160), 15 November 2002, paragraph 18.

<sup>120</sup> *ibid.* paragraph 9.

<sup>121</sup> *ibid.* paragraph 10.

<sup>122</sup> Transcript of evidence, 27/02/03, p 218.

reasonable levels of proof when the state intervenes in these matters, it is concerned that there may be an excessively high level of proof required which may have been an unintended consequence of the drafting. The Committee is of the view that if the law should err at all in these circumstances, it should be on the side of caution and protecting the welfare of the child.

9.8. The Committee understands that amending the Act to state clearly that these principles are not to apply to care and protection cases could remedy this situation.<sup>123</sup> Alternatively it may be appropriate to amend the Act so that it is clear that it is sufficient, in care and protection matters, for allegations to be proven on the balance of probabilities and that any evidence of significant risk must be taken into account.

### **Recommendation 23**

**9.9. The Committee recommends that the Government amend the *Children and Young People Act 1999* so that:**

- i. the evidentiary requirements for care and protection cases are not in doubt; and**
- ii. the state can act to protect children without having to prove cases beyond a reasonable doubt, but rather on the balance of probabilities.**

### **The complexity of the Act**

9.10. During the course of this inquiry the Committee has also become aware of concerns, from a range of stakeholders, regarding the complexity or lack of “usability” of the Act – particularly in relation to care and protection cases. The following comments from the Children’s Magistrate illustrate this point.

In its present form the Act makes a mockery of any concept of access to the law. If, as was the case here, qualified and experienced lawyers, including counsel briefed by the Chief Executive, were unable to readily comprehend the meaning and effect of the legislation, what hope has an unrepresented litigant or an ordinary member of the public? The Act needs

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<sup>123</sup> Submission 19, Children’s Magistrate, p 3.

urgent review with a view to simplifying and shortening it. A good start would be to avoid the “daisychain” method of drafting so prevalent in the present Act.<sup>124</sup>

9.11. The Committee notes that the Children’s Court Magistrate stated these concerns in the 2001-2002 Annual Report of the Children’s Court<sup>125</sup> and they were reiterated in his submission to this inquiry.<sup>126</sup>

9.12. The Department of Education, Youth and Family Services also provided evidence to the Committee echoing some of these concerns.

There are some practical problems: the legislation from my view is written in fairly plain English, but some of the practitioners find that it’s not an easy piece of legislation to work through. That is the opinion of our Family Services workers, who have to be guided constantly by the legislation: it is their bible and it directs the way that they operate. In that practical sense, people are finding that perhaps it’s not as easy to use as it might be. It’s not as clear in a practical sense.<sup>127</sup>

9.13. The Committee also notes that in camera evidence from carers supported the notion that members of the public had difficulty understanding the provisions within the Act, such as the basis on which action would be taken by Family Services and the rights and responsibilities, more generally, of stakeholders in care proceedings.

9.14. The Committee is of the view that while it is important to observe the separation of powers in terms of the relationship between the judiciary and the Executive, the judiciary as a key institution involved in implementing Executive policy (via legislation) must be involved in legislative review processes. The Committee therefore believes that there needs to be an active process for including the input of the Children’s Court in the review of the Act.

9.15. The Committee notes by way of example that the insights of the Children’s Magistrate shared during this inquiry have proved invaluable to the Committee’s understanding of a number of issues.

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<sup>124</sup>Reasons for the Decision in respect of KM and XM (CE 1159 & CE 1160), 4 July 2002, paragraph 15.

<sup>125</sup> ACT Department of Justice and Community Safety, 2001-2002 Annual Report, p 238.

<sup>126</sup> Submission 19, Children’s Magistrate, p 3.

<sup>127</sup> Transcript of evidence, 21/02/03, p 178.

## **Recommendation 24**

**9.16. The Committee recommends that the Government simplify and shorten the *Children and Young People Act 1999* taking on board the views expressed by key stakeholders including, in particular, the Children’s Magistrate and ACT Legal Aid.**

### **Enforcing mandatory reporting of suspected child abuse**

9.17. The Committee was concerned that there may be a widespread lack of compliance with the legislative provisions requiring mandatory reporting of cases of suspected child abuse. The following evidence provided by the Community Advocate reinforced this concern:

Recently there was an inquest into the death of a young child. That coroner has not handed down her findings yet, but the inquest is finished and awaiting the coroner’s findings. That inquest did a very thorough examination of the systemic failures that led to the death of the child. I was party to that inquest, and there were some notable failings, if you like, that I can summarise.

One thing that was really obvious was that there were a whole range of professionals in that case—I think, seven—who had responded to the child. There was an ambulance officer, an emergency department nurse, an emergency department doctor, a paediatric nurse, a paediatrician, a radiologist and another paediatrician. I may have missed out a couple of professional people. These people are all mandated under the act, and not one of those people made a mandatory report.

Yet, having watched these people in the witness box and heard their evidence, I would want to assure you that every single one of them was a highly professional, deeply concerned, compassionate person who believed they were doing the right thing. They would be totally mortified if it were ever said that they had not done the right thing. But not one of them reported.<sup>128</sup>

9.18. While the Community Advocate also advised the Committee that in her view this issue is now being addressed within Family Services<sup>129</sup>, the

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<sup>128</sup> Transcript of evidence, 27/02/03, p 213-214.

<sup>129</sup> *ibid.* p 216.

Committee is concerned that the clarification of roles and responsibilities and an education campaign aimed at mandated reporters is insufficient.<sup>130</sup>

9.19. The reasons why people fail to report can be deeply cultural, for example established views within the medical and legal profession concerning privacy and confidentiality.

9.20. The Committee notes the views of the Chair of the ACT Law Reform Commission that two or three high profile prosecutions of persons who had failed to report might change this culture.<sup>131</sup>

9.21. At the same time the Committee believes the maximum penalty for failing to report should be reviewed.

- The current maximum penalty for failing to report suspected cases of abuse is 50 penalty units (\$5,000), imprisonment for 6 months or both.
- In NSW the maximum penalty is 200 units or \$20,000.<sup>132</sup>

## **Recommendation 25**

**9.22. The Committee recommends that the Government:**

- investigate ways to streamline the procedural mechanisms for mandatory reporting;**
- develop and implement a protocol for responding to instances where mandated persons have failed to report abuse; and**
- review the penalty within the *Children and Young People Act 1999* for the offence of failing to report a suspected case of abuse.**

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<sup>130</sup> *ibid.* p 243.

<sup>131</sup> Transcript of evidence, 30/04/03, p 281.

<sup>132</sup> *Children and Young Persons (Care and Protection) Act 1998*, Section 27(2), [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/caypapa1998442/](http://www.austlii.edu.au/au/legis/nsw/consol_act/caypapa1998442/) accessed 23/5/03.

## Expanding mandatory reporting to cover suspected cases of serious neglect

9.23. The Committee is of the view that the current mandatory reporting provisions in the Act should be expanded to cover serious neglect. The Committee believes that expanding mandatory reporting obligations in this manner recognises that the serious neglect of children can be as harmful to their well-being and safety as “abuse”.

It is important to distinguish abuse from neglect. Neglect in the literature is almost as strong a predictor of violent offending as physical abuse, and neglect, inadequate supervision and support, and verbal aggression have been found to be more significant than abuse in several studies.<sup>133</sup>

9.24. Earlier in this Report it was noted that children of parents who are affected by drugs or have a mental illness can be at risk. In some cases what they are most at risk of is harm caused by neglect, rather than harm from abuse.

9.25. The Committee is of the view that expanding mandatory reporting to include neglect will strengthen the legal framework to protect these children and support intensive interventions.

9.26. Both the Children’s Magistrate and the ACT Law Reform Commission support such an amendment, with the latter noting that any new provisions should only cover cases of obvious and substantial neglect to ensure that those mandated to report do not disregard the provisions and that the Department is not flooded with trivial incidents.<sup>134</sup> This is an extremely important point. By “neglect” the Committee is not referring to isolated incidents where a child may arrive at school once without lunch. Rather, the Committee is concerned about the child who routinely arrives at school without any food or means to purchase food. In this sense there is what might be termed a continuum of neglect. The Committee acknowledges that expressing where neglect *is* serious will require very careful drafting.

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<sup>133</sup> *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, Summary Volume, p.21  
<http://sgeag001web.ag.gov.au/www/ncpHome.nsf/0/287555BEB39C1954CA256B140019A799?OpenDocument> accessed 23/5/03.

<sup>134</sup> Submission 19, Children’s Magistrate, p 6; Submission 20, ACT Law Reform Commission, paragraph 21; Transcript of evidence, 30/04/03, p 281.

9.27. The Committee recognises that while amending legislation per se is not particularly costly, this amendment would require some form of education campaign prior to implementation.

### **Recommendation 26**

**9.28. The Committee recommends the Government amend the *Children and Young People Act 1999* to require mandatory reporting of suspected cases of serious neglect.**

### **Comprehensive working with children and young people checks**

9.29. The need for criminal history or “police checks”, for both employees and volunteers working in organisations for children and young people, is an issue the Committee asked of witnesses at public hearings. This was also an issue that the Committee spoke specifically about with officials from other jurisdictions who administer working with children and young people checks.

9.30. In the ACT there are no legal requirements to undertake police checks specifically for staff working with children and young people.<sup>135</sup> However on the basis of the *Public Sector Management Act 1994* and a common law duty of care, Government policy is to require police checks on public servants working with children and young people (including volunteers in public schools). This also includes staff that work in programs funded by the Children, Youth and Family Services branch in the Department of Education, Youth and Family Services.<sup>136</sup>

9.31. Non-Government schools though are not required to undertake police checks on staff or volunteers. The Minister advised the Committee that:

- the Catholic Education Office do undertake police checks on staff; and

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<sup>135</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/02/03.

<sup>136</sup> *ibid.*

- the Association of Independent Schools of the ACT, while developing protocols and materials on the matter, only “strongly advises” schools to undertake police checks.<sup>137</sup>

9.32. The Committee is aware that many other organisations do have their own systems of checking employees and volunteers. For example, Barnardos indicated that it requires police checks of all employees, volunteers and carers working with children.<sup>138</sup> The Committee understands that organisations that require police checks of employees and volunteers have to meet the costs from their budgets.

9.33. In considering the adequacy of these measures to screen persons who work with children and young people (either in a paid or volunteer capacity) and the appropriateness of additional measures, the Committee has been guided by the following five overarching considerations.

9.34. The **first** is that children and young people are a special class of persons in society that warrant additional protection. The New Zealand Commissioner for Children expressed this aptly when he said that:

...children have special needs and life circumstances. They have an innocence and vulnerability. They require a special, extra response from society, in law and in practice.<sup>139</sup>

9.35. The state has a clear role to play in ensuring that they are safe and that their rights are protected. The Committee is of the view that it is now a community standard that children be protected, *in a preventative way*, through the screening of persons who work or have contact with children and young people.

9.36. The **second** consideration is that any screening needs to cover persons who may work with *young* people as well as children.

9.37. Although it is often recognised that young children (particularly pre-verbal children) can be especially at risk of abuse, teenagers are also vulnerable to abuse. This is a time when they are becoming more aware of their sexuality and can be seeking adult mentors other than their parents. The Committee makes explicit note of this point because it is

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<sup>137</sup> *ibid.*

<sup>138</sup> Transcript of evidence, 10/10/02, p 57.

<sup>139</sup> Presentation by the Hon Roger McClay, New Zealand Commissioner for Children, Inquiry into the Convention on the Rights of the Child by the Joint Standing Committee on Treaties, 28/05/98, p 8.

common to refer to these checks simply as “working with children checks” and what is needed is a screening process that covers children and young people.

9.38. The **third** consideration is that no person has a “right” to work with children and young people.

9.39. The Committee notes that occasionally the view is put forward that such checks contravene the rights of individuals to work or volunteer in their chosen area. In this regard the Committee notes that no one has a right, per se, to work with children or young people. To work with children or young people is a matter of choice. To suggest that having a mandatory screening process could contravene a person’s right to employment is akin to saying that anyone has the right to be a doctor regardless of whether they have the appropriate qualifications.

9.40. The **fourth** consideration is that any screening system should adhere to the principles of natural justice. It should be transparent and accountable to all stakeholders and have mechanisms, for example, to allow for the removal of false complaints from a person’s record.

9.41. The **fifth** and final consideration is that the system should be based on a risk management approach.

9.42. The Committee believes that the screening process should assess the degree of risk posed by any individual, for a specific position, at a particular point in time.

9.43. In determining the degree of risk the Committee notes that a system of police checks will not necessarily ensure that only suitable people are involved in activities with children and young people. For example, it will not pick up people who have not been convicted of an offence who still may be a risk to children and young people. Further, without a central national register of paedophiles, there is a possibility of such people falling through the gaps in the system. On 12 November 2002, the Minister for Police advised the Assembly that the Police Ministerial Council meeting in November had agreed in principle to establish a national paedophile register.<sup>140</sup>

9.44. In recognition of the limitations of a “police checks” approach, some jurisdictions have broadened their screening processes.

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<sup>140</sup> Minister for Police, response to question without notice from Mrs Cross MLA, 12 November 2002.

