GETTING THE ACTS TOGETHER: AN ANALYSIS OF ATTEMPTS TO REFORM CHILD PROTECTIVE LEGISLATION IN VICTORIA 1978 - 83

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ABSTRACT

This paper examines the background to recent moves to reform child protective legislation in Victoria. The basic provisions are contained in the Community Welfare Services Act 1970 and the Children's Court Act 1973. Each Act relies on provisions and definitions in the other Act to operate. This is particularly true in the case of ss. 31, 34 and 104 of the Community Welfare Services Act and ss. 14, 21, 22 and 27 of the Children's Court Act. These sections relate to 'case and protection' and 'irreconciliable difference' applications and are the particular focus of this study.

The Government has established a number of committees of enquiry to get the law changed, but the gaps and inconsistencies persist. It is concluded that as a method of law reform, these enquiries have proved singularly ineffective and that Victoria would do well to follow some of the examples of more successful change in other states and territories.

GETTING THE ACTS TOGETHER: AN ANALYSIS OF ATTEMPTS TO REFORM CHILD PROTECTIVE LEGISLATION IN VICTORIA 1978-83

This essay is about the process of law making through the medium of committees of inquiry. In it, I discuss various attempts to reform child protective legislation in Victoria, and their failure to produce successful legislation. Mostly this has been due to the multiplicity of interests involved and the diverse ideas of what should constitute a proper philosophy of child welfare, but the lack of understanding of legislative skills has also played a major role in preventing Victoria from achieving what has been accomplished in other states of Australia. One's first impression of a study of recent demands for reform of legislation concerned with children's welfare in Victoria, is that with the passage of time, they have become increasingly divergent and vociferous. Changes to the Acts concerned in 1978, 1979 and 1983 have done little to curb the general level of dissatisfaction. In spite of a number of government inquiries, establishment of committees by non-statutory bodies, research reports, and not inconsiderable media attention, Victoria has not completed the necessary overhaul of child welfare legislation. A prominent member of the Victoria Police wrote in 1980: "The problem in Victoria today concerning child welfare legislation, is child welfare legislation. The Community Welfare Services Act and associated Victorian legislation is in tatters. It is fraught with danger, both to the practitioner and child alike. It is riddled with errors, omissions, inconsistencies and ambiguities".[1]

Up to the time of the most recent amendment in May of this year,[2] there were 217 separate defects, many of which had been introduced by inept reforms in 1978 and 1979. These were due to inconsistencies and gaps within the relevant Acts, between the Acts, and between the Acts and the Regulations necessary to put them into operation.[3] The most

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1 Chief Inspector R. Baker. Address to Seminar on Child Maltreatment, LaTrobe University, 9 June 1980.

2 Community Welfare Services (Amendment) Act, 1983.

recent Act has removed some of the operational difficulties but leaves the basic task of review, promised as early as 1974, still to be done.

It is the purpose of this paper to trace the ideas, the events, and the groups involved in trying to change one particular aspect of child welfare law, namely the grounds on which the state should intervene between parents and children in the interests of the child and the community, how these grounds are to be established and the procedures to be followed.

The provisions relating to taking a child into state care by judicial means are contained in two Acts, The Community Welfare Services Act, 1970, ss. 31, 34 and 104, and the Childrens Court Act, 1973, ss. 14, 21, 22. These sections provide inter alia for the apprehension or summons by public authorities of children who are neglected ('in need of care and protection'), whose parents cannot cope with them (or vice versa), and those who are abused and maltreated. Children who commit offences can also be brought into state custody, but the procedures are different (although it may just be a matter of discretion on the part of the apprehending authority, if it is the police, to charge a minor with an offence or apply for a care and protection order). In both neglect (civil) and criminal cases the matter will be heard in the specialized jurisdiction of the Children's Court.

Problems of Child Welfare Legislation in Victoria

Problems created by the need to change legislation concerned with children in trouble are not unique to Victoria. In many jurisdictions, both in Australia and overseas, the legal basis for removing children from the care of their parents has been under scrutiny. In some places an extra-court body such as a panel has been given the task of making decisions in the interests of the child's welfare. In other places this sort of approach is not acceptable as it is seen as infringing the rights of children and parents. In Victoria the dichotomy between justice and welfare with regard to children has been institutionalized in the existence of two separate

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3 Interview with Chief Inspector Baker. Police Headquarters, William Street, 13 July 1983.

acts, but because the criteria for both sorts of intervention are not clear, the balance between the Acts is a very uneasy one. Attempts to reform them piecemeal and one at a time have been partly responsible for the gaps and inconsistencies mentioned above.

Another difficulty for modern child welfare law is that in many welfare areas there has been a growing tendency to see a child as a member of a family group and to envisage his welfare in terms of family wellbeing. This creates problems for children's jurisdictions if they see the child, and not that of the family, as the focus for intervention.[4] Families as such cannot be coerced, they must be persuaded and supported. Hence there has been an emphasis on providing voluntary support services for the families in the hope that they will be able to use them in the child's interests. In Victoria this has led to a movement for spending money on community based projects rather than directly on the more negative aspects of care for children who are in trouble here and now.

Victoria's policy makers seem to have been very little influenced by reports and inquiries in other states and territories which have dealt more explicitly with the philosophical problems inherent in children's jurisdictions.[5] Instead, they have taken a very pragmatic approach to change. This means that the influence of different interest groups has been very important on what change that has occurred. Taking children into care by judicial process where parental care is inadequate or unsatisfactory evokes the unpleasant reality of family failure and childhood suffering, at variance with everybody's ideal of parent/child relationships. Most people do not want to know about it, and those in direct contact with such parents and children have to endure unrewarding work and often misunderstanding of their aims. This makes them touchy and often opposed to new ideas. The fact that far more people now are involved in the debate about change than formerly, has meant that the debate has been a fairly acrimonious one.

There is no direct lobbying by those most intimately concerned, i.e. the affected parents and children who represent a small non-vocal part

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4 See Lynne Foreman, Children or Families (1975), A.G.P.S.

5 See reports from other states in the Bibliography.

of the population.[6] However, any Government initiative will have to satisfy the electorate in the long run, and as people generally regard child welfare as the Government's business, it is important that Government be seen as active. It is this fact which explains the number of promises made and the number of inquiries set up.[7] Parliamentary debates would indicate that child welfare was becoming a far more sensitive issue recently than it was even 10 years ago.[8] Outside interest groups do not include as wide a spectrum as in many other political issues and do not include self-interest groups.[9] They are limited to voluntary welfare institutions and agencies, community interest groups such as V.C.O.S.S., and a few specialized groups of lawyers, social workers and doctors, some hospitals and some government departments such as the Police, Department of Community Welfare Services (D.C.W.S.), the Health Department and the Law Department. While the interests of children are the primary focus of all these groups, their approaches to what should be done are very different. It is noticeable that none of the interest or advisory groups inside or outside the government, have been given responsibility for preparing legislation to carry their recommendations into practice. This has vitiated their effectiveness.[10]

Legislative Problems

As has already been mentioned, there are two Acts to be considered here. The Children's Court Act 1973 (C.C. Act) is administered by the

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6 These children represented 4.6 per 1000 children under 18 in 1977-78 and 3.3 per 1000 in 1981-82. Annual Report 1981-82, Department of Community Welfare Services, Victoria.

7 Attitudes of parliamentarians in the seventies are noticeably different from those in the late sixties, when Sir Arthur Rylan said: "How far is the general taxpayer - who looks after his own children - expected to go on looking after other people's children?". Cited by Mr. Mathews, Victorian Parliamentary Debates (P.D. (Vic.)), 20 June 1979, 1115.

8 Mr. Dixon and Mr. Roper had 21 separate exchanges in Parliament in 1977-78 over the government's inaction.

9 See Jean Holmes, the Government of Victoria V.Q.P. (1979) 130.

10 See Report of Royal Commission on Australian Government Administration (1976) (Coombs Report). Appendix I for discussion on this point.

Law Department, and the Community Welfare Services Act 1970 (C.W.S. Act) by the Department of Community Welfare Services. This would seem to be a recognition of the difference between welfare and legal approaches. But the general intention that they should be complementary has not been fulfilled.[11] The historical origins of the two acts are quite disparate.[12] The neglect provisions of the C.W.S. Act had their origin in the Neglected and Criminal Children's Act 1864, which regulated the grounds upon which a child could be removed from their parents' care (an administrative decision), and the Neglected Children's Act 1887 under which children could be 'charged' with being neglected (s. 20) and which spelled out the conditions of state wardship. The question of how such a provision could be legally administered was solved in 1906 with the passing of the first Children's Court Act.[13] The Children's Court was given the responsibility about making decisions about the disposition of children committing an offence and also when they had been found to have been neglected.

