

CHAPTER SIX

EDUCATION

6.1 INTRODUCTION

The fulfilment of children's rights to advocacy must include a sympathetic and meaningful expression of these concepts within the education system at all levels. Individuals spend a large part of their childhood attending various educational institutions and their impression of their place in society is strongly influenced by the treatment they experience.

Article 28 of the United Nations Convention on the Rights of the Child contains a recognition of the right of the child to education, and requires governments to:

- *make primary education compulsory and available free to all;*
- *encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in cases of need;*
- *make higher education accessible to all on the basis of capacity by every appropriate means;*
- *make educational and vocational information available and accessible to all children; and*
- *take measures to encourage regular attendance at schools and the reduction of drop-out rates.*

Governments are also required to take all appropriate steps to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention.

The demands that our society makes on its educational institutions have increased and broadened in recent decades. Social and economic factors are continuing to drive these changes. Examples of these factors influencing our society are:

- the increased competition for employment;
- the reduced availability of unskilled jobs;

- the need for more extensive life-skills and training;
- increasing numbers of families with two working parents; and
- the decline in extended family support in modern society.

The change in the nature of work has also impacted on the education of our young people. In Western nations there has been a move away from manufacturing, which was a major source of employment for young women, and a provider of trade apprenticeships for boys. The Committee understands that the reduction in apprenticeships, the decline of the manufacturing sector, and the loss of opportunities for employment in unskilled jobs have significantly affected employment prospects for those young people not wishing to pursue further study.

Today the youth unemployment rate is approximately 27%. In some areas of the country this figure reaches as high as 35-40%. With such high levels of unemployment, more children are staying at school with the hope of gaining access to tertiary education or some form of employment. According to the 1991 census, 58.8% of 15 - 24 year olds are attending education institutions (Submission 40).

In his submission, Dr Ferry Grunseit, the New South Wales Child Advocate, also points out that children are entering the school system at an earlier age. He suggests that while this is not always a problem, some children who are entering school at four years of age and competing with older and more mature children "start off disadvantaged and never catch up" (Submission 35).

6.2 STUDENT INVOLVEMENT IN DECISION-MAKING

The Committee heard from a number of witnesses that the greatest challenge in improving advocacy within the education system is to ensure that children have a voice on issues that concern them. In speaking to students from schools in both urban and rural New South Wales, the Committee found this to be the single issue of greatest concern.

Article 12 of the United Nations Convention on the Rights of the Child states that a child capable of forming his or her own views shall be assured the right to express those views freely in all matters affecting the child. In recognition of the large proportion of a child's life that is spent at school, the Committee considers it important for children to have adequate input into their educational environment, as well as an equal right to access education services.

In addition, the Committee believes it essential that students are educated for citizenship in a democratic society such as our own. Students are expected to leave school at the age of 18 years and begin to exercise their democratic right to participate in social institutions.

Providing adequate training in how those institutions work, how to access citizenship rights and how to develop skills in that area is a fundamental necessity of an education system in a free society.

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Minister for Education review student involvement in decision-making in schools; urge schools to ensure that students are consulted in the development of anti-violence initiatives; and produce information on standards of best practice regarding student participation for dissemination to all schools (Standing Committee on Social Issues, 1995:217). The Committee appreciates that the right of children to be heard in decisions affecting them has begun to be recognised through mechanisms such as student representative councils. The Committee was informed that these groups are increasingly becoming part of the decision-making process in the school, and they advocate on behalf of other students on issues arising in the school.

The revised *Student Welfare Policy* (Department of School Education, 1996c), released in July, encourages schools to include their Student Representative Councils in decision-making. *The Good Discipline and Effective Learning* statement (Aquilina, 1995), released by the Minister for Education in December 1995, requires all public schools to prepare their own school discipline policy in time for the 1997 school year. This work is to be undertaken collaboratively involving the whole school community - students, staff, parent organisations and school councils.