- New South Wales has a register of people who may have not committed an offence but nevertheless are not considered suitable for working with children and young people.<sup>141</sup>
- In Tasmania the Office of the Commissioner for Children’s policy advises organisations that work with children and young people to adopt a system of formal checks on employees and volunteers as follows:
  - seek police checks for criminal activities in both the Federal and State jurisdictions;
  - request the person seeking employment to obtain a statement from the Division of Children and Families in the Department of Health and Human Services, that with respect to the person who seeks employment, there are no reported concerns about them in relation to any and all matters that were of risk to or did cause damage or injury to children, but did not amount to criminal charges or child protection proceedings being initiated; and
  - ask any person who seeks to work with children to sign a statutory declaration that states they have not been involved in activities that harm, injure, damage or exploit children.

9.45. Another important element of a risk-based approach is that it caters for those limited circumstances where it may be appropriate to appoint a person who is assessed as being a very low risk, to a position that has minimal contact with children and young people. i.e., it recognises that there may be times when suitability for employment is not clear cut and subjective judgements must be made.

9.46. It also addresses the reality that people and information held about a person can change over time. Systems that provide once off checks or checks for a period of time can give a false sense of security.

9.47. In light of the considerations above, there are a number of important points to be made about the current approach to screening people who work with children and young people in the ACT.

9.48. The first and most obvious is that the approach appears to be ad hoc. There does not seem to be a comprehensive policy in place that

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<sup>141</sup> Transcript of evidence, 10/10/02, p 57.

recognises and manages the risks associated with children and young people's vulnerability across the range of circumstances that they will be in. People who abuse children and young people may be staff or volunteers, involved in public or private schools, sporting programs or religious groups. There isn't a single 'profile' that can be managed, the only real constant is the presence of children and young people.

9.49. In the recent review of child protection in South Australia it was noted that:

The high level of vulnerability of children to abuse in circumstances where they are being provided with services such as tuition in education, sports, recreation or religious activities mostly in the absence of their carers, warrants a consistent and deterrent approach. Many sex offenders may gain access to children through organisations. It is imperative that proper mechanisms are developed to ensure that children are protected appropriately and with proper safeguards in place.<sup>142</sup>

9.50. The current approach in the ACT also only appears to screen via police checks. As noted above, there are significant limitations to screening for suitability based solely on a criminal record.

9.51. The Committee believes that the ACT should adopt a system similar to that in NSW. Below are some of the key elements of this system (which is administered by the NSW Commission for Children and Young People):

- a ban on sex offenders applying for or working with children and young people. NSW is the only state to make it a criminal offence for convicted sex offenders to apply for or work with children and young people. As part of the screening process people must sign a prohibited employment declaration.
- background checks cover national criminal records (both current charges and convictions), relevant disciplinary hearings and certain apprehended violence orders.

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<sup>142</sup> *Our Best Investment: A State Plan to Protect and Advance the Interests of Children*, 2003, p. 2.63 See <http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp>

- if any “trips” are flagged then the person has to go through a risk assessment process and the Commission ranks them from low to high risk – depending on their background and the position they are seeking.
- the risk rating goes back to the employer who then makes the decision.
- the Commission holds the database and negotiates with employers to remove people if they are there as a result of false or vexatious complaints.

### **Recommendation 27**

**9.52. The Committee recommends that the Government establish a working group to develop a comprehensive and risk based screening system, based on the NSW model, for persons wishing to work or volunteer with children and young people in the ACT.**

### **Expanding the role of “Official Visitors”**

9.53. There have also been suggestions that the Official Visitor should be visiting all facilities that provide residential care for adolescents (i.e., not just Quamby and Marlow Cottage but all residential substitute care facilities and refuges).<sup>143</sup> This is on the basis that all children in substitute care are potentially vulnerable and therefore may require an advocate, such as an official visitor, whose role is to monitor conditions and receive complaints.

9.54. From its visits interstate, the Committee is aware that both Queensland and NSW have “visitor” schemes, which provide advocacy and support services to a much broader range of vulnerable children and young people including those in detention centres, authorised mental health services and out-of-home residential care facilities.

9.55. The Committee believes consideration should be given to expanding the role of the official visitor here in the ACT as well as changing the name given to the role to something more user friendly such as “community visitor”. The Committee notes that the Government has commissioned an independent review of statutory oversight and community advocacy agencies. An expanded “visitor” scheme for

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<sup>143</sup> See for example transcript of evidence, 10/10/02, pp 39-40.

children and young people might link in appropriately to a broader scheme of visitors across a wide range of facilities.

### **Recommendation 28**

**9.56. The Committee recommends that the Government expand the “official visitor role” to all children and young people in residential facilities and consult with stakeholders, in particular children and young people in these facilities, about a more appropriate name for this role.**

9.57. Lastly, the Committee notes the level of concern within the community about the delay in appointing the Official Visitor last year. For several months there was no one in this position and the Committee believes this is unacceptable.

### **Focusing on “early intervention”**

9.58. During the course of this inquiry the Committee’s attention has been drawn to the issue of “early intervention”.

9.59. In respect of care and protection and early intervention, the Committee notes the following comments from the Community Advocate:

One of the things that I think has happened over the years is that, with the reduction in resources that are available to care and protection agencies and the poor record that care and protection agencies have had—in Australia and overseas countries—care and protection systems have narrowed their focus and not become so involved in preventative work as might well have been the case.<sup>144</sup>

9.60. This trend noted by the Community Advocate appears to be borne out in the ACT with recent analysis showing that while the ACT has above average real expenditure per child on child protection and out of home care services among jurisdictions, it has the second lowest real expenditure per child on *family preservation services*.<sup>145</sup>

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<sup>144</sup> Transcript of evidence, 27/02/03, p 212.

<sup>145</sup> 2003 Productivity Commission Government Services Report, Table 15A.1 ‘State and Territory Government real recurrent expenditure on child protection and out-of-home care services’, <http://www.pc.gov.au/gsp/2003/attachment15.pdf> accessed February 2003.

9.61. The Senior Community Advocate went on to say:

...the system tends to work with the aim of substantiating or not substantiating the allegations raised in the report. Too frequently non-substantiation is equated by the system with no further intervention. There are incidents where children will be the subject of—no exaggeration—10 or 15 reports over 10, five or sometimes two years. In many of those incidents it has been “Report unsubstantiated: no action.”

So the goal of the system is to substantiate and not substantiate rather than look at the information and ask, “How does that information change my perception of the safety and well-being of that child? How can we as a system work to protect that child?” That does not necessarily mean in the court arena—because the act goes way beyond just obtaining court orders for children—but within the family prior to removal, and that can be done even with an unsubstantiated report.<sup>146</sup>

9.62. The Committee recognises that there will be occasions when no further action is required following a report and investigation. However the Committee is concerned that because of pressures within Family Services (including a lack of resources), there are occasions when opportunities for early intervention – that will prove far more effective in the long run – are being lost.

9.63. As part of the recent \$1billion plan to expand the child protection system in NSW, the NSW Government has decided to quarantine approximately half the proposed new case workers to work on the lower level or less serious reports. The aim is to prevent issues escalating by helping families before they reach crisis point.

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<sup>146</sup> Transcript of evidence, 27/02/03, p 217.

9.64. The Committee believes that allocating staff in this way should also be considered in ACT Family Services.

### **Recommendation 29**

**9.65. The Committee recommends that the Government consider quarantining a proportion of child protection staff to focus on responding to “lower level” or less serious reports in order to provide early and intensive support to families before they reach crisis point.**

9.66. The Committee has also considered early intervention in relation to offending behaviour. In the past few years, the Commonwealth Government has provided funding to advance research and coordinate policy in this area. One of the outcomes of this targeted funding has been the report *Pathways to prevention: Developmental and early intervention approaches to crime in Australia*. Key elements of this report are an assessment of the causes of juvenile offending and an audit/assessment of existing programs in Australia that focus on early intervention.

9.67. In relation to the causes of juvenile offending, the report notes that:

The roots of criminal offending are complex and cumulative, and are embedded in social as well as personal histories. The risk of crime is exacerbated by not providing meaningful social pathways for a diverse range of young people, and by not promoting the attachment of individuals and communities to mainstream social supports and developmental institutions such as families and schools.<sup>147</sup>

9.68. Given the comments above about early intervention and care and protection cases, it is also worth noting that the report reiterates the evidence demonstrating that where children have been physically abused and/or neglected they are more likely to be arrested for non-traffic offences (either as a juvenile or an adult). This is in addition to the fact that children in care are much more likely to come into contact with the

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<sup>147</sup> *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, Summary Volume, p 4, [http://sgeag001web.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/830827FF5ABAA28CCA256B140019DA79/\\$file/no6\\_summary.pdf](http://sgeag001web.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/830827FF5ABAA28CCA256B140019DA79/$file/no6_summary.pdf) accessed 29/5/03.

justice system for other reasons such as the lack of access to appropriate advocates and instability in their living arrangements.<sup>148</sup>

9.69. To address the causes of juvenile offending the report recommends developmental and early intervention approaches. This means having a whole of government focus on enhancing pathways for individuals and families at the critical transition points such as birth, the preschool years and the transition from primary to high school.<sup>149</sup>

9.70. The Committee is aware that the Government has a number of programs in place that provide early intervention during some of these transition points or which aim to foster social supports (e.g., the ‘Schools as Communities’ program). While the Committee has no specific recommendation to make about these existing programs it draws the Government’s attention to the need for ongoing funding, evidence based decision-making and rigorous evaluation.

A striking aspect of the audit was the number of innovative programs that were pilots, with no guarantees of continued funding. Service providers were acutely aware of the impact on their own activities of bureaucratic policy and resource decisions often made without reference to critical evidence from the field.

Perhaps one of the most important conclusions drawn from this research project is simply that the kinds of programs and services identified should be valued more, and should be more adequately supported. Moreover, they should have a much greater degree of funding continuity from one year to the next, subject to the requirement (made possible through the allocation of adequate funds) that rigorous evaluations be carried out.<sup>150</sup>

9.71. Anecdotal evidence suggests that these issues are also affecting service providers here in the ACT.

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<sup>148</sup> *ibid.* pp 20-21.

<sup>149</sup> *ibid.* p 10.

<sup>150</sup> *ibid.* p 27.

### **Recommendation 30**

**9.72. The Committee recommends that the Government require the Department of Education, Youth and Family Services to provide in its Annual Report:**

- i. general information on programs and pilot programs which focus on early intervention; and**
- ii. specific information regarding their funding status and evaluations of their efficacy.**

9.73. The other context in which early intervention has been raised during this inquiry is in relation to infants – and this is an area where the Committee believes there are gaps in existing services.

9.74. As noted earlier in this Report, the Committee received evidence of considerable concern about the welfare of children aged 0-3 years, particularly where their parents may be drug affected or otherwise at risk (for example, single mothers who are homeless or socially isolated).

9.75. In the last couple of decades, research has increasingly shown that this period from birth to three years of age is critical in terms of the development of children. This research, and its implications, has been the subject of policy debate (and action) at both the state and federal levels over the past ten years. For example, the 1996 report from the Australian Senate Employment, Education and Training References Committee “Childhood Matters: the Report of the Inquiry into Early Childhood Education” drew specifically on the pioneering work of the Carnegie Corporation in the US – one of the key organisations that brought to public attention the neurological evidence about the development of children from birth to three years.

9.76. On the importance of the early years, the Carnegie report stated:

The risks are clearer than ever before: an adverse environment can compromise a young child’s brain function and overall development, placing him or her at greater risk of developing a variety of cognitive, behavioural, and physical difficulties. In some cases these effects may be irreversible. But the opportunities are equally dramatic: a good start in life can do more to promote learning and prevent damage than we ever

imagined.... A range of “protective factors” – such as good nutrition and sensitive parenting – helps the child to achieve good outcomes and avoid bad ones.<sup>151</sup>

9.77. In addition, the report noted that:

- A major influence in the difference between good and poor outcomes is the quality of parent and family interactions. Infants thrive on one-to-one interactions with parents...
- Risk factors are often multiplicative, not additive, in their effects... when children have two or more risk factors, they are four times as likely to develop social and academic problems...
- Although children are resilient and can benefit from later intervention, the costs of reversing the effects of a poor start in life increase as the child grow older, and the chances of success diminish.<sup>152</sup>

9.78. In citing the Carnegie report, the Senate Committee made the point that despite the overwhelming degree of evidence that the period of 0-3 years of age is critical, policy makers are still failing to utilise the outcomes of this research in designing and funding appropriate programs. That point was nearly seven years ago. The question for the Committee has been to what extent is the ACT adopting an evidence based approach, particularly in terms of the level of resources being devoted to early intervention and the approach taken to care and protection issues for the children from birth to three years?

9.79. The Committee asked the Minister for Education, Youth and Family Services what mechanisms are in place to identify *proactively* “at risk” infants and provide additional supports. The Committee was informed that they are identified via mandated and non-mandated reporters. Further that while all reports regarding infants under 12 months old are appraised, not all reports concerning infants aged 1-3 years old are appraised.<sup>153</sup>

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<sup>151</sup> The Quiet Crisis – Abridged Version of ‘Starting Points: Meeting the Needs of our Youngest Children’, Report of the Carnegie Task Force on Meeting the Needs of our Youngest Children, 1994, Carnegie Corporation, NY, USA, p 2.