The first issue mentioned above, i.e. whether children were to be detained for their well-being, or as a punishment, was never really clarified, although the reading of Hansard at the time would indicate that the parliamentary intention was to have a purely welfare approach.[14] The two main reasons for taking children into care have never sat easily together since that time, and they continue to obscure what is at issue.

Since 1970, the C.C. Act has been amended once, and the C.W.S. Act has been amended four times so that there have been four versions of

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11 See the discussion in F.A.R. Bennion, Statute Law (1980), Oyez Publishing Co., at 110, of the U.K. Children's Bill 1908, where the political motive of having a "Children's Charter" distorted the shape and content of the Bill so that individual matters contained in other legislation were inconsistent and the whole was dressed up as something it was not.

12 See the Report of the Committee of Enquiry into Child Care Services in Victoria (1976), Government Printer, Chapter 3, and Department of Community Welfare Services Newsletter, No. 12, 5, 14.

13 The term, being 'charged' with neglect, persisted until 1973.

14 See for instance, P.D. (Vic.) Vol. 115, 3201-2. Mr. Prendergast's speech.

s. 31.[15] In 1970 s.31 read as follows: "Every child or young person under the age of seventeen years who answers to any of the following descriptions shall be deemed to be a child or young person in need of care and protection, that is to say:- (then followed sub-sections (a) to (l) which covered descriptions of three broad types of situation; firstly, what we now associate with homelessness, i.e. found wandering, begging, associating with prostitutes, or likely to lapse into a career of vice or crime; secondly, what could be called neglect or abuse, i.e. insufficient food or clothing, being ill-treated or exposed; and thirdly, where the person who was supposed to look after the child was unfit, because of his or her habits or health, to do so. The nineteenth century ring of the phrases used has attracted much criticism, but there were more serious objections viz., that categorizing the situations was artificial and limited the court's discretion, and also that those who thought children were in trouble would find a category arbitrarily that would stick in court.[16] It was also thought undesirable that children could receive pejorative labels. Section 34 provided for parents who could not control their child to apply to have the child admitted to the care of the Department. Section 104 made the same provision for parents of a young person (i.e. between the ages of 15 and 21). There was also a provision for voluntary admissions of a child to the Department's care which by-passed the Court and is not discussed here (s. 35(1)).

In 1970 the Children's Court Act 1958 was operative and s. 27 provided inter alia for the Court to admit the child to care if adjudged to be in need of care and protection under s. 31. The C.C. Act was amended in a few inconsequential ways in 1973 after the Statute Law Reform Revision Committee had made certain recommendations in 1972.[17] The

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15 See Appendix I. The original Act was the Social Welfare Act 1970, but its name was changed to the Community Welfare Services Act 1970, in 1978.

16 See for instance, A.H. Hiller and L. Hancock, "Juvenile Delinquency and the Processing of Juveniles in Victoria" in Legislation and Society in Australia ed. R. Tomasic (1980), Allen and Unwin, 299:325. The authors claim this resulted in boys being charged with offences and girls with moral danger of various sorts.

17 See Marrilyn Warren, Initiatives and Directions of Law Reform relating to Children in Victoria, 1973-1982, LLM Thesis,

(Footnote continued)

other sections in the C.C. Act which illustrate the inconsistencies between the Acts, are mainly s. 14(1) which gives the Court jurisdiction to hear and determine applications under s. 31, s. 34 or s. 104 of the C.W.S. Act, and s. 21 which outlines the procedure to be followed after a child has been apprehended and ensures that decisions are made as expeditiously as possible. Section 21 provides that the child shall, if practicable be taken before a children's court within 24 hours, or, if no convenient children's court sits within that time, before some justice or magistrate. It is not clear here whether the word 'child' is defined according to the C.C. Act, i.e. anyone under 18 (s.3), or according to the C.W.S. Act, i.e. anyone under 15 (s.3). Section 27, (mentioned above) is also important in this context as it is also affected by the discrepancy in definitions of a 'child' between the Acts. Section 34 (C.W.S. Act) refers to 'children' having an irreconciliable difference with their parents, and s.104 (C.W.S. Act) refers to a 'young person'. The section as amended in 1978 gave the child the right to apply to the court as well as the parent, so that the word 'child' must refer to the C.C. Act's definition if s.104 is to be included. In the case of s.34 this raises a difficulty with regard to the capacity of a minor to initiate legal action.[18]

Attempts to Change the Legislation Prior to 1978

Many of the discontents which surfaced between 1978-83 had their roots in events before this time. Melbourne University had produced three important studies which drew attention to defects in child welfare practice and legislation. In 1963, Tierney pointed out the disastrous consequences of the way that the goals of the legislation were distorted by the organisational aspects of taking children into care.[19] In 1970, King looked at the criteria used by police women (the main people involved at that stage) for preparing reports to be used in s.31 applications.[20] In 1973, a major study was carried out

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[17] (continued) 1983, Monash University, Chapter I. See also Francine McNiff, Guide to the Children's Courts Practice in Victoria (1979) C.C.H. Chapter I.

[18] See McNiff op. cit., paras 501:508.

[19] Leonard Tierney, Children Who Need Help: A Study of Child Welfare Policy and Administration in Victoria (1963) M.U.P.

by the Melbourne Criminology Department which provided a descriptive analysis of children brought before the court on protection applications (a total of 1843 children).[21] The Leaper study showed that the categories most used were s.31(j) and (k) (48%) (i.e. "likely to lapse into a career of vice and crime", and "exposed to moral danger"). Less than 1% of the applications were for children considered uncontrollable by their parents. No rationale based on the provisions could be discerned for using one clause rather than another[22] and Leaper concluded that s.31 was due for major revision.[23] Assessment by experts only rarely took place before the hearing because under s.27 the court could not order investigation until after adjudication had taken place.

In the year 1973-74 a total of 1057 children were admitted to care under s.31 (compared with 558 voluntary admissions, as 'uncontrollable children' or because of offences committed). Already 2020 wards were being cared for in approved non-governmental children's homes (compared with 731 wards in Departmental homes). The cost to these institutions was not being met by subsidies and they threatened to close their doors. In 1974, the Social Welfare Department (S.W.D.) responded by commissioning three pieces of research.[24]

The Children's Welfare Association, which was the body representing the voluntary sector, was not impressed. Finally a Committee of Enquiry into Child Care Services (Norgard) was announced by the Premier, Mr. Hamer, in December 1974. It consisted of social welfare and administrative personnel, but no one with legal training.[25] One of the terms of reference of the Norgard Committee concerned

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20 Catherine King, Preventive Child Welfare: The Feasibility of Early Intervention, Social Work Occasional Paper. Department of Social Studies (1971) (see p. 147).

21 Patricia M. Leaper, Children in Need of Care and Protection : A Study of Children brought before Victorian Children's Courts, (1974), Melbourne University Criminology Department.

22 Ibid 221.

23 Ibid Part II.

24 See Victorian Social Welfare Department Annual Report 1974, 40.

25 Members were Mr. J. Norgard (Chairman), Mr. Davy (S.W.D.), Mrs. Horne (C.W.A.), Miss. Sharpe (Family Welfare Advisory Council), Mr. Slattery (Assistant Public Service Inspector). The Research and Administrative Officer was Mrs. Jaggs (Senior Social Worker with S.W.D.).

procedures for admitting children to care.[26] The Committee endorsed the Leaper Report's views on s.31, and considered that its present form was the result of a number of unco-ordinated administrative and legal innovations over many years.[27] The committee met 50 times and interviewed 300 groups and individuals, including ex-wards. Seventy-nine submissions were received. The committee took the initiative of consulting Mr. Terry Carney of Monash University Law School when they realized the implications of their findings for legislative changes. One of their recommendations was that the C.C. Act and the S.W. Act needed review. The Committee struggled hard to produce a report that would not be pigeon-holed, and also to stimulate interest in change, but they were frustrated by the enormity of the task and the lack of unanimity among the members of the committee.[28]

The Report received a lot of publicity and it has since been widely quoted, but its effect on existing structures was minimal.[29] The Department had been forced to restructure its payment for wards during the period of the enquiry and this fact removed some of the pressure on Government for immediate change, so another committee was set up. This was the Central Implementation Committee of the Enquiry into Child Care Services in Victoria (C.I.C.).[30] However, its energies were dissipated by a proliferation of sub-groups and its final report was upstaged by the Committee of Enquiry on the Future of Social Welfare in Victoria in 1978 (White Paper Committee).