The Committee heard students are also increasingly becoming involved as part of school councils which have a significant role to play in identifying educational needs and priorities and in decisions regarding school finances (Kyrios Evidence - 29 November, 1995). Students are also involved in Quality Assurance Reviews. Quality Assurance Panels gather information through structured meetings and interviews with a cross-section of pupils, school staff (both teaching and non-teaching) and parents in the local community. These reviews evaluate the effectiveness with which schools meet community educational needs within the context of statewide policy and resources, and have been conducted in over 1,200 schools. Some regions have recently provided specific training for students so that they can become panel members themselves (Kerr-Roubicek Evidence - 29 November, 1995).

The Committee welcomes and approves these initiatives. However, the Committee recognises that consultation can take a number of forms and may not be regarded as bona fide by those consulted. Isobel Seidel, a Year 11 student from the Billabong High School in Walla Walla, told the Committee of her experience of the process of consultation between students and government as a member of the New South Wales Students Representative Council. Ms Seidel stated:

With my involvement in the consultation, I found that we were successful in the recommendations we put forward to the Assistant Director-General. He accepted our

recommendation, and in the restructure which will happen throughout the State we have been allocated a welfare officer and another body which will help SRCs. This shows that they have listened to what we wanted. I thought that that was very good because they were able to include us in the process. However, I found that they included us after the decision had been made. I suppose it really has to do with government. We are not consulted on the effects the decisions will have, and we are left with the consequences. I found that difficult (Evidence - 9 November, 1995).

For students to have a more meaningful voice, the Committee believes further cultural change is required in the education system. With major reviews of areas such as the Higher School Certificate, the Committee hopes significant consultation occurs with children across New South Wales to ensure their best interests and needs are addressed.

6.3 SUPPORT FOR STUDENTS

Social and economic stresses, which bear down heavily on less fortunate families in our society, may often be manifest in the behaviour of children at their school. Children from families with working parents may also face certain difficulties in gaining the support and nurturing they need.

Children are also spending a greater part of their lives in the care and supervision of our school system and greater resources are needed to support them to cope with difficulties which arise in their life outside school. The Committee recognises that the school system increasingly is expected to adopt a parenting role, which poses considerable challenges given the current burdens on the curriculum.

The Youth Action Policy Association stated in their submission:

Schools must be recognised as primary sites where students problems will manifest themselves and a site for intervention if problems occur. It must also be recognised that however skilled, teachers are not trained to deal with a whole range of social and psychological problems exhibited by their students (Submission, 40).

6.3.1 School Counsellors

Student problems are most often dealt with by school counsellors. School counselling was introduced to government schools in New South Wales in 1935 with the appointment of two "educational counsellors" to Sydney Boys' High and Sydney Girls' High. The number of school counsellors has grown in subsequent years to today's total of 653, with 91 district guidance officers. The average counsellor to student ratio is a little over one counsellor for every 1,000 students (Davidson, 1996).

School counsellors support students by:

- providing psychological counselling services and teacher in service training;
- maintaining links with government bodies and private organisations providing student services; and
- keeping informed of Departmental and inter-Departmental policies, and strategies for dealing with students.

During its Inquiry into Youth Violence, School Psychologists Australia Inc provided the Committee with statistics from a survey sample consisting of one-third of all school counsellors in New South Wales, and based on their work in the twelve months to November 1992 (Grunsell, 1993). From extrapolating these survey data, the frequency with which school counsellors in New South Wales deal with various types of incidents in one year was estimated. These incidents included:

Type of Referral	No. of Incidents
Parent Separation or divorce; traumatic family breakdown	3,368
Violence in the family	3,029
Violence among peers (including dating violence), or within the school, or towards a teacher	2,853
Family financial hardship (chronic or crisis)	2,639
Severe depression, suicidal thoughts of student	1,656
Drug/alcohol abuse by student	1,599
Notification of Child Sexual Assault	1,360
Notification of Child Physical Assault	1,010
Attempted suicide of student	864

These figures refer to the number of cases, and any one case could involve many interviews with a number of individual students, groups of students, students with their parents or siblings, with teachers or with health professionals.