<sup>152</sup> *ibid.* p 3.

<sup>153</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/02/03.

9.80. The Committee is concerned that this approach, which appears largely reactive, is insufficient and fails to provide an adequate safety net.

9.81. The Committee believes that there needs to be a proactive approach to supporting parents both before and after the birth of their children. And, in recognition of the fact that the period from birth to three years is important for *all* children, the Committee is of the view that this approach ought to be universal i.e., services offered to all parents

9.82. The NSW Government has recently committed to providing every family with a new baby a free home visit from an early childhood nurse in the first few weeks after a baby is born. This is an extension to the Families First Strategy, which provides services at a regional level targeted at pre-natal care, volunteer mentors and support networks (e.g., supported play groups).

9.83. The Committee notes the intention of Government to “improve the inter sectoral relationship between maternity and child protection services” and “develop inter-agency guidelines to provide an overarching framework for working together”.<sup>154</sup> These will presumably underpin interagency cooperation under the ACT Children’s Plan that at the time of writing this Report had not been released.

9.84. The Committee is strongly of the view that there needs to be a greater focus on supporting families in the early years through improved pre-natal care and through measures such as a universal home visiting scheme both shortly after a child’s birth and at regular intervals thereafter. The appropriateness of this kind of approach is backed up by research, which indicates that the more successful early intervention programs beginning in infancy are those that have multiple components, last at least two years and begin pre-natally.<sup>155</sup>

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<sup>154</sup> *ibid.*

<sup>155</sup> *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*, Summary Volume, p 19, [http://sgeag001web.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/830827FF5ABAA28CCA256B140019DA79/\\$file/no6\\_summary.pdf](http://sgeag001web.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/830827FF5ABAA28CCA256B140019DA79/$file/no6_summary.pdf) accessed 29/5/03.

## **Recommendation 31**

**9.85. The Committee recommends that the Government fund a universal home visiting scheme by community health nurses for families with new babies, to provide support to families during children's early years.**

### **Diversionsary approaches to care and protection cases and juvenile justice**

9.86. During this inquiry the Committee has considered the need for diversionary or less formal/adversarial approaches to care and protection cases and the treatment of juvenile offenders. The following paragraphs deal with these two issues separately, however as a general comment, the Committee is of the view that there needs to be a greater emphasis on enhancing the role of the family in dealing with these matters. The Committee notes that in New Zealand there is extensive use of family group conferences and this is legislatively provided for in their *Children, Young Persons and Their Families Act 1989*, which expressly outlines the making of:

...provision for matters relating to children and young persons in need of care or protection or who have offended against the law, to be resolved, wherever possible, by their own family or family group.<sup>156</sup>

9.87. In relation to care and protection cases, the Committee shares the view of the Children's Magistrate that it is preferable for agreements to be reached voluntarily through conferencing, than decisions being made through litigating outcomes.<sup>157</sup> The Committee is therefore concerned that:

...the Court's ability to actively participate in brokering such agreements is currently severely compromised by a lack of resources in this area, as care proceedings require a considerable amount of time and expertise to be conducted.<sup>158</sup>

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<sup>156</sup> 'Signs of the future', Presentation by the Hon Roger McClay - NZ Commissioner for Children, at the Children's Summit – "The State of Western Australian Children", 25/10/02, p 3.

<sup>157</sup> ACT Department of Justice and Community Safety, 2001-2002 Annual Report, p 237.

<sup>158</sup> *ibid.* p 237.

9.88. In the Committee's view it is obvious that avoiding formal court cases for these matters saves money in the long run and more importantly, offers the best chance at minimising the likely negative impact of proceedings on the child/ren concerned as well as their parents/carers. One can only assume that staff at Family Services and substitute care agencies would also prefer a less adversarial approach.

9.89. In his submission to the inquiry, the Children's Magistrate has indicated that an additional officer dedicated to conferencing care cases could provide a better service.<sup>159</sup>

9.90. The Committee considers that it would be highly desirable to enhance the Court's conferencing capacity.

### **Recommendation 32**

**9.91. The Committee recommends that the Government fund an additional position dedicated to conferencing care cases, at an appropriately senior level, from the 2004-2005 budget onwards.**

9.92. The Committee has also considered the issue of diversionary conferencing as an alternative to prosecution for criminal matters involving children and young people.

9.93. The Committee was advised that court processes are still surrounded with formality, legalese and a sense of authority, which is intimidating for young people. A major impediment to improved understanding is the length of time it takes for cases to come to court. As Child, Youth and Family Agencies of the ACT reported in the case of children and young people who have committed a number of offences, but who may only be charged with one instance, the memory of the particular offence becomes blurred, and in the meantime further offences are committed. When consequences are eventually incurred the relationship between the original offence and the consequence may not seem very direct. In such instances the likelihood of re-offending is increased as the pattern of negative behaviour becomes entrenched.<sup>160</sup>

9.94. ACT policing introduced a diversionary conferencing scheme in 1994. This scheme provides both juveniles and adults, who are eligible to participate, with the potential of avoiding a criminal record and

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<sup>159</sup> Submission 19, Children's Magistrate, p 4.

<sup>160</sup> Submission 8, Child, Youth and Family Agencies of the ACT, p 1.

importantly for the community, a new understanding of their criminal behaviour.<sup>161</sup>

9.95. As the ACT Law Reform Commission noted:

For many young offenders, the implications of their behaviour may be brought home to them more forcefully by conferences in which they are obliged to actually meet the victim and hear how his or her life had been affected by their behaviour, than by being convicted and sentenced by a magistrate.<sup>162</sup>

9.96. Diversionary conferencing has been shown to be effective in decreasing rates of juvenile re-offending both here in the ACT and in other jurisdictions where it is used.<sup>163</sup>

- Young violent offenders who participate in diversionary conferences in the ACT re-offend at a significantly lower rate than those sent to court.
- In NSW, the risk of re-offending has been shown to reduce by 15-20%.

9.97. It is also worth noting that studies in NSW have shown that the majority of offenders and victims were satisfied with the process and the outcomes from conferencing.<sup>164</sup>

9.98. While the Committee has not had the resources to evaluate comprehensively models for diversionary conferencing, it is of the view that this is an issue that warrants further attention. In broad terms the Committee believes that for juvenile offenders, diversionary conferencing:

- is wholly consistent with restorative justice;
- should be utilised both as an alternative to prosecution or to sentencing; and

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<sup>161</sup> Submission 17, ACT Policing, p 6.

<sup>162</sup> Submission 20, ACT Law Reform Commission, paragraph 53.

<sup>163</sup> *op. cit.* p 6.

<sup>164</sup> Johns, R (2003) *Young Offenders and Diversionary Options – Briefing Paper*, <http://www.parliament.nsw.gov.au/prod/web/phweb.nsf/frames/1?open&tab=home&body=/prod/web/PHWebContent.nsf/PHPages/ParliamentaryServicesLibrary?Open> accessed 4/04/03.

- should have a statutory basis (the current scheme does not).

9.99. The Committee also notes that while diversionary conferencing likely reduces the cost burden on society in the long run it is not a “no cost” alternative to traditional approaches.

...there may be little point in providing a statutory power to divert young offenders away from the criminal justice system if there are no adequate programs to which they may be diverted. Legislative reform is not a cheap substitute for the provision of sufficient resources and planning.<sup>165</sup>

9.100. Finally the Committee notes that in considering the implementation of a broad system of conferencing the current Children’s Magistrate has suggested that such a system is likely to deal with less significant matters and it may therefore be appropriate to have a dedicated Judge, rather than a Magistrate, to deal with those matters that are not appropriate for conferencing.<sup>166</sup>

9.101. The Committee can see a number of potential issues with this approach. Firstly, it is unlikely that it would be possible to justify having a judge whose only area was children’s matters. This would mean that the benefits of having a “children’s magistrate” i.e., a dedicated magistrate who builds up expertise, would be lost.

9.102. It also raises issues about whether cases would be heard before a judge and jury and the appropriateness of juries deliberating on these issues. Again the reasoning behind having a dedicated magistrate would suggest that jury trials would not be appropriate.

9.103. The Committee also notes that while it is true more serious cases may not be appropriate for diversionary conferencing, there may be other cases that aren’t appropriate for diversionary conferencing for other reasons, because of their *minor* nature for example. It could not be assumed that cases would neatly fit into one category or the other.

9.104. Hearings before a judge and diversionary conferencing, in many respects, represent the two ends of the spectrum. The Committee is of the view that it would not be advantageous to forego the option of hearings before a magistrate, which is, as it were, the middle ground. Furthermore the Committee finds it difficult to reconcile conducting hearings before a

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<sup>165</sup> Submission 20, ACT Law Reform Commission, paragraph 11.

<sup>166</sup> Submission 19, Children’s Magistrate, p 13.

judge, with the increased formality and process that would involve, with a restorative justice approach that aims to ensure that young people are involved in the proceedings around them.

9.105. The Committee is aware that the Government is considering the issue of diversionary conferencing as part of the Sentencing Review and awaits the outcomes of that Review with interest. The Committee draws to the Government's attention the relevant sections on diversionary conferencing from the submissions by the ACT Law Reform Commission and the Children's Magistrate.

### **Improving the quality of legal representation for children and young people**

9.106. The issue of appropriate legal representation for children and young people was raised extensively during the inquiry.

9.107. For example, a practising solicitor highlighted the fact that in representing children in relation to care and protection issues and in considering the 'best interest of the child' principle, some legal representatives do not have any contact with the child. This witness asserted that it is impossible to consider the 'best interest of the child' without discussing the matter with the child so long as the child is mature enough to understand the issues.<sup>167</sup>

9.108. It was also asserted that some solicitors do not have the skills or training to enable them to deal appropriately with children. i.e., they do not have any understanding of the developmental needs of children or theories such as attachment and are unable to talk to children in appropriate language that they can understand.<sup>168</sup>

9.109. The Office of the Community Advocate (OCA) reported that there do not appear to be any over-arching guidelines or minimum standards that are applied and monitored in a consistent manner in relation to legal representation for children and young people subject to care and protection matters before the ACT Children's Court.

9.110. Issues of particular concern to the OCA are minimum standards relating to:<sup>169</sup>

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<sup>167</sup> Submission 1; Transcript of evidence, 10/10/02, pp 68-69.

<sup>168</sup> Transcript of evidence, 10/10/02, p 44.

<sup>169</sup> Submission 12, Office of the Community Advocate, p 51.

- solicitors having ongoing face-to-face contact with the children and young people they are paid to represent;
- training for solicitors on basic issues affecting children and young people in the care and protection and youth justice systems;
- training for solicitors on how to communicate effectively and respectfully with children and young people, including those with intellectual or social disabilities;
- the difference between acting on the instructions of a child or young person, and representing the best interests of a child or young person; and
- types of care and protection orders that can be made by the court and what these orders mean in terms of enforceability and powers.

9.111. The Committee recognises that this is a complex issue. For example, some view the fact that solicitors representing children sometimes do not meet the children at all prior to a legal proceeding as evidence that they do not see the value and necessity of engaging with children and young people. However the Committee is aware that some lawyers are reluctant to meet with children in case they may then have to give evidence about what the child says to them – in which case their status as the child’s solicitor /advocate could be compromised. i.e., it is not simply a matter of disinterest. The ACT Law Reform Commission also noted in their submission that:

If interviews are conducted, lawyers may be uncertain as to how far to go in questioning expressed views which they fear may reflect what the children have been told to say, rather than their true feelings. Lawyers are, after all, accustomed to acting on the faith of their client’s instructions rather than on impressions of their own which have been formed despite their client’s express assurances to the contrary.<sup>170</sup>

9.112. A lot of work on the issue of child representatives has been done in the context of the Federal Family Court, which has a specific ‘Child’s Representative Training Programme’. In the ACT, only solicitors that have completed this training may act as representatives for legal aid in family law matters. In addition, the Family Court has recently issued

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<sup>170</sup> Submission 20, ACT Law Reform Commission, paragraph 43.

Practice Directions and Guidelines for Child Representatives.<sup>171</sup> While some of this training is applicable to non-family child law matters (such as general training in relation to child development), it is the *Children and Young People Act 1999* that covers criminal and care proceedings in the ACT and, as territory specific legislation, it presents unique challenges.

9.113. The Government has advised the Committee that the ACT Law Society is preparing a draft document on standards for child representation in the ACT and that this will be released as a discussion draft when completed.<sup>172</sup>

9.114. Standards by themselves however will not improve the quality of the legal representation of children and young people. In many respects what needs to change is a culture and this means both developing standards or guidelines, as well as providing ongoing education.

9.115. The Committee notes that when the *Children and Young People Act 1999* is amended it will be necessary to inform members of the legal profession of the impact of those changes.

### **Recommendation 33**

**9.116. The Committee recommends that the Government actively support improving the quality of child representatives by providing ongoing funding to the ACT Law Society and ACT Legal Aid to develop and implement a training package on being a child representative in the ACT.**

9.117. The Committee believes that the Government must also address the fundamental issue of remuneration for solicitors appearing in children's matters.