During the period of the C.I.C.'s operation (1977-81), the pressure for change developed a broader base. A series of important Commonwealth Government enquiries had taken place, the Poverty

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26 Reference No. 4.
27 Ibid 78.
28 Interview with Mrs. Shirley Horne, 22 August 1983.
29 Interview with Mrs. Donna Jaggs, 10 August 1983.
30 Announced by Mr. Dixon in the Legislative Assembly Parliamentary Debates (Victoria), 27 April 1977, 4. The members were the Permanent Heads of all Government Departments. Most of the work was done by a task force of specialists within the Departments called the Interdepartmental Working Party. This group produced a lot of detailed work. See memo to Management Services Bureau, Chief Commissioner of Police, 15 May 1980 from C.I. Baker. See also Warren Op. cit., 22:30.

Commission Report, has drawn attention to defects in child welfare legislation.[31] The Social Welfare Commission sponsored the study Children or Families[32] already referred to, which gave a detailed and succint analytic account of child welfare legislation in all Australian states and territories. The wording of the Victorian C.W.S. Act s.31 was particularly criticized in this report,[33] although the writer pointed out that this section could not be amended unilaterally. This report was very influential in affecting change in other states[34] but it had little practical impact on the S.W.D. who held the initiative for change in Victoria.

By late 1976, dissatisfaction with the Acts was being expressed in another quarter, in connection with child abuse. This came from a wide spectrum of pediatricians, hospital staff, public health authorities, academic lawyers and social workers. A workshop was held at the Royal Children's Hospital in 1976. Once again the unsatisfactory nature of s.31 was pointed out in the report of the workshop.[35] Changes were recommended and draft legislation prepared by the lawyers' group was appended. This legislation included a definition of physical and emotional injury and provisions facilitating detection. The Opposition in Parliament claimed that this report was ignored.[36] Mr. Dixon meanwhile assured Parliament that a "massive consultation" with the people of Victoria was necessary before change was undertaken. He was referring to the White Paper Enquiry, mentioned earlier, which was carried out by the Victorian Consultative Committee on Social Development.[37] Members of

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31 Australia: Commission of Inquiry into Poverty, Legal Needs of the Poor (1975), A.G.P.S., 51 and Second Main Report Ronald Sackville, Law and Poverty in Australia (1975), Chapter 11.

32 Lynne Foreman (1975), Op. cit.

33 Ibid, 39.

34 The author was invited to be a consultant by the Queensland and Northern Territory governments.

35 Report of the Child Maltreatment Workshop Melbourne 1976, Chapter 6.

36 A ginger group We Care had been set up by those involved to press for changes.

37 Report on the Future of Social Welfare in Victoria (1978) (White Paper), Government Printer, Melbourne. The management of the enquiry itself was in the hands of Mr. Colin Benjamin, then Director of Office of Social Planning and Research in D.C.W.S.

the C.I.C. considered their work would be rendered redundant by this enquiry. However they had already recommended that a legislation standing committee be set up, and two years later this took place. (It is hard to understand why two post-Norgard inquiries had been taking place at the same time.)[38] The White Paper certainly dominated the scene as far as Mr. Dixon was concerned, but it did not consider legislation directly, nor give any priorities for implementation of the Norgard Report.

The Report produced generalizations about the need for a family policy, and emphasized the need to close institutions, return children to their homes, and to provide regional services to support them there. The Committee consulted 5000 individuals and 500 organisations. Although they saw their work as connected with the revision of the legislation which took place in 1978, this committee had little contact with lawyers and apparently none at all with the C.I.C. The release of this Report coincided with the Government's desire to economize on welfare spending. It provided a rationale for closing institutions and for encouraging non-professional volunteers and self-help groups in local communities to cope with the work caused by the increased discharge of wards. Social workers in Regional Offices were either by-passed or overloaded.

These local groups were initially to be given grants under the Family and Community Services Scheme (F.A.C.S.) and it was contended that their aim was to support families so that family disruption would be prevented before it occurred. This was seen as a positive solution to the problems the S.W. Act and the C.C. Act were supposed to deal with.

The White Paper stands in great contrast to the N.S.W. Green Paper which was issued about the same time. The Green Paper[39] addresses the question of legislative changes directly, grapples with the conceptual problems of legal intervention and proposes draft legislation.

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38 Warren, Op. cit., 33.

39 A Report issued by the Hon. R.F. Jackson M.P., Minister for Youth and Community Services, on Child and Community Welfare Legislation, December 1978.

In Victoria informed community discussion was taking place quite independently of government moves. This is evidenced by the establishment by the C.W.A. of a journal devoted to child welfare issues, and a series of articles in a popular legal journal.[40]

Legislative Changes 1978-83

By the end of 1977, the Working Party on Child Maltreatment was actively agitating for new legislation along the lines of their draft legislation. The Children's Protection Society was claiming that, on the basis of the Leaper Report, direct attention to the provisions was necessary. Several hospitals had had experience of some badly handled cases of child abuse.[41] There was overcrowding in the Department's reception centres, and some church-based homes had already had to close. (It was seen as essential by the Department to cut down on residential care.)

In April 1978, Mr. Dixon announced a prospective Bill to amend the two Acts.[42] He assured the House that the 'widest comment' along the lines of the White Paper suggestions would be invited, but in fact sought to have a second reading the next day. The Bill was not passed.

At the end of the last session for the year, another Bill was brought before the House which Mr. Dixon claimed took the work of the C.I.C. and White Paper Committees into account.[43] Both the A.L.P. and the National Party raised objections but, by the use of the guillotine, the Act was passed (C.W.S. (Amendment) Act 1978). Importantly it changed the name of the Act and the Department to 'Community Welfare Services'; it changed the welfare descriptions in s.31, and the terminology "uncontrollable" to that of "irreconciliable difference" in ss. 34 and 104. It also provided for an annual review by the Director General of Wardship (independently of the courts).

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40 Australian Child and Family Welfare, and the Legal Service Bulletin. See Bibliography for a list of articles.

41 Dr. Alan Williams of the C.W.A. prepared a report for V.C.O.S.S. on Child Maltreatment.

42 P.D. (Vic.) 27 April 1978.

43 P.D. (Vic.) 16 November 1978, 509.

The new s.31 (s.19 of the amending Act) was replete with faults. The term 'care' was substituted for 'care and protection', and the welfare descriptions were altered to avoid stigmatizing labels. In s.31(1)(a) the criterion for admittance to the care of D.C.W.S. was changed to read "the child or young person has been ill-treated or is likely to bne ill-treated" (i.e. if a child is presently being ill-treated he is presumably unable to come under this provision). Again, Section 31(1)(b) read that where guardians were "unable or unwilling" to adequately supervise, a child could be admitted to care. It was pointed out by those experienced in Children's Court work, that a parent could be technically able and willing enough to supervise, but quite unsuitable in other ways. It is of interest that this vital section did not rate a mention in the debate. The explanatory notes on the clauses merely described the changes to s.31 as rewording "the grounds for admittance to the Department".[44]

A storm of criticism followed the enactment. The Law Department had not been consulted on s.27 of the C.C. Act which they had to implement. The Child Maltreatment lobby objected to the removal of the word protection, and D.C.W.S. did not have its records of wards sufficiently up-to-date to implement yearly reviews. The legislation had been drafted by a lawyer in D.C.W.S. who had been influenced by the authors of the White Paper and had not considered the C.C. Act at all. The Government took the easiest way out and did not proclaim most sections of the Act.

In June 1979, Mr. Jona, who had replaced Mr. Dixon, brought forward another Bill to amend the 1978 Act. A new s.31 was proposed, which inserted the present tense in s.31(1)(a).[45] The debate was adjourned one week. Meanwhile a former student of Dr. Lynne Foreman,[46] who was in the Law Department rang to tell her that the Bill had been introduced and that the second reading was to take place in five days, i.e. after the Queen's Birthday Weekend. Dr. Foreman got in touch

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44 Community Welfare Bill. Notes on clauses 1978.

45 P.D. (Vic.) 13 June 1979, 751.

46 Then a lecturer in Criminology at Melbourne University. Much of this information was obtained in an interview with Dr. Foreman, 19 August 1983.

with the President of the National Council of Women, Mrs. Diane Alley, who had also had no word of the Bill's existence. Between them they contacted the Police officers on the C.I.C., and the Children's Court Magistrates, none of whom had heard of the Bill. Dr. Foreman wrote a letter to Mr. Jona which was hand-delivered to him by the Friday night (a copy was also sent to the Shadow Minister, Mrs. Toner). Mr. Jona agreed to attend a meeting at Mrs. Alley's home on the Saturday afternoon. Among those present were Chief Inspector Baker and Inspector Barbara Oldfield of the Victoria Police, the President of the Probation Officers Association, the President of the Children's Protection Society, some Children's Court magistrates, the Director of the Children's Court Clinic, members of D.C.W.S. including the draftsman concerned and Mr. Colin Benjamin of D.C.W.S. who had played an important part in the White Paper Inquiry, as well as the Superintendent at "Allambie". The objections were vociferous and wide-ranging. There was a great deal of anger expressed over the Government's action. While there was little consensus about what should be in the Act, the meeting unanimously agreed that in its present form it was a disaster.