● **Availability and Numbers**

According to the Youth Action Policy Association, the current ratio of counsellors to students is inadequate. The Association believes there is a need for a greater number of school counsellors in the education system (Submission 40). This was supported by student members of the New South Wales Students Representative Council, which represents students across the state, in evidence before the Committee.

In its *Report into Youth Violence In New South Wales*, the Committee recommended a review of the school counsellor service to examine the adequacy of counsellor numbers in each region; the basis upon which the allocation occurs; and the services provided by school counsellors (Standing Committee on Social Issues, 1995:212). The Government's response was that school counsellors are currently provided to schools "on the basis of

need" (Cabinet Office, 1996:41). School counsellors usually service one or more high schools and a number of feeder primary schools.

The Committee sought clarification of the basis for allocation decisions, and was informed that each year the allocation is reviewed taking into account such factors as the number of special education classes and students with disabilities integrated in the school; the level of suspensions; the level of child protection notifications; the number of non-English speaking background students; and other factors based on local specialist knowledge (Davidson, 1996).

Each of the Department of School Education's 40 District Offices has a student welfare consultant as well as a Senior Education Officer and Student Services and Equity Officer. The Department of School Education established a new Student Welfare Directorate in 1996. This Directorate has a Student Counselling and Welfare Unit which will review the processes for allocation of school counsellors, with the view to some changes being made for the beginning of 1997 (Davidson, 1996). The Committee welcomes this initiative, and calls for the adequacy of current numbers of school counsellors to be considered further.

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Minister for Education allow the appointment of selected experienced psychologists without teaching diplomas to the position of school counsellor (Standing Committee on Social Issues, 1995:212). The Committee was subsequently advised that the purpose of requiring school counsellors to have teaching qualifications is to ensure they have an understanding of student needs in a school context (Cabinet Office, 1996:41). The Committee rejects this proposition, and believes the skills of experienced psychologists would be more than adequate to enable them to appreciate student needs and their context. The Committee again calls on the Government to amend the employment criteria for school counsellors.

- **Access to Counsellors and Confidence**

Irrespective of the number of school counsellors, counselling services can only be effective in advocating and promoting the needs of children if they are appropriately accessed by students. In its *Report into Youth Violence in New South Wales*, the Committee recommended that a policy regarding the operations and protocols of the school counselling service be introduced; students be advised of the availability of school counsellors and support teachers; and students be assured access to appropriate guidance and counselling and that, if necessary, this be enshrined in legislation (Standing Committee on Social Issues, 1995:213).

However, Isobel Seidel from Billabong High School told the Committee:

some people do not go to counsellors because they are linked to the department. They are seen as being part of the departmental body which will table and bring out all

the information. They feel obliged to say everything. They believe it is always recorded and that further steps will be taken. In some schools they are very helpful - I know that. It is always good to have someone available for those who need it, but it is hard for them to talk about it with a counsellor (Evidence - 9 November 1995).

During this Inquiry, the Committee found that the issue of privacy was a particular problem for students in rural and regional New South Wales. Students from Taree High told the Committee that in smaller communities such as theirs, most people knew each other and students were often unable to discuss personal issues with school teachers, counsellors or the family practitioner because those individuals may have close social contacts with the student's family (Taree High School Briefing - 9 May 1996).

Student Representatives of the New South Wales Student Representative Council responded favourably to a proposal for an additional community-based option for students who need counselling services. Isobel Seidel stated in her evidence:

An outside body coming to the school would be preferable because the student would be speaking to someone from the community and not under the school's name. That might be helpful (Evidence - 9 November 1995).

Andrew Zaw, a student from Arthur Phillip High School, also expressed his concerns about the issue of confidentiality in talking to counsellors linked to the school. He suggested students might feel more comfortable talking to an independent person because the information about them would not be recorded within the school system (Evidence - 9 November 1995).