9.118. Although there are no doubt a number of solicitors of an exceptional standard who regularly appear in the Children's Court, the maxim "you get what you pay for" holds as true for child representatives as it does in other matters. Children and young people, whether it is for care and protection or criminal cases, have a fundamental right to good representation.

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<sup>171</sup> See [http://www.familycourt.gov.au/html/child\\_representative.html](http://www.familycourt.gov.au/html/child_representative.html)

<sup>172</sup> Correspondence from the Minister for Education, Youth and Family Services dated 20/02/03.

9.119. Most appearances in the Children’s Court are undertaken subject to a grant of legal aid.<sup>173</sup> The Office of the Community Advocate reported that Legal Aid payments are well under current market rates and this impacts significantly on the willingness and capacity of quality firms to assist.<sup>174</sup>

9.120. In its submission to this inquiry, the ACT Law Reform Commission provided a case study that demonstrated that solicitors would often make a financial loss when they represent children.<sup>175</sup> In closing they noted:

...if adequate legal representation is to be ensured in future years, it will be necessary to provide a mechanism for lawyers to receive remuneration that at least bears some relationship to the level of work, responsibility and, at times, emotional strain assumed in undertaking these cases.<sup>176</sup>

### **Recommendation 34**

**9.122. The Committee recommends that the Government provide additional funding to ACT Legal Aid from the 2004-2005 budget onwards for the express purpose of increasing remuneration for solicitors representing children and young people.**

## **Protecting and promoting the right of children and young people to have their views heard in legal proceedings**

9.123. The Committee has heard concerns that children and young people are often unable to exercise their right to have their views represented in legal proceedings.<sup>177</sup>

9.124. Under the *Children and Young People Act 1999*, lawyers can act on instruction when they believe their client is capable of articulating their views and generally understands what’s happening. i.e., the young person tells the lawyer what they want or what happened and the lawyer advocates that position in the Court.

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<sup>173</sup> Submission 19, Children’s Magistrate, p 8; Submission 20, ACT Law Reform Commission, paragraph 44.

<sup>174</sup> Submission 12, Office of the Community Advocate, p 52.

<sup>175</sup> Submission 20, ACT Law Reform Commission, paragraph 44.

<sup>176</sup> *ibid.* paragraph 47.

<sup>177</sup> See for example Submission 3, ACTCOSS, p 5.

9.125. Alternatively, lawyers determine for themselves what they consider to be the “best interests” of the child and put that case forward. In these circumstances, the lawyer’s assessment of best interests can be completely contrary to the views and wishes expressed by the child/young person in question.

9.126. The following case study highlights some of these issues.

A young person of 13 years who had been in care for more than six years was on a long term order until 16. Because of many delays in getting the matter settled over the years, the young person was concerned about the future and requested to the foster family that the order be extended until 18 to ensure completion of education.

The matter was adjourned once and agreement had not been reached between all parties when the next scheduled court date arrived.

The young person asked the foster family if it would be possible to speak to the magistrate personally. With great difficulty and no assistance from the court or the child’s representative, the foster family managed to get the necessary papers so they could be party to the proceedings.

On the day, they were not allowed into the pre court conference, they were told that their presence was ‘unhelpful’ and the young person was not allowed to be present. The young person’s legal representative did not even acknowledge the young person’s presence or seek to clarify whether the young person had any further instructions.<sup>178</sup>

9.127. The arguments for advocating that lawyers should act on instruction or on “best interests” are complex. Some argue from a philosophical standpoint that lawyers acting for young people should not “interpret” their client’s views and that it is the proper role and function of the courts to establish “best interests”.

9.128. Equally there is a need to protect children from being pressured about their views (e.g., by parents) and in that regard, the capacity to act on an assessment of “best interests”, as opposed to on instruction, is also important.

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<sup>178</sup> Submission 8, Child, Youth and Family Agencies of the ACT, p 5.

9.129. The Committee notes that the introduction of standards and continuing legal education for child representatives should go some way to addressing this problem. The Committee has also considered whether it would be useful to have a neutral person who was available to explain the court proceedings and ensure that questions and processes were explained in an age appropriate fashion (a “court friend”).

9.130. In addition, where the child was not able to provide instructions (e.g., due to age or disability), the person could be responsible for instructing the solicitor as to the child’s best interests (a “guardian *ad litem*”).

9.131. The Committee has not come to any firm conclusions about this matter and believes that it warrants further consideration by Government. The Committee notes however that for either model it would be imperative that the role was carried out in an independent manner – independent from both the executive arm of government as well as the court.<sup>179</sup>

9.132. The Committee also notes that in relation to the “guardian *ad litem*” model this might simply add another person with a view on a child’s best interests to the process without necessarily adding value. Ideally, solicitors who practice in this area would have these skills – introducing a “stop gap” measure may be counterproductive.

### **Recommendation 35**

**9.133. The Committee recommends that the Government engage in a consultation process on the issue of a “guardian *ad litem*” or “court friend” for children and young people in conjunction with the release of the discussion draft of the ACT Law Society’s draft standards for child representatives in the ACT.**

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<sup>179</sup> Submission 19, Children’s Magistrate, p 10; Transcript of evidence, 30/04/03, p 285.

## **Enhancing the participation of and consultation with children and young people in the development of laws, policy and practices that have the potential to impact on them**

9.134. The Committee believes that on the whole there is strong support in the community for the proper participation of children and young people in decision making that impacts on their lives.

9.135. The Government's key initiative in this area is Youth InterACT, which aims to encourage participation by young people in the community and government. It does this through a number of mechanisms, including:<sup>180</sup>

- a consultation register;
- a Minister's Youth Council; and
- an annual youth conference and several issue-based forums.

9.136. Beyond these mechanisms, it is unclear to what extent children and young people are involved in policy decision making across government. It is also not clear how the community would know whether this kind of consultation is taking place. For example, "report cards" are not required in departments' annual reports that indicate when young people have been consulted and the outcomes of that consultation.

9.137. The Committee acknowledges that involving young people appropriately is not necessarily straightforward. There are practical difficulties, such as finding a representative sample of young people - even when there is a body such as a Minister's Youth Council. In part this is because putting oneself forward for these bodies generally requires a fair degree of self confidence and often the very people who most need to have a say about the issues affecting them lack this confidence.

9.138. The Committee notes that the peak non-government body for youth affairs in the ACT, the Youth Coalition, has expressed some concerns about the Minister's Youth Council for this very reason. In its submission the Youth Coalition questioned whether the Minister's Youth Council was as representative as it could be, particularly in terms of

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<sup>180</sup> For detailed information about Youth InterACT visit <http://www.pogo.act.gov.au/bheard.htm>

representing more disenfranchised young people (e.g., those who are homeless, young people with a mental illness, young people who have experienced the juvenile justice system).<sup>181</sup>

9.139. It was also noted that the Minister's Youth Council does not seem to have a publicly available work plan or an explicit or defined process for consulting with other young people on issues.<sup>182</sup>

9.140. The Committee is aware that despite best intentions, young people are sometimes simply overlooked. One recent example where young people were not included was the deliberative poll on a Bill of Rights for the ACT. This occurred because a representative sample of Canberrans was selected from the electoral roll i.e., it did not include persons under the age of 18.<sup>183</sup>

9.141. In addition to any practical difficulties there are also sometimes cultural reasons why young people are excluded from decision making, both within government, and across the community more broadly.

9.142. From its discussions with young people it was clear to the Committee that there still persists a view that young people are somehow "less than" human beings, at least until they turn 18. This perception has an impact in young people's lives on a daily basis. For example it can affect how they might be treated in shopping centres or by the police. When the Committee visited the Bay program at Canberra College young people reported that they often felt picked on by police as a result of being randomly stopped and asked for their name and address. The question was asked, would this happen to an adult wearing a suit?

9.143. Some young people also suggested there was an imbalance in terms of the responsibilities they had, with their capacity to influence decisions being made about them through such mechanisms as voting. As the Youth Coalition noted in their submission:

...young people are not adequately represented nor do they have the opportunity to equally participate in major decisions within our community. On one hand the government seeks to

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<sup>181</sup> Submission 11, Youth Coalition of the ACT, p 7.

<sup>182</sup> *ibid.* pp 7-8.

<sup>183</sup> It should be noted however that there were other attempts to consult with young people/youth organisations about this issue. The Committee understands that the Youth Coalition was consulted and a call for submissions was placed on the POGO website.

engage youth participation at all levels, whilst on the other they deny them the clear path to having their voices heard at the polling booths...

Young people are not regarded as mature or responsible enough to vote until they are 18 years yet our youth justice system holds them responsible as young as 12 years old for criminal actions.<sup>184</sup>

9.144. This “less than” perception has even manifest itself in legislation. The Committee was disturbed to discover that the *Community Advocate Act 1991* refers to people who have a disability, which is then defined as including young people under the age of 18! The Committee agrees with the Community Advocate that this is offensive and the Act should be amended.<sup>185</sup>

### **Recommendation 36**

**9.145. The Committee recommends that the Government amend the *Community Advocate Act 1991* to refer simply to children and young people and remove references to a legal disability due to age.**

9.146. Regardless of any real or perceived difficulties, giving a voice to children and young people is important. With sufficient resources and commitment, it is possible to have processes in place that foster participation by young people. In this regard the Committee notes the work of the NSW Commission for Children and Young People, which has produced an excellent resource kit called ‘Taking Participation Seriously’.

9.147. In the ACT, the Committee understands that the Youth Coalition has recently received a small amount of funding to develop an online youth participation and consultation resource.<sup>186</sup> This is an important first step, but participation is something that needs to be championed in an ongoing fashion. It is not achieved simply by the production of “how to” resources. The community and government need to be reminded, encouraged and perhaps cajoled into the need for, and benefits from, the participation of children and young people. The Committee believes that

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<sup>184</sup> *op. cit.* p 8.

<sup>185</sup> Transcript of evidence, 27/02/03, p 221.

<sup>186</sup> Correspondence from the Youth Coalition to the Secretary dated 30/07/03.

this would be an important role for a commission for children and young people in the ACT. This is discussed further in the following Chapter.

9.148. Lastly the Committee notes that as much as young people should be consulted because it is their right, or because it makes sense to do so in order to design effective programs and policies, it should also be remembered that young people have great ideas and solutions. As the NZ Commissioner for Children said:

Quite often young people come up with solutions that it takes members of parliament years to find.<sup>187</sup>

### **Recommendation 37**

**9.149. The Committee recommends that the Government review how Departments consult with young people, with a view to improving the extent and effectiveness of young people's involvement in the development of government policy and programs.**

### **Recommendation 38**

**9.150. The Committee recommends that the Government provide additional resources to the Minister's Youth Council to enable the development and publicisation of a work plan.**

## **Enhancing accountability**

9.151. The accountability of senior Family Services staff emerged as a significant issue during this inquiry. The issue was particularly highlighted for the Committee in terms of the lack of compliance with statutory obligations, which is discussed in Chapter 6.

9.152. The Committee's concern is that there appear to be limited repercussions when senior staff fail to ensure compliance with statutory obligations (obligations designed to protect and promote the rights, interests and well-being of children and young people).

9.153. The Committee notes that while Ministers must delegate certain powers and functions to their Departments and similarly, Chief Executives delegate powers and functions to staff, Ministers should continue to remain accountable for their Department's actions.

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<sup>187</sup> Transcript of evidence, 11/06/03, p 316.

9.154. The Committee therefore considers that the performance contracts for all senior staff, at least in the Department of Education, Youth and Family Services, should contain an explicit statutory compliance criterion, which must be met, in order to be judged as satisfactorily performing one's duties.

**Recommendation 39**

**9.155. The Committee recommends that the Government ensure all performance contracts with senior staff in the Department of Education, Youth and Family Services require compliance with statutory obligations in order to obtain a satisfactory appraisal.**



## **10. Does the ACT need a commission for children and young people?**

10.1. Many participants raised the need for a commission for children and young people in the ACT during this inquiry.

10.2. Three Australian States have such a commission and Victoria and South Australia are both considering one. The underpinning legislation varies in each of these States – Queensland, New South Wales and Tasmania – and consequently commission roles and functions are quite different across the jurisdictions. (Detailed information about each jurisdiction’s commission is at Appendix 6.)

10.3. As part of its consideration of this issue, the Committee met with the Commissioners for Children and Young People in Queensland and New South Wales as well as the Commissioner for Children in Tasmania. The Committee also received evidence from the New Zealand Commissioner for Children. The Committee thanks each of the Commissioners, and their offices, for the invaluable assistance they gave to the Committee during this inquiry.

### **The case for a commission - gaps within the system**

10.4. To evaluate whether or not a commission, or perhaps other changes to existing agencies are required, the Committee is of the view that it was important to identify clearly what is not being addressed currently (or to a sufficient degree), that would warrant either an enhanced or new agency in the ACT, to protect and promote the rights, interests and well-being of children and young people.

10.5. In light of the evidence presented during this inquiry, the Committee is of the view that there are four main areas of concern that might warrant a commission or changes to existing bodies. They are:

1. the lack of external review and appropriate complaints processes regarding Family Services decision making in care and protection cases;
2. the lack of external review/appropriate complaints processes for decisions affecting children and young people generally (e.g., in education);

3. the lack of systems level advocacy for children and young people in the ACT; and
4. the lack of mechanisms for communication between young people and agencies making decisions that impact on them.