On the Tuesday morning, after the long weekend, Mrs. Toner launched her attack (backed up by the National Party) on the Bill. She said it was "ill-prepared, needing considerable alterations". She also said she was sure the Minister must have some misgivings himself. He did. A chastened Mr. Jona proposed amendments during the second reading "to remove legal ambiguities".[47] These amendments to s.31 included reinserting the word 'protection', inserting 'is being' into s.31(1)(a) (though leaving out the past tense 'has been', this time!). In s.31(1)(b) the words 'do not' were inserted to replace 'unable or unwilling' and in s.31(1)(c) a fuller description of parental incapacity was added. Very importantly, a paragraph enabling the Children's Protection Society (C.P.S.) to apprehend children at risk, was added to s.31(2). The relevant sections were proclaimed soon afterwards.

This Act did not allay criticism. An Interdepartmental Working Party

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47 See P.D. (Vic.), 20 June 1979, 1101. See Community Welfare Services (Amendment) Act 1979, s.2 in Appendix I.

(Police, Law Department and D.C.W.S.) was established immediately and this group suggested a further 217 separate amendments. Inconsistencies (including some mentioned previously in this paper) between the Acts were prominent among these. Another important difficulty was that in order to substantiate the grounds of s.31(1)(a) and (b), it may be necessary for the police to seek medical advice; but at the pre-court stage there is no provision for compulsory examination until the grounds have been established under s.27 of the C.C. Act. Often parents are reluctant to co-operate in allowing such an examination for obvious reasons, and the police avoid using the section if they can. A Supreme Court case towards the end of 1979 brought out some more of the difficulties for practitioners contained in the Act.[48] A C.P.S. social worker was requested by a hospital to obtain a care and protection order under s.31, for a child they wanted to keep in safe custody. She applied to the justice of the peace who granted the application, but neither she nor the J.P. correctly followed the procedures under s.21(2) of the C.C. Act.[49] The parents challenged the order on this ground and also on the ground that a hospital was not not "a respectable person" as required under s.22(4)(b) of the same Act. The judge recommended amendment of the Act, but in this instance the child had to be returned to his parents' care.

The discrepancies and difficulties mentioned above, as well as conflicts with Police Standing Orders, led to a view among the Victoria Police that they should adopt a much less active role.[50] At this stage, in other parts of Australia both on a Federal and State level, Governments which had begun the review process considerably later than Victoria, were now producing final reports, and in some instances had the legislation on their statute books.[51] Those

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48 Taylor v. Reilly and the Royal Children's Hospital. Unreported, 19 October 1979.

49 That is to bring the case before the next hearing of a Children's Court within 24 hours.

50 The Age, 2 June 1981 "Child care not police business: Inspector".

51 See, for instance, Australia: Law Reform Commission Report 18 on Child Welfare (1981). References for Queensland, Tasmania, W.A., N.S.W., and the Northern Territory are in the Bibliography.

concerned in Victoria continued to press for reform. In September 1981, the Minister for Community Welfare Services and the Attorney General set up a Legislation and Rights sub-committee under the Child Development and Family Services Council, a statutory advisory body established in the 1978 Act.[52] This sub-committee was to replace the C.I.C. Its terms of reference allowed a comprehensive investigation of all legislation touching children's rights in Victoria. It had a strong expert membership, and included many of those present at the Queen's Birthday meeting.[53] Law Institute constituted an exception to this.[54] The Committee was kept short of day to day funding, and the approach of the State Elections in March 1982, led to a loss of interest on the part of the Government so that the proposed public consultation did not take place. After the change of government, the committee was totally isolated. As the Chairman was concerned about the Committee's ability to operate effectively, she resigned. One recommendation included in her letter of resignation was to be taken up by the new Government, i.e. that an independent non-departmental committee should be established.

In March 1983, Mrs. Toner announced two initiatives in Parliament. First, that a new committee on Child Welfare Practice and Legislation was to be set up to completely rewrite child welfare legislation for the first time in 120 years; and second, that another Bill to make the existing legislation work protem was to be introduced as "the Community Welfare Services (Amendments) Act 1978 did not adequately take into account all the flow-through changes necessary to make relevant section of the Community Welfare Services Act consistent with the Children's Court Act".[55] This committee[56] was to produce a

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52 S.12.

53 Dr. L. Foreman (Chairman), Chief Inspector Baker and Inspector Oldfield (Police), Mr. J. Barnes (Children's Court Magistrate), Ms. M. Warren (Law Department), Mr. K. Williams (D.C.W.S.), Dr. P. Leaper (Royal Children's Hospital), Mrs. J. Hay (C.D. & F.S. Council).

54 The submission of the Law Institute of Victoria made detailed and expert comment about faults in the C.W.S. Act and the Children's Court Act. The Institute expressed a willingness to continue consultation over other aspects of the legislation.

55 P.D. (Vic.), 17 March 1983, 3203.

56 Consisting of Dr. Terry Carney (Chairman), Ms. T. Harper

(Footnote continued)

discussion paper in September 1983 and a final report in September 1984. This discussion paper has just appeared and Age reports[57] indicate that it covers a wide range of topics. Generally it maintains that the Government must take responsibility for children; that police powers in relation to apprehension of juveniles should be limited, and that reporting of abuse should not be mandatory. Already the C.P.S. has criticized these suggestions. It considers that the committee had missed the point that maltreatment of children did not occur in families who are able to identify their own needs. The C.P.S. also maintained that the report favoured the rights of parents over children. A police spokesman said that the Report was disappointing because the committee opposed mandatory reporting of abuse. These comments are an early indication the committee will have great difficulty producing a consensual report.

As far as the new Act is concerned, the Minister has realized, as her predecessors did not, that those working in the field will no longer tolerate having their wish for change postponed by Committees of Inquiry. Those working directly under the Acts (D.C.W.S., the Police, C.P.S., and the Children's Courts) have been insistent that the legislation be made workable here and now.

Only a few of the hundreds of defects in the legislation identified by the C.I.C. have been discussed here, but their cumulative effect has been destructive of good relationships between the different agencies.[58] For instance, the Police have been avoiding using s.31 when they need to move quickly, choosing instead to charge minors with offences to secure some sort of care for them. They want a review of the police/social work role. At present absconders from Youth Training Centres can be apprehended without warrants, but nothing can be done about absconding wards unless the police officer concerned happens to have a warrant with him. The role of the police in relation to C.P.S. workers is ambigious. Although the C.P.S. are given authority to apprehend, they are not secure against trepass

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56 (continued)
(Institute of Family Studies), Mr. Tony Lawson (V.C.O.S.S.) and Mr. K. Readwin (Educationalist).

57 The Age, 12 October 1983.

58 Interview with Chief Inspector Baker, 13 July 1983.

actions if they enter premises to check up on children, so they frequently asked police to secure a warrant and accompany them. The police do not wish to act on their own as they do not see themselves as competent to assess which, if any, of the welfare descriptions in s.31 of the C.W.S. Act, apply. The police find themselves acting as adjuncts and legal advisors to the C.P.S. workers, and they would prefer to have the separate roles made clear.

Some of these difficulties have been ameliorated in the 1983 Amendment[59] which reinserted the words into s.31(1) "in need of care and protection" instead of "in need of care". It also reinserted the past tense so that past, present and future were all covered in s.31(1)(a). This sub-section now reads, "The child or young person has been, is being, or is likely to be ill-treated, exposed or neglected or his physical, mental or emotional development is in jeopardy".[60] In 31(2) the sub-section was amplified to read: "A child or young person shall not be admitted to the care of the Department as a child or young person in need of care and protection whose care and custody are likely to be seriously disrupted unless the Court is first satisfied that all reasonable steps have been taken by the Director-General, or an authorized children's protection agency, to provide such services as are necessary to enable the child or young person to remain in the care of his family ....".

Two new sub-sections were inserted in ss. 34 and 104 of the Act (irreconciliable difference applications) to allow immediate placement of a child or young person in any form of accommodation provided for under s.22(4)(a) or (b) of the C.C. Act. This solves one of the problems in the Taylor case. Other cross references between the Acts have also been made consistent, and the provision which hampered police in their search for absconders, improved. Mrs. Toner has differentiated between what is covered in the Amending Act and the work of the committee by saying the latter will handle substantive issues!

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59 Community Welfare Services (Amendment) Act 1983, s.3. See Appendix I(d).