The Committee has been advised that only qualified school counsellors and counsellors-in-training under the supervision of qualified school counsellors have routine access to registered guidance files. All guidance personnel have a responsibility to ensure secure storage of registered guidance files and to restrict access to them. These files contain confidential records of students who have received a significant guidance or counselling intervention. Records may include psychological test protocols, reports received from parents, and medical reports. Files are registered at Regional Offices and are Departmental rather than school records. School counsellors must inform principals and teachers about information on the file that is relevant to the management of the student concerned or would contribute to education programming for that student. Such information may be photocopied for the Principal provided that this does not infringe confidentiality or copyright (Department of School Education, 1991). Registered guidance files can be the subject of a Freedom of Information request or a subpoena.

The Committee considers these guidelines do not overcome the conflict between student confidentiality and access to records, and recommends this conflict be investigated and reported on.

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Recommendations included in the Committee's *Report into Youth Violence in New South Wales* also focused on the need for school counsellors to have access to telephones and accommodation to ensure sufficient privacy and confidentiality (Standing Committee on Social Issues, 1995:213). The Government's response was that it is not financially feasible to provide counsellors with a telephone line for their exclusive use (Cabinet Office, 1996:41).

The Committee finds this response unacceptable. The Committee finds it astonishing that in Australia, which has the highest rate of mobile telephone usage in the world, a school counsellor cannot access a fixed private telephone line in a school. The Committee believes this could undermine the dignity of the child seeking assistance from a counsellor. The potential for breaches of confidentiality exists when counsellors do not have the technical and environmental facilities to ensure privacy. Such breaches of confidentiality could be devastating for a child already burdened by personal difficulties. The Committee urges the Government to implement the relevant recommendations of the *Report into Youth Violence in New South Wales*.

The Committee acknowledges that many children, particularly those in small communities, would value having a person outside of the school environment to approach when they were experiencing problems. The Committee believes that the efficacy of alternative counselling services external to the school is worthy of further consideration. Such services could be provided through existing youth services networks.

RECOMMENDATION 21

That the Minister for Education require the Department of School Education to report on:

- **the adequacy of current numbers of school counsellors;**
- **the appropriateness of existing employment criteria which prevent the appointment of selected experienced psychologists without teaching diplomas to the position of school counsellor;**
- **the conflict between student confidentiality and access to guidance records;**
- **attitudes of students to school counsellors; and**
- **possible alternatives to school-based counselling, having regard to the particular needs of rural children and children who may be reluctant to seek assistance from counsellors within the school establishment.**

6.3.2 Interagency Initiatives

The Committee was made aware of efforts to co-ordinate the activities of relevant departments and agencies to provide a holistic approach to student welfare. The Chairperson of the New South Wales Child Protection Council, Mr Adrian Ford, referred to these initiatives and supported closer collaboration between the Department of Education and other departments to help resolve some of the problems that children experience. In evidence to the Committee he commented:

The Department of Education is doing some extremely valuable work in terms of meeting children's needs, but there are also examples ... of children being caught up and labelled as, for want of a better expression, "bad" children. They exhibit particular problems such as difficult behaviour, emotional problems, or even psychological or psychiatric difficulties, and they may be attended to by a stretched school counsellor system. They may then be referred to a health system but there are no resources to get them to a health system. So that may not help to resolve the issue at hand (Evidence - 9 November, 1995).

In its Inquiry into Youth Violence in New South Wales, the Committee recommended the extension of the use of schools for community-based programs and services, and of the Department of School Education's involvement in parenting programs. The Government's Inter-Agency School Community Centres Pilot Project, involving joint collaboration between the Departments of School Education, Health and Community Services to fund a two year pilot project to establish four community centres, is in accord with these recommendations. The project will develop and trial models of inter-agency coordination to support families with children under 5 years of age, with a view to promoting a positive start to school and to prevent disadvantage on school entry.