10.6. It should be noted that these are very much listed in order of priority in terms of resourcing solutions to these concerns. Children and young people who are subject to decisions/involvement by Family Services are without doubt some of the most at risk and vulnerable members of our community. The next level of “need” is children and young people more broadly who are affected by a range of decisions being made for and about them. For example, decisions made about exclusions in schools or policies and practices in juvenile justice. Lastly, the Committee recognises that the current lack of coordinated systems level or “cultural” advocacy on behalf of children and young people in our community has an impact— although it can be difficult to quantify or characterise this easily. In a sense, systems level advocacy for children and young people is more about saying what can we do *pro-actively* in our community to enhance their lives (rather than considering their rights, interests and well-being in a *reactive* fashion).

10.7. Having identified these areas as “gaps” the question is can they be addressed through changes to some existing body? Or, is a new body such as a commission for children and young people justified?

10.8. The Committee acknowledges that in considering the establishment of a commission, the issue of the relative size of the ACT is a serious consideration. The ACT is a small jurisdiction with limited resources.

10.9. The Committee also notes that although the majority of organisations and individuals giving evidence supported a commission, there were some concerns that a commission in and of itself would not resolve the systems issues that are at the heart of some of the problems and, may possibly only create another level of bureaucracy.

10.10. During the Standing Committee on Justice and Community Safety’s inquiry into the *Commission for Integrity in Government Bill 1999*, the Auditor-General suggested that the following three questions needed answers before establishing a new authority:

1. are there ACT agencies or bodies which currently have the legislative authority to carry out all or most of the proposed Commission’s functions?;

2. if the answer is yes, are the legislatively authorised agencies or bodies effectively conducting the functions?; and
3. if the answer to 2 is no, can the reasons for the functions not being effectively conducted be addressed so that the functions can be effectively conducted in the future?<sup>188</sup>

10.11. The Committee notes that these three questions are pertinent to its consideration of a commission for children and young people. (The ACT Discrimination Commissioner proposed similar questions in her submission to this inquiry.<sup>189</sup>)

10.12. The new versus existing body question, in relation to the first of the areas identified as a “gap” (the lack of external review and appropriate complaints processes regarding Family Services decision making in care and protection cases) is discussed earlier in this Report in Chapter 6.

10.13. The Committee’s conclusion on this issue is that it *is* necessary for a new and independent body to be responsible for developing, and monitoring the compliance with, standards applying to the care and protection system, and that a commission should have this role. The Committee has also concluded that there needs to be a specific complaints investigation function within this commission.

10.14. In relation to decisions affecting children and young people generally, while the OCA currently acts in the fields of mental health (in relation to involuntary orders) and juvenile justice, its capacity to do so is limited due to resources. It must prioritise its advocacy for those most at risk, which are generally those children and young people subject to detention by the state. As noted earlier, it is also generally pursuing systemic advocacy rather than individual advocacy. The Committee has observed that there isn’t currently any agency that has the resources or mandate to oversee decisions more broadly being made for and about children and young people.

10.15. While it would be impossible to have a body that looks at every decision involving a child or young person, it is arguable that there is a gap in the system now for some vulnerable children and young people in

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<sup>188</sup> Auditor-General’s submission cited in ‘The Commission for Integrity in Government Bill 1999’, Report Number 18 of the Standing Committee on Justice and Community Safety, August 2001, p 8.

<sup>189</sup> Submission 13, ACT Human Rights Office, pp 9-10.

the ACT. For example who is protecting the rights, interests and well-being of children and young people excluded from schools? Or those who are being restrained – whether it is at school, in hospitals or at Quamby?

10.16. As with the issues concerning Family Services, a case can be made that there is a need for both individual and systemic advocacy for these children and young people. In looking at which existing agencies currently might be able to perform this role the OCA is an obvious candidate in that it has experience in some of these areas – although it is clearly under resourced to exercise this role properly at present. One might also consider whether the Human Rights Office (with its legislation suitably amended) might be an agency that could perform this role.

10.17. However the Committee is of the view that although it would be possible to add these functions to an existing agency, they would also sit within the framework of a commission for children and young people.

10.18. The last areas were the lack of systems level advocacy and communication mechanisms for children and young people in the ACT. Here the Committee is referring to advocacy that seeks to change the way society views children and young people generally and enhances their status and participation in society. As mentioned earlier it is asking what can we do *pro-actively* to enhance their lives rather than considering their rights, interests and well being in a *reactive* fashion.

10.19. The advocacy of the rights, interests and well being of children and young people is a responsibility that we all share. There is a role for government, the non-government sector and the community generally.

10.20. In terms of the adequacy of what government is doing, the Committee has received evidence that there is a considerable lack of coordination and consistency across portfolios in regard to children and young people.

10.21. One option that might address this would be to create an ACT Office for Children and Young People in the Chief Minister's Department. The Chief Minister's Department already has an Office of Ageing, Office of Women, Office for Multicultural Affairs and an Aboriginal and Torres Strait Islander Unit. Presumably the rationale driving their establishment would also apply to children and young people i.e., that they are a special group within society that require a focused and coordinated approach across government.

10.22. Such an office could potentially deliver a more coordinated approach by government and increase the profile of children and young people's issues within government. While this would be important, it is not the complete answer to the lack of systems wide advocacy for children and young people. This is largely because the very nature of government is that it must balance a range of views and competing interests. Advocacy, on the other hand, is the opposite of this "balancing act" in the sense that children and young people need someone that will firmly advocate on their behalf without having to juggle competing interests.

10.23. The benefits of this role were highlighted to the Committee in its visit to the NSW Commission for Children and Young People. The Committee was particularly struck by the work of the Commission in advocating for children and young people as a "class" of people. For example working with retailers on codes of practice for young people's use of shopping centres or developing with the education system a package on rights based on the UN Convention.

10.24. Though complementary to the work of government agencies, this kind of work is not necessarily a role for government. Nor is it necessarily a role for youth organisations. In a sense, a commission can be the vehicle for bringing both government and non-government organisations to the table in order to advance the rights, interests and well-being of children and young people.

10.25. Again the question is whether or not there is a body in the ACT that really undertakes this role. As with the other areas of concern, the body that comes closest to having the expertise for this kind of role is the OCA – however its focus to date has clearly been on children and young people who are in need of protection from abuse, exploitation or neglect. With limited resources it is understandable that this would be the priority rather than advocating for the rights of children and young people generally.

10.26. These limitations were recognised by the Government in its submission to the inquiry.

While the Office of the Community Advocate provides a vital service to children and young people in the community, an identified weakness is that, as it is currently structured, it is limited in its capacity to change wider systemic structures which have an impact on children and young people. While it has a wider, systemic advocacy role, its actions tend to be

reactive and focused on case-by-case advocacy. Additionally the OCA has a limited capacity to undertake research into issues of concern to the safety and well-being of children and young people that might drive systemic change.

There is a role, therefore, for developing processes to address the broader systemic issues in order to progress the debates around children and young people's issues, needs and rights.<sup>190</sup>

10.27. In conclusion, while the OCA's role and functions have some important similarities with a commission for children and young people, the areas of difference and the response of Government to date to the OCA, suggest to the Committee that the answer is not to enhance the OCA, but rather establish a specific body solely focused on the rights, interests and well-being of children and young people.

10.28. The Committee notes that having a body whose sole focus is children and young people has a number of advantages in terms of the priority afforded children and young people's issues compared to when resources must be shared. Having a commission for children and young people also creates an identifiable place/institution for people to come to with their concerns or if they are seeking information. The importance of having an office with a name that clearly identifies the agency's work cannot be overstated.

10.29. The Committee therefore considers that there is a firm case for a commission for children and young people in the ACT.

## **A model for a commission for children and young people in the ACT**

### **Establishment of a commission – the need for independence**

10.30. The Committee is of the view that to be effective, a commission for children and young people must be independent from Government. This is not to say that it should not be subject to parliamentary processes, but rather that it must be protected from political influence and intrusion.

10.31. To achieve this kind of independence, the commission should:

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<sup>190</sup> Submission 15, ACT Government, p 20.

- be a statutory agency, with the arrangements for the appointment and the duration of the commissioner set out in legislation;
- have predictable levels of funding provided from a different department to that which it scrutinises (e.g., from Chief Minister's rather than Education, Youth and Family Services) to ensure that it's capacity to achieve outcomes over the long term is not compromised;
- have adequate funding, to enable it to have its own staff and premises;
- report to the Assembly through the Annual Report process, the relevant Minister and the designated Standing Committee; and
- have the power to report directly to the Chief Minister explicitly provided for within its operating legislation.

10.32. It is these sorts of measures that enable a commission to achieve the long term changes in culture and practice that are required if we are serious about the rights, interests and well-being of all the children and young people in our community.

10.33. Without these safeguards in the establishment, funding and reporting arrangements for the commission, it will have great difficulty being the independent voice that children and young people need. A good illustration of this can be seen in the proposed changes to the independence and autonomy of the Ontario Child Advocate.<sup>191</sup> After 13 years of what might be termed fearless scrutiny of the Ontario Provincial Government, the Advocate's relationship with the Government has deteriorated. As a result, the Ontario Government tried to force the Advocate to sign a contract that would require her to submit all her reports, findings and press releases to the relevant Ministry for approval. The contract would also require her to seek approval from the Ministry prior to undertaking any investigations. The Advocate has rightly, in the Committee's opinion, refused to do so.

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<sup>191</sup> 'Children deserve a stronger voice', Editorial – Toronto Star, 7/07/03.

## **Participation of children and young people**

10.34. For a commission to represent the views of children and young people it goes without saying that it would need to have mechanisms to incorporate the views and input of children and young people.

10.35. The Committee notes that each of the commissions in Australia has a range of mechanisms to seek the views of children and young people from reference or advisory groups and targeted focus groups to online forums. These are generally viewed as complementary to mechanisms such as ministerial youth councils or advisory groups for specific issues and the Committee sees no reason why this should not be the case in the ACT.

## **Reference group**

10.36. The Committee also believes it is important for a commission to be adequately supported in carrying out its role. This can be achieved through establishing a reference group that the commission could call on for assistance and advice. Members of the reference group should have relevant expertise in areas such as health, education, child development, the youth sector and the law. They should also be able to demonstrate an ongoing involvement with children and/or young people.

## **Functions**

10.37. As noted earlier, the functions of existing commissions vary across jurisdictions. For example, Queensland has a strong focus on care and protection matters. However in NSW the focus is on the broader advocacy issues for children and young people because in addition to the Commission for Children and Young People in NSW, there is an Office of the Children's Guardian and a Community and Disability Services Commissioner as a Deputy Ombudsman within the NSW Ombudsman's Office. i.e., there is external oversight of care and protection issues through other agencies.

10.38. Generically, there are a number of types of functions that a commission could have. They include:

- monitoring government practices and policies;
- conducting inquiries;
- undertaking research;

- managing specific programs such as employment screening or community visitor schemes;
- investigating complaints;
- developing standards;
- increasing public awareness of the rights, interests and well-being of children and young people; and
- encouraging the participation of children and young people in the community.

10.39. For the ACT, the Committee considers that a commission for children and young people should have the following *specific* functions in relation to children and young people who may be at risk of abuse, exploitation or neglect:

- to investigate acts done or omitted under the *Children and Young People Act 1999*;
- to monitor and assess the policies and practices of the Department of Education, Youth and Family Services (and any other body or organisation performing a function/service which has been delegated by the Chief Executive i.e., non government providers); and
- to develop, and monitor the compliance of, enforceable standards in relation to substitute care and the treatment of children and young people in juvenile justice and psychiatric facilities.

10.40. In addition to these specific functions, the commission should have the following functions in relation to all children and young people:

- to inquire into, and report on, any individual or systemic matter that relates to the welfare of children and young people;
- to promote the establishment of accessible and effective complaints mechanisms for children and young people and monitor the number and nature of complaints;
- to raise awareness of issues relating to the best interests of children and young people;

- to promote the participation of children and young people in the development of laws, policies and practices that have the potential to impact on them, through a range of measures including the educational system;
- to conduct research into issues affecting children and young people;
- to develop the policy for, and oversee the implementation of, employment screening for persons wishing to work with children and young people; and
- to convene a child death review committee.

10.41. In relation to the last function of convening a child death review committee, the Committee would like to note that in its submission, the Government advised the Committee that ACT Health (in conjunction with the Department of Education, Youth and Family Services and other key departments in the ACT) had just established a Child Death Review Team.<sup>192</sup>

10.42. However the Committee understands that in fact a Child Death Review Team has still not been established. The Committee is also aware that the OCA has been advocating *since early 1994* for its establishment.<sup>193</sup> In many respects, the lack of action by successive governments on this issue for nine years, in itself points to the need for a commission.

## **Powers**

10.43. The Committee heard a range of views about the sorts of powers (and possible sanctions) that a commission for children and young people should have. In light of the diversity of views the Committee has determined not to recommend a defined set of powers (or possible sanctions) but notes that:

- a commission needs certain powers in order to conduct investigations (including the power to call for records/documents) and these powers should not be limited to government agencies;

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<sup>192</sup> Submission 15, ACT Government, p 37.