60 Chief Inspector Baker said the Police will still have difficulty with these criteria which are not defined sufficiently, ibid.

A Supreme Court case has further clarified the limitations put on s.22 by the Taylor case, and decided that a hospital, or at least its registrar, could be said to be a 'respectable person' as specified in this section.[61]

The effect of the 1983 Act may be to relieve the Government from immediate pressure for more changes. This may help the committee in giving it a breathing space to do its task; but it may mean that if its final recommendations are comprehensive (and expensive) they will go the same way as those of the Norgard Report, the White Paper, the Central Implemention Committee Reports and those of their immediate predecessors, the sub-committee on Children's Legislation and Rights.

Although the Act is able to be operated at the moment, there have been sufficient changes in the field to mean quite new directions may be necessary later so in fact the work of the committee could be to change legislation for new conditions. One of these has been mentioned above as an outcome of the 1978 and 1979 changes, and the philosophy of the White Paper. Further, the substitution of supervision orders, for care orders, plus the practice of early discharge, has led to a decline in the numbers of wards.[62] Tierney points out that this decrease is accompanied by a decline in the number of probation orders as well, and also that de-institutionalizing children does not necessarily mean that constructive measures have been taken, but rather that the young people are left to fend for themselves. Thus there has been an increase in homelessness commensurate with young people in the care of D.C.W.S.[63]

Two new types of complaint are appearing; first, that children are being returned to parents without investigation of circumstances,[64]

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61 Webb v. Johns (1983) VR, 739.

62 In 1974, 6677 children were wards of state, and in 1981-82 the number was 3834. See Annual Reports, Social Welfare Department 1974, and Community Welfare Services Department 1981-82.

63 Children and Youth under Institutional Care, in Submission to the Senate Standing Committee on Social Welfare, Parliament House, Canberra, September 1982.

second, that funding is being withdrawn from agencies with professional staff in preference to locally based untrained volunteer groups.[65] Both of these factors may have implications for the new committee's work.

Conclusions

This essay has examined ideas and events, which are the background to the present state of affairs. The aim has been to sort out inevitable, contingent, and gratuitous pressures from each other and then to see what progress in legislation has occurred as a result of inquiries and pressure from interest groups, particularly in the last 5 years. Certainly community awareness is greater as mistakes can be more stimulating than inertia, some sorting out of trouble spots has occurred. In addition, the Government is still anxious to come into line with other states, it remains to be seen whether they will persist in reform efforts when the pressures are not so great. One conclusion that can be safely drawn from this brief history however is that consultation has not as yet effected the necessary changes in the Victorian Child Welfare legislation; it may even have diverted them. Reid speaks of a 'poverty of pluralism analogy' that may apply here.[66] This is a belief that if every voice is heard a balance that will work for everyone's good will emerge, i.e. a sort of law-making by the balancing of vocal interest groups - a social equivalent of an Adam Smith type of economics. Reid suggests that a way to avoid this is to have a Royal Commission or formal law reform body enquiry which will produce draft legislation to be processed by a parliamentary committee. An example of Reid's approach would be the Standing Committee on Social Welfare in the Federal Parliament. The fact is that preparing legislation is highly technical work. It needs policy

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64 The Age, 27 July 1983, printed a number of articles. One was entitled - "Department puts Wards at risk: childworker, Toner denies department negligence". Others provided reports on 3 children who had been wards and were later killed by the parents after being returned to their care.

65 Canon Peter Hollingworth, The Age, 15 October 1983.

66 See G.S. Reid "The Parliamentary Contribution to Law Making" in A Revolution in Our Age: The Transformation of Law, Justice and Morals, Canberra Seminars in the History of Ideas, A.N.U. 1975, 2.

guidelines, of course, but it also requires comprehensive knowledge of other legislation, common law assumptions touching children's rights, standards of proof and attitudes to status offences. Further, it needs skilled draftsmen to translate clearly expressed intentions into legislative texts. The success of the N.S.W. Legislative Committee (Green Paper) may have been due to the fact that Mr. Justice Muir prepared much of the report on which it was based.

While consultation is valuable and necessary, it is more productive after clear proposals for change and their implications have been spelled out. This was the method used in the Northern Territory. This was also the method used in the Australian Law Reform Commission's consultation prior to the issuing of its draft Child Welfare Legislation for the A.C.T. The new committee of Enquiry in Victoria is in an excellent position to learn from mistakes and successes of government-initiated enquiries both in Victoria and in the various Australian states. Because it is later in time, the committee is in a position to take a more sophisticated view of what is at issue than earlier Victorian enquiries. If it is to produce the first major revision in 120 years it will need to know something of what went on during that time, particularly during the last 5 years. Only then will it escape the likelihood of living through the same sad history over again.

BIBLIOGRAPHY

Primary Sources

Victorian Statutes

Children's Court Act 1958, No. 6218.

Children's Court Act 1973, No. 8477.

Social Welfare Act 1970, No. 8089.

Community Welfare Services Bill, Notes on Clauses, 1978.

Community Welfare Services Act 1978, No. 9248.

Community Welfare Services (Amendment) Act, No. 9266.

Victorian Parliamentary Debates (Legislative Assembly);

28 November 1906, 3205, 3211.
9 October 1973, 705, 707.
25 October 1973, 1485, 1495.
31 March 1977, 7065 - 7067.
27 April 1977, 8135 - 8139.
23 November 1977, 11953 - 11975.
16 November 1978, 5909 - 5915.
8 December 1978, 7531 - 7557.
13 June 1979, 751 - 755.
20 June 1979, 1101 - 1123.
17 March 1983, 3201 - 3647.

Cases

Taylor v. Reilly, Unreported Sup. Crt. Vic., 19 October 1979.

Johnson v. Director-General of Social Welfare (Vic.) (1976) C.L.R., 92.

Webb v. Johns (1983) V.R., 739.

Reports

Victoria

Pilot Study of a Sample of Children Admitted to Care During 1974, Social Welfare Department, Victoria.

Report of Enquiry into Child Care Services in Victoria, 22 September 1976 (Norgard Report), Government Printer.

Report of the Child Maltreatment Workshop, Melbourne 1976, Government Printer.

Report on the Future of Social Welfare in Victoria, 28 November 1978 (White Paper), Government Printer.

Victorian Social Welfare Department, Annual Report 1974.

Department of Community Welfare Services, Victoria. Annual Reports 1980-81 and 1981-82.

Department of Community Welfare Services, Newsletter No. 2, 1983 Looking at Child Welfare.

The Age, 2 June 1981, 27 July 1983, 12 October 1983, 13 October 1983, 15 October 1983.

New South Wales

A Report Issued by the Hon. R.F. Jackson, M.P., Minister for Youth and Community Services on Proposed Child and Community Welfare Legislation (1978) (Green Paper).

Northern Territory

Community Welfare Bill 1983.

Juvenile Justice Bill 1983.

Statement by the Hon. Ian Tuxworth, Minister for Community Development, N.T. Legislative Assembly, 24 March 1983.

Australian Government

Commission of Inquiry into Poverty, Second Main Report, October 1975. Professor Ronald Sackville: Law and Poverty in Australia, A.G.P.S.

Commission of Inquiry into Poverty, Law and Poverty Series, Legal Needs of the Poor, 1975, A.G.P.S.

Families and Social Services in Australia, A Report to the Minister for Social Security, Vol. 1., A.G.P.S., 1978.

The Law Reform Commission Discussion Paper No. 9, Child Welfare Children in Trouble, 1979.

The Law Reform Commission Discussion Paper No. 12, Child Abuse and Day Care.

The Law Reform Commission Report No. 18.

Child Welfare, A.G.P.S., 1981.

Report of Royal Commission on Australian Government Administration (Coombs Report) 1976, A.G.P.S., Appendix 1L "Non-Statutory Bodies".

Children's Legislation and Rights Sub-Committee, Child Development and Family Services Council, Minutes and papers, 31 December

1981-29 June 1982.

Victorian Police Command Conference, 9 July 1981, Police Role in Social Welfare.

Victorian Police Management Services Bureau, Memo on Legislative Deficiencies, 15 May 1980.

Interviews

Mrs. Donna Jaggs, 9 August 1983.

Chief Inspector R. Baker, 18 August 1983.

Mrs. Shirley Horne, 22 August 1983.

Dr. L.J. Tierney, 12 September 1983.

Dr. L. Foreman, 23 September 1983.

Hearing in Children's Court, 27 September 1983.

Secondary Sources

Asche, Hon. Mr. Justice The Rights of the Child, First Vernon Collins Memorial Lecture, 1981.

Asquith, Stewart "Legal and Welfare Modes of Thought in Juvenile Justice" Semainaire Internationale D'Etudes Comparees sur La Delinquance Juvenile (1980) Vaucresson Paris.

