

## INTRODUCTION

### THE INQUIRY PROCESS

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

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

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

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

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

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

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

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

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

## THE NEED FOR CHILDREN'S ADVOCACY

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

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

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

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

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

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

Flekkoy (1991:224) has argued that:

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

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

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

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

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

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

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

## CRITICS OF CHILDREN'S ADVOCACY

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

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

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

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

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

## PARENTS AND FAMILIES

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

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

Further, Ludbrook explained to the Committee in his testimony:

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

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The Committee heard that:

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

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

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

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

## CONCLUSION

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

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

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





## CHAPTER ONE

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

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

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

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

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

##### 1.1.1 Defining "Children"

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

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

##### 1.1.2 Defining "Advocacy"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1.2 THE IMPORTANCE OF CHILDREN'S ADVOCACY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Youth Justice Coalition contended:

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

### 1.3 FEATURES OF EFFECTIVE CHILDREN'S ADVOCACY

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

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

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

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



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

#### 1.4 FORMS OF ADVOCACY

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

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

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

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

Each of these will be discussed in the following section.

##### 1.4.1 Systemic Advocacy

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

As Hogan noted:

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

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

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

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

#### **1.4.2 Individual/Representative Advocacy**

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

As the submission from the Youth Justice Coalition notes:

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

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

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

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

### 1.4.3 Parental Advocacy

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

### 1.4.4 Self/peer Advocacy

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

However, as the Youth Justice Coalition observe:

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

### 1.4.5 Citizen/Voluntary Advocacy

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

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

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

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

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

### 1.4.6 Summary

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

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

## 1.5 PAST PROPOSALS FOR CHILDREN'S ADVOCACY

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

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

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

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

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

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

These documents include:

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

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

They suggest:

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

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

## 1.6 CHILDREN'S ADVOCACY: GOVERNMENT RESPONSES

### 1.6.1 Commonwealth Responses

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

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



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

### 1.6.2 New South Wales' Responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The New South Wales Child Advocate has also noted:

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

He further concludes that:

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

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

### 1.7.1 History and Provisions

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

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

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

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

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

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

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

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

## THE NATURE AND SCOPE OF CHILDREN'S ADVOCACY

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

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

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

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

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

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

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

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

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

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

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

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

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

As Article 5 of the Convention states:

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1.8 CONCLUSION

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

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

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