<sup>193</sup> Submission 12, Office of the Community Advocate, p 9; Submission 15, ACT Government, p 37.

- a commission should be able to assess all relevant information from all parties, in order to recommend the outcome which is in the best interests of the child or young person;
- two members of the Committee are of the view that it could be problematic were the commission to be both the “policeman” and the “judge” i.e., a distinction needs to be made regarding the roles of investigating matters and monitoring compliance with standards versus making decisions about the consequences of non-compliance; and
- one member of the Committee is of the view that a commission should have the power to both review and override decisions of government agencies, including those of Family Services.

10.44. The Committee will examine any proposed legislation from the Government concerning a commission to check that the powers are consistent with the functions as described above.

### **Resource implications**

10.45. The Committee considers that the above model for a commission could largely be funded through the reallocation of existing resources.

10.46. The Committee is aware that the Government is conducting a review of community and statutory oversight agencies in the ACT. This review is examining the statutory oversight functions and powers of:

- the Community and Health Services Complaints Commissioner;
- the Community and Health Rights Advisory Council;
- the Discrimination Commissioner;
- the Community Advocate;
- the Management Assessment Panel and Care Coordination Office;
- the ACT Ombudsman; and
- official visitors in the areas of child protection and youth justice, mental health and disability.

10.47. It is also examining the role and function of community advocacy agencies.

10.48. Without wishing to pre-empt the outcomes of that broader review, the Committee notes that the model described above would effectively see the existing functions within the OCA that relate to children and young people, being transferred to a commission for children and young people. In that regard one would assume that the associated resources would accompany that transfer.

10.49. The Committee also considers that the majority of the functions for the commission replicate functions that either are, or should be occurring, within the Department of Education, Youth and Family Service. e.g., the coordination of employment screening. Resources could therefore similarly be transferred. The major cost would probably be the costs of employing a commissioner and the establishment of an office for the commission.

10.50. In short, the Committee does not believe that the potential cost of a commission, or the fear that it might duplicate existing agencies work, should be considered substantial impediments to its establishment.

#### **Recommendation 40**

**10.51. The Committee recommends that the Government establish a commission for children and young people with the appropriate powers to enable the full investigation of complaints and to allow the commission to act effectively. This is to ensure definite outcomes as well as the capacity to review decisions previously made which affect the health and well being of a child or young person. The Committee recommends the commission be established as outlined in Chapter 10 of this Report.**

#### **A differing view**

10.52. One member of the Committee, Mr Greg Cornwell MLA, does not support the establishment of an independent commission for children and young people. He has submitted the following paragraphs outlining his views on this matter:

While I support, indeed commend, the 41 Recommendations that go to make up this Report, I do not believe it is necessary to establish a separate commission for children and young people as set out at Recommendation 40 and outlined in Chapter 10.

My reasons are as follows:

- There is strong support for an advocacy/overseeing role in the interests of children and young people who for one reason or another come to the attention of authority: Family services, the courts, police, health etc.
- This support was reflected in the 20 written submissions and the 51 witness appearances- all were concerned about services or lack thereof in areas of government responsibility.
- Important as these concerns are and the need to address them unarguable, we need to keep numbers in perspective. Evidence is incomplete, however in two crucial areas youth waiting for public housing - 759 persons under 25 years (paragraph 5.82) and 439 persons in at least one placement of foster care (paragraph 6.43), the magnitude of the ACT problem can be guessed. I submit the problem is not great, certainly not by interstate standards and certainly not large enough to warrant a separate commission.
- My objection to a separate commission for children and young people goes beyond a simple question of size, however, because I am deeply concerned at the much wider role and function of such a body as proposed by the committee and set out at paragraphs 10.39 and 10.40. In my opinion this is giving powers to the proposed commission well beyond those sought by the submissions or by our witnesses, powers that could threaten the parental rights and responsibilities of the vast majority of ACT families whose children do not come to the attention of any local authority.
- Further, there has been no demand from the children and young people themselves of this same majority of parents to obtain the protection from their mothers and fathers of an independent body. Not one submission was received from suburbia wanting "rights".
- The Committee seems determined to establish an independent body to provide the rights, interests and well-being of children and young people to the greater majority who have not sought such protection and, I submit, do not need it.
- The Committee also seeks "rights" for under aged children who do not have to be always responsible for their actions in enjoying such freedom.

Therefore to sum up my different view:

- Because there has been no general call for a commission with such wide-ranging powers and functions, the proposed body should only be concerned with matters such as those outlined in the Report in Chapters 1 through 9 and relevant recommendations.
- Incorporation into an existing but expanded agency would enable deficiencies identified in the Report to be addressed, and rightly so, at much less cost and jurisdictional reorganisation.
- Incorporation also would see the attention of the commission focussed upon the identified areas of concern rather than addressing and interfering in areas where no problems exist.
- The number of the problem youth identified in the Report could be handled by an expanded agency in spite of the varying difficulties they face. After all, the Chief Minister's Department, as outlined at paragraph 10.21, incorporates Offices of Aging, of Women, of Multicultural Affairs and of Aboriginal and Torres Strait Islanders. All, I suggest, deal with complexities equal to if not greater than those of the children and young people with or in difficulties as outlined in this Report.

# 11. Other related matters

## State versus Federal Responsibility

11.1. In deliberating on the above issues, the Committee has also considered the issue of jurisdiction, and the relative benefits of states and territories having jurisdiction over child welfare and criminal matters (in contrast for example to family law falling under federal jurisdiction).

11.2. The Committee has observed that there are some perceived advantages to a federal approach. For example it appears that there is a greater targeting of resources and more coordinated training and education for legal practitioners across the states and territories in relation to family law matters.

11.3. In contrast, the onus of maintaining jurisdictional control is that the ACT must provide (often unique) mechanisms to support its own system, for example, the need to invest in the training the legal profession of today which becomes tomorrow's judiciary.

11.4. Philosophically, it is also arguable that the best interests of children are not served by disparate approaches across jurisdictions. As a 'border' town this issue has some relevance for children and young people who move between the ACT and NSW.

11.5. However, if a federal approach and consistency was likely to result in the 'lowest common denominator', there are obvious reasons why in the ACT, as a "well educated, relatively affluent community", we would probably want to maintain control of these matters.<sup>194</sup>

11.6. In considering these matters the Committee notes that there are significant legal and jurisdictional issues to consider including that:

- it may not be possible for the Commonwealth to take over a criminal jurisdiction to deal with juvenile offenders only;<sup>195</sup>
- other states and the Northern Territory may not wish to relinquish jurisdiction to the Commonwealth for either criminal or welfare matters relating to children and young people;

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<sup>194</sup> Submission 19, Children's Magistrate, p 12.

<sup>195</sup> Submission 20, ACT Law Reform Commission, paragraph 59.

- the Commonwealth may not wish to assume responsibility for these matters; and
- were the Commonwealth to do so, there is a real question as to whether a centralised bureaucracy dealing with child welfare, for example, would manage matters any more effectively.

11.7. A conclusive evaluation of the merits or otherwise of transferring jurisdiction on either child welfare or criminal matters is beyond the capability of this Committee at this time. However the Committee is of the view that this is an issue that does warrant further attention.

### **Recommendation 41**

**11.8. The Committee recommends that the Government consult with the community regarding the issue of jurisdiction for criminal and welfare matters relating to children and young people, with a view to raising this issue at the Standing Committee of Attorneys' General.**

John Hargreaves MLA  
Chair  
19 August 2003

## **Appendix 1 – Submissions received**

1. Mr Jason Lee
2. Australian Early Childhood Association, ACT Branch
3. ACT Council of Social Service
4. Woden Community Service
5. Child and Adolescent Mental Health Service
6. Community Education and Training
7. ACT Shelter
8. Child, Youth, Family Agencies of the ACT (CYFAACT)
9. Domestic Violence Crisis Service Inc.
10. Mrs M Day
11. Youth Coalition of the ACT
12. Office of the Community Advocate
13. ACT Human Rights Office
14. Mr Greg Tannahill
15. ACT Government
16. CYCLOPS ACT
17. ACT Policing
18. Ms Jette Bosworth
19. Children's Magistrate, Mr John Burns
20. ACT Law Reform Commission



## **Appendix 2 - Witnesses at public hearings**

**9 October 2002**

As private citizens

Mr Dave Rugendyke

Mrs Beverley Orr

For the YWCA of Canberra

Ms Kasy Chambers, Executive Director

Mr Jamie Crosby

For Community Education and Training

Ms Kim Sattler, Executive Director

For the ACT Human Rights Office

Ms Rosemary Follett, Discrimination Commissioner

As a private citizen

Ms Tricia Rushton

**10 October 2002**

For Child, Youth and Family Agencies of the ACT

Ms Sue Mickleburgh, Executive Director Marymead Child and Family Centre

Mr Wilf Rath, Chief Executive Officer Richmond Fellowship

Ms Annette Kelly-Egerton, Senior Manager Barnardos Canberra

Mr Craig Webber, Director Galilee

For the Domestic Violence Crisis Service

Ms Dennise Simpson, Manager

As a private citizen

Mr Jason Lee

#### **4 December 2002**

For the Youth Coalition of the ACT

Ms Meredith Hunter, Executive Officer  
Ms Alex Cahill, Policy Officer  
Mr Tim Moore

Official Visitors

Ms Mary Hyndman  
Mr Simon Abbott

For CREATE Foundation

Ms Michele Townsend, A/g National Director  
Ms Leanne Clarkson, Facilitator ACT

#### **5 December 2002**

For ACT Legal Aid

Mr Chris Staniforth, Chief Executive Officer  
Ms Linda Crebbin, Assistant Executive Officer

For the Community and Health Services Complaints Commissioner

Mr Ken Patterson, Commissioner

For the ACT Ombudsman

Ms Christhilde Haase, A/g Senior Assistant Ombudsman

#### **21 February 2003**

For Mental Health ACT

Mr Brian Jacobs, General Manager  
Ms Merrie Carling, Director – Child and Adolescent Mental Health  
Services (CAMHS)

For the ACT Government

Ms Katy Gallagher MLA, Minister for Education Youth and Family Services

Ms Sue Birtles, Executive Director – Children’s, Youth and Family Services

Ms Barbara Baikie, Director – Family Services

Mr Frank Duggan, Director – Youth Services

**27 February 2003**

For the Office of the Community Advocate

Ms Heather McGregor, Community Advocate

Mr Alasdair Roy, A/g Deputy Community Advocate

For the ACT Government

Mr Bill Wood MLA, Minister for Disability, Housing and Community Services

Ms Sandra Lambert, Chief Executive - Department of Disability, Housing and Community Services

Mr Robert Hutchison, Executive Director – ACT Housing

Ms Sarah King, Manager – Community Services

Ms Bronwen Overton-Clarke, Director – Strategic Policy and Organisational Services

For the ACT Government

Ms Katy Gallagher MLA, Minister for Education Youth and Family Services

Ms Sue Birtles, Executive Director – Children’s, Youth and Family Services

Ms Barbara Baikie, Director – Family Services

Mr Frank Duggan, Director – Youth Services

**27 March 2003**

For ACT Policing

Mr John Murray, Chief Police Officer for the ACT

**30 April 2003**

For the ACT Law Reform Commission  
Mr Justice Crispin, Chair

**15 May 2003**

For the Children's Court  
Mr John Burns, Magistrate

**11 June 2003**

For the New Zealand Office of the Commissioner for Children  
The Hon. Roger Mc Clay, Commissioner

## Appendix 3 – Views of young people

### Youth BBQ “Have your say” – 7 March 2003

On 7 March 2003 the Committee hosted a “Have your say” BBQ at the Civic Youth Centre. As well as talking directly with young people, the Committee put up graffiti boards with a number of questions for young people to respond to. The following is a direct copy of what was on those boards. Offensive language has been dealt with by the use of asterisks.