Australian Law Journal Current Topics "Law Reform Commission's Discussion Paper on Child Abuse and Day Care", 54, July 1980, 382.

Baker, R.G. Child Welfare Legislation Seminar on Child Maltreatment at LaTrobe University, 9 June 1980.

Bennion, F.A.R. Statute Law 1980, Oyez.

Burns, Ailsa and Goodnow, Jacqueline Children and Families in Australia (1979) Allen & Unwin.

Carney, Terry Victorian Child Welfare Law: Problems and Prospects (1979) V.C.O.S.S.

Chisholm, R. "When Should the State Take Over" (1979), Legal Serv. Bull., 133.

Chisholm, R. "Child Abuse - the Legal Framework" Aust. Child and Fam. Welfare (1977) 1:8, 13:18.

Cleary, R. "Committee of Enquiry into Child Care Services in Victoria" Aust. Child and Fam. Welfare (1970) 1:4, 16:18.

Donzelot, Jacques The Policing of Families (1979) Random House.

Foreman, Lynne Children or Families (1975) A.G.P.S.

Foreman, Lynne "An Alternative to the Concept of Children's Rights", Aust. Child and Fam. Welfare (1976) 1,1, 16:21.

Foreman, Lynne Child Maltreatment Issues Paper Seminar on Child Maltreatment at LaTrobe University, 4 June 1980.

Goldstein, Joseph; Freud, Anna and Solnit, Albert Before the Best Interests of the Child (1979) Free Press.

Hiller, A.E. and Hancock, L. "Juvenile Delinquency Legislation and the Processing of Juveniles in Victoria" Legislation and Society in Australia, Tomasic, R. (ed.) (1979) Chapter 14.

Horowitz, Donald L. The Courts and Social Policy (1977) The Brookings Institute.

King, Catherine Preventive Child Welfare: The Feasibility of

Early Intervention (1971) Melbourne University Social Studies Department.

Leaper, P. Children in Need of Care and Protection (1974) Melbourne University Criminology Department.

McGregor, S.N. and Bailey, R.J. "Taking Children into Care by Non-Judicial Process in South Australia" Adelaide Law Review (1978) 6, 44:76.

McNiff, Francine "The Adolescent Half-Way House" Legal Serv. Bull. (1978) 3, 2. 44.

McNiff, Francine "Family Support or State Indifference" Legal Serv. Bull. (1979) Vol. 5:1, 6:9.

McNiff, Francine Guide to Children's Courts Practice in Victoria (1979) C.C.H.

McNiff, Francine The Juvenile Client Seminar Law Institute of Victoria Transcript, 13 August 1980.

Morris, Allison and McIsaac, Mary Juvenile Justice? (1978) Heineman.

Morris, Allison; Giller, Henri; Szwed, Elizabeth and Geach, Hugh Justice for Children (1980) Macmillan.

Melton, Gary B.; Koocher, Gerald P. and Saks, Michael J. Children's Competence to Consent (1982) Plenum Press.

Reid, G.S. "The Parliamentary Contribution to Law Making" A Revolution in Our Age: The Transformation of Law, Justice and Morals, Seminar A.N.U., August 1975.

Seymour, John "Child Abuse and the Law: The Australian Law Reform Commission's Approach" Aust. Child and Fam. Welfare (1982) 7, 3:9.

Stamm, Mortimer "Reforming Children's Courts" Legal Serv. Bull. April 1979, 51.

Tierney, L.J. Children who Need Care (1963) M.U.P.

Tierney, L.J. "Enquiry into Child Care in Victoria" Aust. Child and Fam. Welfare 1, 1, 41:42.

Tierney, L.J. Children and Youth under Institutional Care Submission to Senate Standing Committee on Social Welfare, Parliament House, Canberra.

Victorian Council of Social Services Priorities of Action in Welfare Law Reform A proposal submitted to the Victorian Law Foundation and The William Buckland Foundation, April 1981.

Warner, Kate "Proposals for Legislative Changes in Relation to Neglected Children and Child Offenders in Tasmania" Aust. Child and Fam. Journal (1982) 7:1, 10:15.

Warren, Marrilyn Initiatives and Directions of Law Reform Relating to Children in Victoria 1973-82 (1983) L.L.M. Thesis, Monash University.

Appendix 1. Section 31.

a. 1970

No. 8089.

SOCIAL WELFARE ACT 1970.

DIVISION 4.—ADMISSION OF CHILDREN AND YOUNG PERSONS TO THE CARE OF THE DEPARTMENT.

31. Every child or young person under seventeen years of age who answers to any of the following descriptions shall be deemed to be a child or young person in need of care and protection, that is to say :— Children and young persons in need of care and protection. No. 6219 s. 16.

Every child or young person—

(*a*) found begging or receiving alms or being in any street or public place for the purpose of begging or receiving alms or inducing the giving of alms ;

(*b*) found wandering, abandoned, or sleeping, in any public place ;

(*c*) who has no visible means of support or no settled place of abode ;

(d) who

(*d*) who is in a brothel or lodges lives or resides or wanders about with known or reputed thieves drunkards vagrants or prostitutes whether such thieves drunkards vagrants or prostitutes are the parents of the child or not ;

(*e*) who (not being duly licensed pursuant to the provisions of Division 9 of this Part) is employed in street trading in contravention of that Division or the regulations after a member of the police force or any person authorized in that behalf by the Governor in Council has (whether orally or otherwise) warned the child to desist from such trading and (where the parent or guardian of the child can be found) warned such parent or guardian that the child should desist from such trading ;

(*f*) who is not provided with sufficient or proper food nursing clothing medical aid or lodging or who is ill-treated or exposed ;

(*g*) who takes part in any public exhibition or performance referred to in Division 9 of this Part whereby the life or limbs of the child taking part is endangered ;

(*h*) who is in the care and custody of any person unfit by reason or his conduct or habits or incapable by reason of his health to have the care and custody of the child or young person ;

(*i*) who is lapsing or likely to lapse into a career of vice or crime ;

(*k*) who is exposed to moral danger ;

(*l*) who is required by law to attend school and who without lawful excuse has habitually absented himself from school and whose parent has, in respect of such absence, been convicted under Part IV. of the *Education Act* 1958.

Proceedings to be in Children's Court. No. 6219 s. 17.

32. (1) Every child or young person under the age of seventeen years found by any member of the police force or by any person authorized (whether generally or in any particular case) by the Minister in any of the circumstances enumerated in section 31 may be immediately apprehended by such member or person without warrant.

Warrant of apprehension.

(2) (*a*) If it appears to any justice on information made before him on oath by any person, that there is reasonable cause to suspect that a child or young person under the age of seventeen years is in any place in any of the circumstances enumerated in section 31 he may issue a warrant authorizing any person named therein to enter any house building or other place specified in the warrant for the purpose of apprehending any such child or young person.

1978

VICTORIA.

No. 9248

19. For section 31 of the Principal Act there shall be substituted the following section :— Amendment of No. 8009 s. 31. Child or young person in need of care, &c.

"31. (1) Every child or young person under 17 years of age who is in need of care by reason of any of the following shall be admitted to the care of the Department, namely :—

(a) The child or young person has been ill-treated or is likely to be ill-treated or his physical, mental or emotional development is in jeopardy ;

(b) The guardians of or persons having the custody or responsibility for the child or young person are unable or unwilling to exercise adequate supervision and control over the child or young person ;

(c) The guardians of the child or young person are dead or incapacitated and no other appropriate persons are available to care for the child or young person ;

(d) The child or young person has been abandoned and his guardians or persons having the custody of or responsibility for him cannot, after reasonable inquiries, be found.

(2) A child shall not be admitted to the care of the Department under the provisions of this section unless the Director-General is first satisfied that all reasonable steps have been taken by the Department, to provide such services as are necessary to enable the child to remain in the care of his family and that admission to the care of the Department is in the best interests of the child in the circumstances.

(3) Any person who believes on reasonable grounds that a child or young person is in need of care for any of the reasons specified in sub-section (1) may notify the circumstances of the child or young person to a member of the police force or to any person who or children's protection agency which is authorized in that behalf by the Minister (whether generally or in any particular case).