#### What bugs you about being a young person in Canberra?

- *Not doing what you want to do*
- *Violence*
- *Nowhere to live*
- *Can't get money*
- *It's good to be young*
- *To much drugs*
- *Lack of knowledge concerning the legalities that influence our lives!!! I luv Beazly*
- *Not being able to have the last say!! And where to go for help!!*
- *PARENTS*
- *Less privileges*
- *No F\*\*\* place to live*
- *You can't vote & get rid of that c\*\*\* head John Howard 4 eyed f\*\*\* k\*\*\* rash*
- *Being 15*
- *Everyone judging you on what u wear & how you look*
- *Strict parents*
- *No smoking*

- *tear\**
- *well the Canberra part really*
- *we need a wonderland*
- *here we r the nations capital & what do we have here? Nothing*

**What are some of the good things in your life?**

- *Nothing at the moment*
- *God moralities*
- *People*
- *War*
- *The Junction my 3rd home*
- *Youth center*
- *God*
- *Good schooling / education*
- *Money*
- *QYR (Queanbeyan youth refuge)*
- *The helping hand of open family/YIC (youth in the city)*
- *Friend*
- *Youth center*
- *Life*
- *Info on God & religious education*
- *Friends & family support*

### **How do you want to get info?**

- *Read it*
- *My mummy*
- *No where*
- *Call Emma from open family*
- *Seminars & lectures*
- *Call Pete open family*
- *Ask someone who knows*
- *From the Parliament House*
- *Ask God /pray*
- *News*
- *The Internet*
- *Free money 4 me*

### **Good/bad things about voting at 16 (instead of 18)**

- *The kids get more of a say how the future goes*
- *Us youth get a say to*
- *I might be able to vote for more housing*
- *More of a chance of getting younger members who are therefore more likely to be in touch with youth affairs*
- *Being too young*
- *Better say for youth*
- *People that age lack knowledge on the legalities influencing and associated with that prospect issued*
- *Get rid of d\*\*\* head Prime Minister*

- *We get a better Prime Minister instead of that doggy dogg howard! (old fart)*
- *Go Beazly*

### **What should politicians be talking about?**

- *Sex*
- *Life & being 25*
- *More housing for young people*
- *Kill John Howard & long live Beazly*
- *Something besides the crap they do*
- *It would help if they talked about anything rather than always bitching about the oppositions policies from the 80's (start talking about education funding –and give it more)*
- *I luv God*
- *Lowering cost of smokes, alcohol, petrol and everyday expenses like bread and milk*
- *Young people*
- *Religion*
- *The legalities associated with people our age & the influence the law has on us. To gain knowledge & a sense of individuality*
- *Me and my lot*
- *Putting the rapists in jail not drug dealers they r just trying to make a living*
- *I luv Jonny*

## **Key points raised by young people at the Bay**

“The Bay” is a suite of rooms at both campus sites of the Canberra College, which are designed to enable students, staff, parents and community members to access a diverse range of career, health and social services and agencies in a safe, friendly and accessible way.

Members of the Committee visited the Bay and spoke with around a dozen young people. The following is a summary of their views.

### **What works**

- The Bay – “friends” in our space
- “People more our own age giving us information”
- Using buses for advertising

### **Participation/politics**

- Good to have young people as representatives
- Like to be able to vote at 16

### **Family Services**

- “worse than Centrelink”
- “most useless organisation”
- “just fix Family Services and that would make such a huge difference”
- One young person told Members that their Family Services worker took a week to see them after they rang up to report they had been abused – despite the need to be seen by a doctor and be photographed. This person reported that they had been stuck in a cycle of being “dumped” into refuges by Family Services but then unable to stay because they had no income to pay their tariff in the refuge and Family Services would not support their application to Centrelink.
- Another young person told Members that they had been sent home by Family Services over a dozen times, despite ongoing abuse by the father. This person stated that Family Services refused to act

despite overwhelming evidence of the abuse that included video footage of being thrown through a glass window by the father, which had been taken by a neighbour. It was also alleged that Family Services refused to let the young person go and live with relatives interstate - despite this being what the young person desired. The young person said the reason given by Family Services was that it would be difficult to maintain contact with the abusive father interstate (the young person alleged this contact only consisted of highly supervised visits in Family Services Offices and police were required to be present).

### **Refuges**

- Young people who had been to refuges said there should be checks on standards at refuges and the workers. One reported being assaulted by a worker and another worker selling drugs to clients.
- It was also noted that people in refuges don't want to live with people who've just come out of Quamby who may be violent, offenders.
- One young person commented that refuges only cater for those who are 12+ - they said they knew of much younger kids with nowhere to go.

### **Education system**

- Don't like the bell curve – think its unfair to simply say there are only 2A's per class
- Not enough teachers and teachers who really know their subjects
- Counselling system hopeless – 2 counsellors for 1000 students, doesn't work if you have to book appointments weeks in advance

### **Living in Canberra**

- Nothing to do in Canberra
- Want more dance parties, under 18 venues, events like Big Day Out
- Not enough buses late at night
- Cost of Nightrider \$5 too much

- Cost of buses generally too much

### **Interactions with the police**

- Police stopping young people for no reason and asking for name and address
- Opposite sex police officers were conducting searches
- Police don't tell us our rights



## Appendix 4 – Reviews/reports recommending an adolescent inpatient facility

### Excerpts from previous reviews and Government responses, beginning at the most recent report

*Report to the Minister for Health: Investigation into Risk of Harm to Clients of Mental Health Services – Community and Health Services Complaints Commissioner ACT November 2002*

#### Finding 42

There is no residential setting where younger clients can stay while receiving treatment.

#### Recommendation 35

That bed based services be provided for young clients and that the decision about a suitable location be made in conjunction with decisions about other groups, such as older clients, and the integration of services provided at The Canberra Hospital and Calvary Health Care.<sup>196</sup>

...There are no beds in the ACT for young persons under the age of 18 years. This issue is a matter of concern for staff and has been addressed in past reviews. A feasibility study is currently being conducted to develop options for a specialist unit. Because of the problems of scale in the ACT and the estimation by Professor Nurcombe that the ACT could support no more than six to eight beds the options being considered are: an ACT specific service with a partial hospital or day program; or a service for the South West of NSW and the ACT. The Commissioner did not address the status of the feasibility study but noted the concern of staff about this gap in their service.<sup>197</sup>

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<sup>196</sup> Report to the Minister for Health: Investigation into Risk of Harm to Clients of Mental Health Services – Community and Health Services Complaints Commissioner ACT, November 2002, p 9.

<sup>197</sup> *ibid.* p 77.

*Review of the ACT Child and Adolescent Mental Health Services*

Professor Barry Nurcombe, November 2001 (\*this is a review to follow up on a previous review conducted by Professor Nurcombe in December 1998)

The Lack of an Inpatient Unit for Psychiatrically Disturbed Adolescents

This issue has not been addressed. I understand that there are plans to develop a “swing” sub-unit for up to four adolescents in the existing psychiatric unit of the Canberra Hospital. I strongly advise against that course of action. Such an arrangement could be no more than a stop-gap, and stop-gaps have a tendency to become permanent...

...The result is that psychiatrically disturbed adolescents, who often present serious management problems at the time of admission, disrupt the existing adult unit, are not welcomed by staff primarily oriented to adult patients.<sup>198</sup>

According to the Government submission to this current inquiry the Children’s Services Council (which is established under the *Children and Young People Act 1999*) “considered the implications of the Nurcombe Report and supported its recommendations to the Minister for Health.”<sup>199</sup>

*Review of Therapeutic Protection Order Provision (ACT Children’s and Young Peoples Act 1999), RPR Consulting, July 2001*

Recommendation 1

That the broader review of young people with intensive support needs examine the need for adolescent mental health beds and how this need might best be met.

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<sup>198</sup> Nurcombe, B., (2001), Review of ACT Child and Adolescent Mental Health Services, p 5.

<sup>199</sup> Submission 15, ACT Government, p 20.

## Adolescent mental health beds

The review identified major gaps in service provision for young people with intensive support needs that have an impact on some stakeholders' perception that a specific purpose facility is needed. In particular there is some evidence that there is a need for a small adolescent mental health unit to cater for young people with self-harming or other mental health problems. However as this was not looked at in depth given the focus of this review, a more detailed assessment of need should be undertaken as part of the broader review into intensive care needs.<sup>200</sup>

## Government response to the recommendation – August 2001

Agreed to Recommendation 1 – “This issue will be considered in the broader review of intensive youth support.”<sup>201</sup>

*Government Response to concerns raised in the first review of child and adolescent mental health services by Professor Barry Nurcombe conducted in 1998 – presented 24/11/99.*

The need for an in-patient unit devoted to adolescents was raised and supported by the ACT Government in their report to the Standing Committee on Social Policy regarding the adequacy of mental health services in 1997.

ACTMHS, in conjunction with Calvary Hospital, is about to embark on a feasibility study that will investigate the establishment of an adolescent in-patient unit at Calvary. A 12 bed in-patient unit will be investigated along with an associated mental health day treatment program.<sup>202</sup>

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<sup>200</sup> Review of Therapeutic Protection Order Provision (ACT Children and Young People Act 1999), RPR Consulting, July 2001, p 11.

<sup>201</sup> Report on Review of the First 12 Months of Operation of the *Children and Young People Act 1999* in Relation to Therapeutic Protection, presented by the Minister for Health, Housing and Community Services, 21/08/01, p 4.

<sup>202</sup> Government Response Addressing Concerns Raised in the Review of Child and Adolescent Mental Health Services by Professor Barry Nurcombe, – presented by the Minister for Health and Community Care, 24/11/99, p 5.

*Report on the inquiry into The Adequacy of Mental Health Services  
(Report No.6 Standing Committee on Social Policy), September 1997*

Recommendation 1

4.14. The Committee recommends that the ACT Government provide an accessible and age appropriate in-patient facility for young people with a psychiatric illness.<sup>203</sup>

*Government response to the recommendation – December 1997*

The Government agrees that access to an appropriate inpatient facility is important for young people. The Adolescent Ward at the Canberra Hospital is currently supported by ACT Mental Health Services staff. However, ACT Mental Health Services is currently considering other options to enhance hospital based service provision for young people. This will include an analysis of the potential benefits of establishing an adolescent day unit. It is also important that the treatment is provided in the context of national policy directions and best practice. A primary objective of the National Mental Health Strategy is a reduction in the reliance on inpatient-based treatment and care. This is fully supported by the ACT Government. Thus, in line with best practice for this client group, hospitalisation should be viewed as a treatment option of last resort. In order to achieve this objective, it is important to expand the range of accommodation options in the community as a priority, and not to rely solely on inpatient services. This expansion will be achieved as part of the overall expansion of community-based accommodation. In addition, the community-based nature of ACT Mental Health Services' regional teams, and the restructured Crisis Assessment and Treatment Team will allow more clients to be treated appropriately in the community.<sup>204</sup>

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<sup>203</sup> Report on the Inquiry into the Adequacy of Mental Health Services, Report No.6 of the Standing Committee on Social Policy, September 1997, p 17.

<sup>204</sup> Government Response to Report No.6 of the Standing Committee on Social Policy, Report on the Inquiry into the Adequacy of Mental Health Services, presented 11/12/97, p 3.

*Mental Health Services Review*

*Fjeldsoe, D.Spencer & A.Jones, May 1996*

This review is noted in the Community and Health Services Complaints Commissioner Report of November 2002 as highlighting the lack of an inpatient acute program for children and adolescents as an area of concern.<sup>205</sup>

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<sup>205</sup> Report to the Minister for Health: Investigation into Risk of Harm to Clients of Mental Health Services – Community and Health Services Complaints Commissioner ACT, November 2002, p 133.



## Appendix 5 – Recommendations from CYCLOPS for young carers

### RECOMMENDATIONS:<sup>206</sup>

It has been shown that the negative impacts of caring proportionately correspond to the lack of services available to assist family members and the lack of awareness, recognition and support for them. It is thus imperative that:

- That the ACT Department of Health increase funding for in-home respite services to allow young carers to attend activities that promote their social development and emotional wellbeing, and provide more access to transport services;
- That the ACT Department of Health investigate the provision of accessible and flexible respite options that ensure children and young people are able to leave the family home for periods to access education, social and recreational and support opportunities;
- That disability health and community services recognise the impacts of caring on family members, of young carers in particular, and adopt a whole-of-family response to service delivery;
- That this process is ensured legislatively through the enactment of policies to those currently operating in the United Kingdom (Carers Recognition Act);
- That young carers are recognised as a group of “young people at risk” and are thus targeted as a priority for the delivery of mainstream health services and youth services and that appropriate training and resources is provided so that this may be achieved;
- That support programs and the availability of community services be better publicized in schools and other places young people access to enable students to access support and information without having to identify as “at risk”;
- That the ACT government explore the development of interagency and interdepartmental processes that ensure that young carers and their families are not lost within the service system;

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<sup>206</sup> Submission 16, CYCLOPS, p 7.

- That research be conducted to explore young carer issues including service gaps, interagency collaboration, child protection and poverty and that strategies be developed to respond to these issues;
- That a service similar to CYCLOPSACT be developed for children under 10 with care responsibilities is developed or that existing programs are extended (with extra resources) to support this age group; and
- That the needs of children and young people in families affected by drug dependence are investigated and that a service be developed to specifically address their needs.

## **Appendix 6 - Summary of information about commissions for children and young people in Australia<sup>207</sup>**

### **The Queensland Commission for Children and Young People**

Queensland first established a Commission for Children in 1996 following concerns about paedophilia in the community. The initial Commission focused on the delivery of services to children by the Department of Families, the department that is responsible for child protection matters. This commission was funded by the Department of Families, Youth and Community Care and reported to the Minister for Families, Youth and Community Care.

In 1998, the Minister for Families, Youth and Community Care established a commission of inquiry to examine whether there had been any abuse, mistreatment, or neglect of children in Queensland institutions. The Forde Inquiry (as the commission for inquiry became known) recommended *inter alia* that changes be made to the Act governing the Commission for Children to ensure the independence of the office of the Children's Commissioner and the office of the commissioner be strengthened by:

- investing it with the role of Independent Inspector of residential care facilities and juvenile detention centres;
- empowering the commission to conduct inquiries into matters affecting children and young people;
- establishing a comprehensive research function to enable research to be conducted into all matters relating to the rights, interests and well-being of children and young people in residential facilities and juvenile detention centres;

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<sup>207</sup> This is a summary of information about commissions for children and young people operating in Australia. The information was sourced from Commission internet sites, brochures/information papers and the Committee's discussions with the Commissioners.

- providing the Commissioner with the power to monitor the role of the department in overseeing the care of young people in residential facilities and detention centres;
- extension of the official visitor's program to provide a comprehensive and regular monitoring function of all residential facilities for children and young people and detention centres.

In 2000 a new Act was proclaimed establishing the Commission for Children and Young People. The Act is unique in that it provides the Commission with both advocacy and ombudsman functions. The Commission for Children and Young People is a statutory body, which reports directly to the Premier.

The Commission has the following functions relating to children and young people from 0 to 18 years.

### **Complaints and investigations**

Under its ombudsman function, the Commission is able to receive, seek to resolve and investigate complaints about services provided to children and young people who are in the following circumstances:

- the child is the subject of an order under the *Child Protection Act 1999*; or
- the Chief Executive (Families) is taking action under the Child Protection Act to ensure the child's protection; or
- the child is subject to a community service order, fixed release order, immediate release order or probation order; or
- the child is in detention; or
- a child is in the course of a program or service established under the *Juvenile Justice Act 1992*.

The new Act extended the whistleblower legislation beyond the public service.

Complaints officers move around to different areas of the State.

In undertaking investigations of complaints, the Commissioner has extensive powers to access additional information to enable proper

assessment of a complaint. This information includes official records and files from a government department.

These investigation powers only relate to one per cent of children in Queensland that is, those in care or detention.

In circumstances where the investigation powers of the Act are not able to be applied, the Commissioner uses other mechanisms, such as advocacy and mediation.

The Act does not at present provide any power for investigations for children and young people not in care.

### **Advocacy**

Another of the Commission's roles is to advocate for the rights, interests and well-being children and young people to make sure their concerns, views and wishes are listened to. Any child or young person or adult acting on their behalf can express a concern or grievance to the Commission.

The advocacy function is complemented by provisions requiring the Commissioner to:

- consult with children and young people in a way that promotes their participation in decision-making by the Commissioner;
- listen to and seriously consider the concerns, views and wishes of children and young people;
- adopt work practices that ensure the Commission is accessible to children and young people; and
- be sensitive to the ethnic or cultural identity and values of children and young people particularly Aboriginal and Torres Strait Islander children.

As a consultative measure to gain input from children and young people, the Commission establishes a series of focus groups.

### **Community visitors**

The community visitor program is a state-wide program which provides advocacy and support services to children and young people in detention centres, authorised mental health services and out-of-home residential

care facilities. Out-of-home residential facilities include shelters/refuges and independent living units and houses where the residents are supported by a youth worker. It also includes special facilities for young people with a disability such as group houses and respite care facilities.

Community visitors have the power to enter and inspect 'visitable' sites, talk to the children and young people who wish to speak to the community visitor and access documents at the facility that relate to residents or facility operations. They make monthly visits. Children and young people can call the community visitor at other times. Community visitors are required to respect the privacy of the children and young people at the sites.

Community visitors work on an hourly basis and have qualifications such as teaching, social work and psychology. They are selected by a panel, which includes a young person from the CREATE Foundation - a national organisation for children and young people in care.

If a visit results in a complaint, the community visitor writes a report. The complaint is forwarded by the Commissioner to the Director General of the Department of Families, which then must respond to the Commissioner within 28 days.

### **Monitoring**

The Commission has a role in monitoring and reviewing laws, policies, and practices relating to the delivery of services to children and young people or that otherwise affect them.

The Commission is consulted on all cabinet submissions that relate to children and young people.

The Commissioner or her representative sit on a range of whole-of-government Committees and the Commission is linked closely with a range of non-Government organisations.

### **Research**

The Commission also has a role in conducting and co-ordinating research into issues affecting children and young people. In this role it must give priority to the following:

- children and young people with a disability;
- children and young people in rural and remote areas;

- children and young people of non-English speaking background;
- indigenous children and young people; and
- children and young people who have no one to speak on their behalf.

### **Criminal history checks**

Under the *Commission for Children and Young People Act*, anyone wanting to work with children in regulated employment, as a paid employee, a volunteer, or a person carrying on a regulated business must consent to a criminal history check prior to their appointment. The Act provides the Commission with the power to access a person's complete criminal history, including charges, regardless of when or where they occurred. The provisions are based on the premise that children and young people are entitled to be cared for in a way that protects them from harm or the risk of harm.

The scheme was introduced on 1 May 2001 for newly appointed employees, on 1 February 2002 for self-employed people and on 1 May 2002 for volunteers.

The criminal history check examines:

- a person's criminal history (if any) to ascertain whether the person is suitable or unsuitable to work with children;
- charges and convictions for offences no matter when they occurred.

Under the provisions of the Act the Commissioner is required to:

- assess a person's suitability to work with children based on his or her criminal history, if any;
- contact a person who has a criminal history which may make him or her unsuitable to work with children;
- invite that person to make a submission to the Commissioner regarding the information in the criminal history on their suitability for child-related employment in the time specified;
- issue to an applicant and his or her employer a notice stating that the person is either 'suitable' or 'unsuitable' to work in child-related employment.

## The New South Wales Commission for Children and Young People

The establishment of a Commission for Children and Young People in New South Wales was a key recommendation of the Wood Royal Commission Paedophile Inquiry.

The work of the Commission is guided by the *Commission for Children and Young People Act 1998*. The Commission is an independent organisation that reports directly to the Parliament of New South Wales. The parliamentary Committee on Children and Young People oversees the work of the Commission.

The Act stipulates that the work of the Commission be guided by the following principles:

- the safety, welfare and well-being of children are paramount considerations;
- the views of children are to be given serious consideration and taken into account;
- a co-operative relationship between children and their families, and between children and their community, is important for the safety, welfare and well-being of children.<sup>208</sup>

In undertaking its functions the Commission covers all children and young people under the age of 18 years, but must give priority to the interests and needs of vulnerable children.

The functions of the Commission are described below.

### Advocacy

As in Queensland, advocacy is a very important function. The advocacy role includes:

- promoting the overall safety, welfare and well-being of children in the community and conducting and promoting public awareness activities on issues affecting children;
- promoting the participation of children in the making of decisions that affect their lives and encouraging government and non-

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<sup>208</sup> *Commission for Children and Young People Act 1998* (NSW)

government agencies to seek the participation of children appropriate to their age and maturity;

- contributing to the development of laws and policies that affect children; and
- conducting and promoting training on issues affecting children.

## **Research**

The Act stipulates that the Commission is to conduct, promote and monitor research into issues affecting children. Research projects include undertaking ongoing research for the NSW Child Death Review Team and specific projects such as research into young people and suicide.

## **Monitoring**

This function includes monitoring:

- the overall safety, welfare and well-being of children in the community;
- trends in complaints made by or on behalf of children
- public awareness activities on issues affecting children; and
- training on issues affecting children.

## **Conducting inquiries**

The Commission does not receive complaints about individuals or child protection issues. Investigations into such matters are conducted by other agencies, for example the Community Services Commissioner or the Ombudsman. It does however conduct special inquiries. The Minister may require the Commission to conduct a special inquiry into a specified issue affecting children, either at the request of the Commission or on the Minister's own initiative. The Commission is required to report in its annual report to Parliament each year any refusal of the Minister not to proceed with a request for a special inquiry.

## **Working with children check**

In July 2000 the Working with Children Check was introduced to implement child-related employment laws as established by Part 7 of the *Commission for Children and Young People Act 1998* (NSW) and the *Child Protection (Prohibited Employment) Act 1998* (NSW). The

Commission is responsible for the implementation and monitoring of these laws, which are designed to enhance the safety and protection of children and young people.

Under the *Child Protection (Prohibited Employment) Act* a ‘prohibited person’ is a person convicted of a serious sex offence. Such a person is not allowed to work in child-related employment.

Under the *Commission for Children and Young People Act 1998*, employers must check the background of preferred applicants for paid child-related employment, foster carers, ministers of religion, and members of religious organisations before they start employment. The check includes a national criminal record check for child abuse, child pornography, sexual activity or acts of indecency. It also includes a check of relevant disciplinary proceedings and Apprehended Violence Orders.<sup>209</sup>

There are a number of approved screening agencies that conduct the checks. These include the Commission for Children and Young People, the NSW Department of Education and Training, the NSW Department of Community Services, the Catholic Commission for Employment Relations, the NSW Department of Health, the NSW Department of Sport and Recreation.

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<sup>209</sup> The Commission for Children and Young People, *Annual Report 2000-2001*, p 40.

## **Tasmanian Commission for Children**

The Office of the Commissioner for Children in Tasmania was established by the *Children, Young Persons and Their Families Act 1997* that came into force in July 2000. The Act itself was informed by the United Nations Convention on the Rights of the Child.

Information published by the Commission states that the *Children, Young Persons and Their Families Act 1997* reflects the rights of the child to be brought up in a family and the family's responsibility towards the child, which is consistent with the UN Convention on the Rights of the Child. This Act is a move away from the traditional 'child rescue model' that took children away from their family unit. In place of such provisions, there is now recognition that under most circumstances, the child's best interests are served within the family and that the source of any danger to the child is to be removed from the family. The philosophy of the Convention is expressed in the fundamental principles of the *Children, Young Persons and Their Families Act 1997* namely:

- that the best interests of the child are paramount;
- that families are responsible for the care of their children; and
- that the Government has an important role in supporting families to meet this responsibility.

The Act states that the Commissioner is to act in an independent and impartial manner. The Commissioner is an appointee of the Governor and is not a Tasmanian public servant subject to the *Tasmanian State Service Act*. The Office is located under the Minister for Health and Human Services.

### **Consultation**

The Act requires the Commissioner to appoint a consultative committee of children and young people to advise the Commissioner. The children and young people are to be representative of diverse cultural and ethnic backgrounds. Some of the topics the council has considered include:

- a media protocol to protect the privacy of children and young people;
- anti smacking legislation; and

- strip searching of visitors at Risdon prison.

## **Advocacy**

The Commissioner serves to promote and protect the rights of all children and young people in Tasmania with respect of their health, care, welfare, protection and development.

Specific advocacy set out in the Act includes:

- encouraging the development within the Department of Health and Human Services of policies and services designed to promote the health, welfare, care, protection and development of children; and
- increasing public awareness of matters relating to the health, welfare, care, protection and development of children.

Examples of the advocacy work undertaken by the Commissioner for Children include:

- a children's policy for all local councils;
- banning physical punishment in homes;
- the extension of pre natal and post natal parent support services, and
- a whole of government and a whole of community approach to child protection and child development.

## **Research**

The Act does not specifically mention a research function.

## **Monitoring**

The Commission has a monitoring role in relation to policy and practice issues.

That role is spelt out in the functions of the Commissioner as follows:

- on the Commissioner's own initiative or on the request of the Minister to advise the Minister on any matter relating to the administration of the Act and the policies and practices of the Department of Health and Human Services, another government

department or any other person which affect the health, welfare, care, protection and development of children; and

- on the Commissioner's own initiative or on the request of the Minister, to advise the Minister on any matter relating to the health, welfare, education, care, protection and development of children placed in custody, or under the guardianship, of the Secretary of the Department of Health and Human Services under this or any other Act.<sup>210</sup>

### **Conducting inquiries**

The Commissioner for Children does not have an ombudsman role and therefore does not conduct formal inquiries into matters raised by children and young people in the same sense as the Queensland Commissioner for Children and Young People. The Commissioner does however receive and deal with complaints and inquiries except complaints about decisions of a Court. Complaints, once all details have been established, are referred to the relevant agency who is asked to attempt to settle the grievance through the agency's own internal grievance procedure if possible.

In situations where internal resolution is not successful, the Commissioner has the power to request any documents required from the agency and to assess the situation further in relation to policy, practice and services and whether the agency is responding to the needs of the child involved in the complaint. When appropriate the complainant is referred to other forums of redress such as the Ombudsman.<sup>211</sup>

The Commissioner also advises the Minister on matters of policy and practice that the complaint has raised.

### **Screening people who work with children**

Tasmania does not have any legislation setting out screening and checks for people who wish to work with children, either as an employee or in a voluntary capacity. In the absence of such legislation, the Office of the Commissioner for Children has developed a policy on screening those who seek to work with children. The policy advises organisations that

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<sup>210</sup> *Children, Young Persons and their Families Act 1997* (Tasmania)

<sup>211</sup> Office of the Commission for Children, *First Annual Report*, Hobart, Tasmania, June 2001, pp 9-13.

work with children and young people to adopt a system of formal checks on employees and volunteers as follows:

- seek police checks for criminal activities in both the Federal and State jurisdictions;
- request the person seeking employment to obtain a statement from the Division of Children and Families in the Department of Health and Human Services, that with respect to the person who seeks employment, there are no reported concerns about them in relation to any and all matters that were of risk to or did cause damage or injury to children, but did not amount to criminal charges or child protection proceedings being initiated; and
- ask any person who seeks to work with children to sign a statutory declaration that states they have not been involved in activities that harm, injure, damage or exploit children.<sup>212</sup>

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<sup>212</sup> Office of the Commissioner for Children, *Policy on screening those who seek to work with children*, Hobart, Tasmania.