(4) Where a notification is made pursuant to the provisions of sub-section (1)—

(*a*) the notification shall not in any proceedings before any court or tribunal be held to constitute a breach of professional etiquette or ethics or to be a departure from accepted standards of professional conduct ;

(*b*) where a person acts in good faith and in accordance with the provisions of sub-section (1) he shall not in any way be liable to any action for damages or any other legal proceedings in respect of the notification ;

(*c*) the notification shall not be admissible in evidence in any proceedings before any court or tribunal except in the cases specified in sub-section (5) or where the person making the notification has authorized in writing the admission thereof in evidence and no evidence of the contents thereof or the name of the maker thereof shall be otherwise admissible in evidence ;

(*d*) a person shall not, except in the case specified in sub-section (5) (*b*), be compelled in any proceedings before any court or tribunal to produce the notification or any copy of or extract from the notification or to disclose or give any evidence of any of the contents of the notification or to disclose the name of the maker thereof ; and

(*e*) the member of the police force, authorized person or authorized agency to whom a notification is made shall not disclose the name of the person making the notification to any other person—

(i) without the permission in writing of the person by whom the notification was made ; or

(ii) unless the proceedings are proceedings specified in sub-section (5) (*b*) and the court or tribunal hearing the proceedings is satisfied that the name of the person making the notification is properly relevant in the proceedings.

(5) The cases referred to in sub-section (4) (*c*) and sub-section (4) (*d*) are as follows :—

(*a*) Where the notification is tendered in evidence by the person by whom it was made in answer to a charge or allegation made against him in the proceedings or that person gives evidence of the notification in answer to any such charge or allegation ;

(*b*) In support of or in answer to a charge or allegation made in the proceedings against any person in relation to the exercise of his powers or duties under this Act.".

C.1979

VICTORIA

Community Welfare Services (Amendment) Act 1979

No. 9266

2. In section 19 of the Principal Act—

Amendment of No. 9248 s. 19. Admission to care of Department.

(*a*) in the expression commencing with the expression "31. (1)"—

(i) for the words "shall be admitted to the care of the Department" there shall be substituted the words "may be admitted to the care or protection of the Department";

(ii) in paragraph (*a*)—

after the words "has been" there shall be inserted the words "or is being";

after the words "ill-treated" (where second occurring) there shall be inserted the words "or is being exposed or neglected";

(iii) in paragraph (*b*) for the words "are unable or unwilling to" there shall be substituted the words "do not"; and

(iv) in paragraph (*c*) after the word "incapacitated" there shall be inserted the words "or are otherwise jeopardizing the physical or emotional development of the child or young person";

(*b*) in the expression commencing with the expression "(2)"—

(i) for the expression "Director-General" there shall be substituted the word "Court";

(ii) for the word "Department" (where second occurring) there shall be substituted the expression "Director-General or an authorized children's protection agency"; and

(iii) after the word "child" (where thrice occurring) there shall be inserted the words "or young person".

d. 1983

VICTORIA

Community Welfare Services (Amendment) Act 1983

No. 9879

Amendment of No. 8144, s. 31. Child or young person in need of care, &c.

3. Section 31 of the Principal Act is amended as follows:

(*a*) In sub-section (1) for the words "in need of care by reason of any of the following may be admitted to the care or protection of the Department" there shall be substituted the words "in need of care and protection by reason of any of the following may be admitted to the care of the Department";

(*b*) For paragraph (*a*) of sub-section (1) there shall be substituted the following paragraph:

"(*a*) The child or young person has been, is being or is likely to be ill-treated, exposed or neglected or his physical, mental or emotional development is in jeopardy;"; and

(*c*) In sub-section (2)

(i) for the words "under the provisions of this section" there shall be substituted the words "as a child or young person in need of care and protection or as a child or young person whose care and custody are likely to be seriously disrupted"; and

(ii) after the words "Director-General or" there shall be inserted the expression "(in respect of a child or young person in need of care and protection) by".

Committee Members

The Committee consists of four members:

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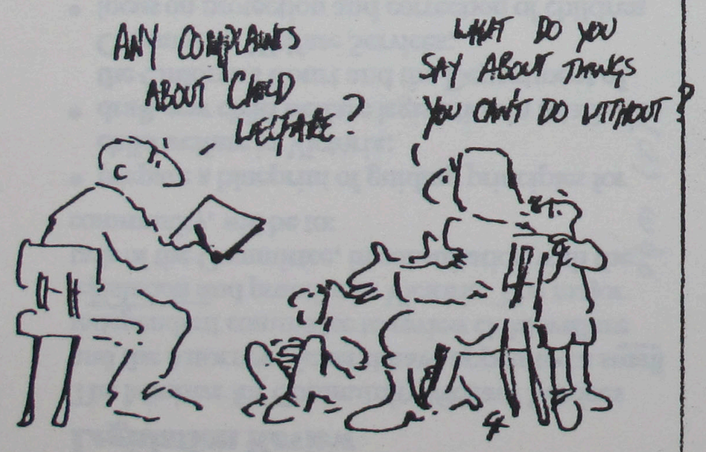


Formal Terms of Reference

The Committee is required:

1. To carry out a review of child welfare legislation and practice in that part of the Victorian welfare/justice system affecting children, young people and their families.
2. To develop a framework of principles that should guide and govern child welfare legislation and practice in Victoria in the forseeable future.
3. To provide detailed instructions on provisions to guide the drafting of new child welfare legislation consistent with the principles identified.
4. To make recommendations on any changes in practices or services that are desirable within the forseeable future, and to indicate practical ways of achieving these, where possible, by rationalisation of existing resources.
5. To suggest a time-scale for the implementation of changes in practices and/or services according to priorities developed through the review process.

F D Atkinson Government Printer Melbourne

6210/83—3678(F1)

Child Welfare Practice and Legislation Review

Information for people interested in the law and welfare affecting children, families and young people in Victoria.

Appendix 2

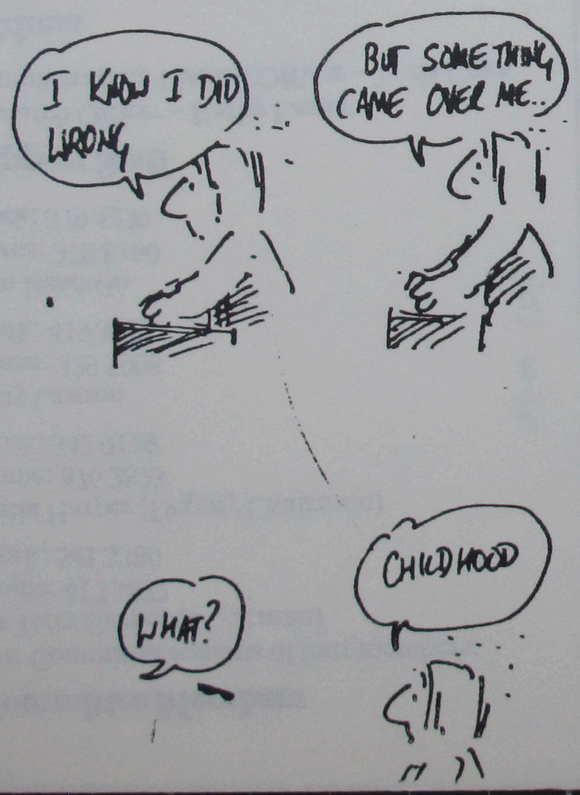
Brochure Child Welfare Practice and Legislation Review, 1983.

Child Welfare Practice and Legislation Review

The Minister for Community Welfare Services and the Attorney-General have appointed a small independent committee to review child welfare legislation and practice in Victoria. The major task of the Committee, in consultation with the community, will be to:

- prepare a blueprint of guiding principles for child welfare in Victoria;
- draft new child welfare legislation in relation to the Children's Court and the Department of Community Welfare Services;
- focus on protection and correction of children and young people;
- make recommendations about future strategies and services in the child welfare area.

This review has given the opportunity for the first complete rewriting of child welfare legislation in Victoria in the last 120 years.



Initial Submissions

The Committee has started meeting and is currently seeking the views of individuals and organisations who provide or receive child welfare services. The Committee wants to hear about the difficulties with the present system as well as suggestions for reform and at this stage would be pleased to receive short briefing papers, formal or informal submissions, or personal contact from individuals and organisations. If you wish your submission will remain confidential. Preliminary submissions will help the Committee to prepare its Discussion Paper.

Community Consultation – Discussion Paper

The Discussion Paper is being prepared and will be distributed in September 1983. It will set out some preliminary views and indicate options for reform. Wide ranging community consultation will begin after the release of the Discussion Paper. Submissions will be invited in response to this Paper.

Final report

The final report of the Committee to the Minister for Community Welfare Services and the Attorney-General is to be accompanied by draft legislation and is expected to be ready for the Spring session of Parliament 1984.

Topics for review

The Committee will be reviewing the Children's Court Act and all of the Community Welfare Services Act apart from the sections dealing with adult offenders.

Some of the topics to be considered by the Committee are listed below:

Children's Court
- Dealing with offenders;
- Dealing with children or young people needing protection;
- Dealing with troubled adolescents;
- Alternative styles of Children's Court;
- Roles for "experts";
- Court orders for children, young people, families;
- Basis for appeals;
- Status of the Children's Court

Police and young offenders
- Apprehension and interview
- Protecting rights
- The warning system
- Alternatives to going to Court
- Minimising further offending

Protection of children and young people
- Preventive services, family support services
- Identification of neglect and abuse
- Roles for police and protection workers
- Family autonomy versus child rights
- A role for a family court?
- Orders of Court
- Legal descriptions of children needing care and protection
- Roles for the community

Department of Community Welfare Services
- Protection of infant life
- Child employment
- School attendance
- Long term foster care
- Short term foster care
- Residential care
- Reception care
- Guardianship/other options
- Youth Services/hostels/refuges
- Family services
- The role of non-Government organisations
- Residential services for offenders
- Community based services for offenders
- Ensuring rights of children, young people, parents.

Appendix 1. Section 31.

a. 1970

No. 8089.

SOCIAL WELFARE ACT 1970.

DIVISION 4.—ADMISSION OF CHILDREN AND YOUNG PERSONS TO THE CARE OF THE DEPARTMENT.

31. Every child or young person under seventeen years of age who answers to any of the following descriptions shall be deemed to be a child or young person in need of care and protection, that is to say :— Children and young persons in need of care and protection. No. 6219 s. 16.

Every child or young person—

(*a*) found begging or receiving alms or being in any street or public place for the purpose of begging or receiving alms or inducing the giving of alms ;

(*b*) found wandering, abandoned, or sleeping, in any public place ;

(*c*) who has no visible means of support or no settled place of abode ;

(d) who

(*d*) who is in a brothel or lodges lives or resides or wanders about with known or reputed thieves drunkards vagrants or prostitutes whether such thieves drunkards vagrants or prostitutes are the parents of the child or not ;

(*e*) who (not being duly licensed pursuant to the provisions of Division 9 of this Part) is employed in street trading in contravention of that Division or the regulations after a member of the police force or any person authorized in that behalf by the Governor in Council has (whether orally or otherwise) warned the child to desist from such trading and (where the parent or guardian of the child can be found) warned such parent or guardian that the child should desist from such trading ;

(*f*) who is not provided with sufficient or proper food nursing clothing medical aid or lodging or who is ill-treated or exposed ;

(*g*) who takes part in any public exhibition or performance referred to in Division 9 of this Part whereby the life or limbs of the child taking part is endangered ;

(*h*) who is in the care and custody of any person unfit by reason or his conduct or habits or incapable by reason of his health to have the care and custody of the child or young person ;

(*j*) who is lapsing or likely to lapse into a career of vice or crime ;

(*k*) who is exposed to moral danger ;

(*l*) who is required by law to attend school and who without lawful excuse has habitually absented himself from school and whose parent has, in respect of such absence, been convicted under Part IV. of the *Education Act* 1958.

Proceedings to be in Children's Court. No. 6219 s. 17.

32. (1) Every child or young person under the age of seventeen years found by any member of the police force or by any person authorized (whether generally or in any particular case) by the Minister in any of the circumstances enumerated in section 31 may be immediately apprehended by such member or person without warrant.

Warrant of apprehension.

(2) (*a*) If it appears to any justice on information made before him on oath by any person, that there is reasonable cause to suspect that a child or young person under the age of seventeen years is in any place in any of the circumstances enumerated in section 31 he may issue a warrant authorizing any person named therein to enter any house building or other place specified in the warrant for the purpose of apprehending any such child or young person.

1978

VICTORIA

No. 9248

19. For section 31 of the Principal Act there shall be substituted the following section :— Amendment of No. 8089 s. 31. Child or young person in need of care, &c.

"31. (1) Every child or young person under 17 years of age who is in need of care by reason of any of the following shall be admitted to the care of the Department, namely :—

(*a*) The child or young person has been ill-treated or is likely to be ill-treated or his physical, mental or emotional development is in jeopardy ;

(*b*) The guardians of or persons having the custody or responsibility for the child or young person are unable or unwilling to exercise adequate supervision and control over the child or young person ;

(*c*) The guardians of the child or young person are dead or incapacitated and no other appropriate persons are available to care for the child or young person ;

(*d*) The child or young person has been abandoned and his guardians or persons having the custody of or responsibility for him cannot, after reasonable inquiries, be found.

(2) A child shall not be admitted to the care of the Department under the provisions of this section unless the Director-General is first satisfied that all reasonable steps have been taken by the Department to provide such services as are necessary to enable the child to remain in the care of his family and that admission to the care of the Department is in the best interests of the child in the circumstances.

(3) Any person who believes on reasonable grounds that a child or young person is in need of care for any of the reasons specified in sub-section (1) may notify the circumstances of the child or young person to a member of the police force or to any person who or children's protection agency which is authorized in that behalf by the Minister (whether generally or in any particular case).

(4) Where a notification is made pursuant to the provisions of sub-section (1)—

(*a*) the notification shall not in any proceedings before any court or tribunal be held to constitute a breach of professional etiquette or ethics or to be a departure from accepted standards of professional conduct ;

(*b*) where a person acts in good faith and in accordance with the provisions of sub-section (1) he shall not in any way be liable to any action for damages or any other legal proceedings in respect of the notification ;

(*c*) the notification shall not be admissible in evidence in any proceedings before any court or tribunal except in the cases specified in sub-section (5) or where the person making the notification has authorized in writing the admission thereof in evidence and no evidence of the contents thereof or the name of the maker thereof shall be otherwise admissible in evidence ;

(*d*) a person shall not, except in the case specified in sub-section (5) (*b*), be compelled in any proceedings before any court or tribunal to produce the notification or any copy of or extract from the notification or to disclose or give any evidence of any of the contents of the notification or to disclose the name of the maker thereof ; and

(*e*) the member of the police force, authorized person or authorized agency to whom a notification is made shall not disclose the name of the person making the notification to any other person—

(i) without the permission in writing of the person by whom the notification was made ; or

(ii) unless the proceedings are proceedings specified in sub-section (5) (*b*) and the court or tribunal hearing the proceedings is satisfied that the name of the person making the notification is properly relevant in the proceedings.

(5) The cases referred to in sub-section (4) (*c*) and sub-section (4) (*d*) are as follows :—

(*a*) Where the notification is tendered in evidence by the person by whom it was made in answer to a charge or allegation made against him in the proceedings or that person gives evidence of the notification in answer to any such charge or allegation ;

(*b*) In support of or in answer to a charge or allegation made in the proceedings against any person in relation to the exercise of his powers or duties under this Act.".

C.1979

VICTORIA

Community Welfare Services (Amendment) Act 1979

No. 9266

2. In section 19 of the Principal Act—

Amendment of No. 9248 s. 19.

Admission to care of Department.

(*a*) in the expression commencing with the expression "31. (1)"—

(i) for the words "shall be admitted to the care of the Department" there shall be substituted the words "may be admitted to the care or protection of the Department";

(ii) in paragraph (*a*)—

after the words "has been" there shall be inserted the words "or is being";

after the words "ill-treated" (where second occurring) there shall be inserted the words "or is being exposed or neglected";

(iii) in paragraph (*b*) for the words "are unable or unwilling to" there shall be substituted the words "do not"; and

(iv) in paragraph (*c*) after the word "incapacitated" there shall be inserted the words "or are otherwise jeopardizing the physical or emotional development of the child or young person";

(*b*) in the expression commencing with the expression "(2)"—

(i) for the expression "Director-General" there shall be substituted the word "Court";

(ii) for the word "Department" (where second occurring) there shall be substituted the expression "Director-General or an authorized children's protection agency"; and

(iii) after the word "child" (where thrice occurring) there shall be inserted the words "or young person".

d. 1983

VICTORIA

Community Welfare Services (Amendment) Act 1983

No. 9879

Amendment of No. 8089, s. 31. Child or young person in need of care, &c.

3. Section 31 of the Principal Act is amended as follows:

(*a*) In sub-section (1) for the words "in need of care by reason of any of the following may be admitted to the care or protection of the Department" there shall be substituted the words "in need of care and protection by reason of any of the following may be admitted to the care of the Department";

(*b*) For paragraph (*a*) of sub-section (1) there shall be substituted the following paragraph:

"(*a*) The child or young person has been, is being or is likely to be ill-treated, exposed or neglected or his physical, mental or emotional development is in jeopardy;"; and

(*c*) In sub-section (2) –

(i) for the words "under the provisions of this section" there shall be substituted the words "as a child or young person in need of care and protection or as a child or young person whose care and custody are likely to be seriously disrupted"; and

(ii) after the words "Director-General or" there shall be inserted the expression "(in respect of a child or young person in need of care and protection) by".