Schools are also working with the Department of Training and Education Co-ordination to refer students to community based programs such as the Time Out and Circuit Breaker programs. The Time Out Program is a co-operative strategy between schools and community organisations to address the needs of chronic truants and behaviour disordered students. The Circuit Breaker Program is for young people of non-English speaking backgrounds who are members of ethnic groups which experience disproportionately high levels of youth unemployment. The program is designed to assist them move from school to work.

The Committee supports the continued development and extension of the policy of making schools throughout New South Wales available as community centres, to enable young people to have access to a range of local services within the security of the school, and promote the sharing of resources within the local community.

6.3.3 Bullying

The Committee found in its *Report into Youth Violence in New South Wales* that the incidence of bullying in schools is alarmingly high. Evidence to the Committee during that Inquiry suggested that approximately 15% of children, or one in seven, report being bullied at least once a week. Victims tend to become withdrawn, and are often very suspicious of other people. Their peers tend to reject them, so they become increasingly isolated, and increasingly likely to be targets.

In health questionnaires, students who were victims of bullying were twice as likely to respond that they were not in good health; felt ill; lost sleep over worry; were panicky without reason; and had "bad nerves".

Students from this group were also more likely to feel depressed and worthless, and feel that life was not worth living. These victimised children were two to three times more likely to indicate that they had thought of "doing away with themselves", wished they were dead, and to have the recurring idea of taking their own life (Standing Committee on Social Issues, 1995:88).

The incidence and nature of bullying described in the *Report into Youth Violence in New South Wales* demonstrates the need for advocacy and the promotion of students' best interests within the education system. In evidence during this Inquiry, Helen Kerr-Roubicek, Chief Executive Officer of the Department's Guidance and Student Welfare Unit, told the Committee of the difficulty in identifying and responding to bullying in schools:

We know from the research that young people need to feel that they will be believed ... and they need to have confidence that the system will respond in a way that will not exacerbate the issue. It is clearly a difficult question for schools because this is a kind of coercive behaviour that occurs behind teachers' backs, which is why it is difficult to intervene in. Teachers underestimate it because they do not see it (Evidence - 29 November, 1995).

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Department of School Education ensure regional education offices:

- offer appropriate information resources to schools to assist them in identifying and intervening appropriately when bullying occurs;
- develop in-service workshops for teachers to assist them in addressing bullying;
- direct schools to formulate a school policy on bullying, with appropriate input from students and parents; and

- develop or approve self-administered, anonymous questionnaires to offer to schools to assist them in evaluating the extent of the problem and in developing an appropriate, co-ordinated response to bullying (Standing Committee on Social Issues, 1995:261).

In its response to the Youth Violence report, the Government has indicated the Committee's recommendations will be incorporated in the work of the newly formed Directorate of Student Welfare (Cabinet Office, 1996:52). The Department of School Education's *Strategies for Safer Schools* (1995b) also addresses bullying. The program provides a process whereby school communities can review current practice, identify training needs and develop whole school behaviour management strategies for classrooms and playgrounds.

The Committee is aware that certain groups of children may be singled out for victimisation by their peers. During its Inquiry into Youth Violence, the Committee heard that children who are different in some way may be the most vulnerable. These groups include Aboriginal students, students with a disability and gay and lesbian students. Female students may also be subjected to sexual harassment by boys.

For example, the SchoolWatch report (Griffin, 1994) examined harassment and violence directed against lesbian, bisexual and gay teachers and students in Australian schools. This report includes data from 152 respondents, and reveals that 67% of student respondents experienced verbal harassment and 30% experienced physical harassment or violence. The most likely location for the incident regarded by students as the most serious was the playground (31%), followed by the classroom (23%), and corridors (17%). Other students of the same school were identified as perpetrators in almost all cases, and the majority of the most serious incidents had not been reported to school authorities.

This victimisation can lead to these students discontinuing their studies. An indirect result of leaving school is that once these students leave the education system they are no longer able to access school-based counselling services and receive support.

A research project was commissioned to examine gender-based harassment as part of the Commonwealth Government's Gender Equity in Curriculum Reform Project, which originated in 1987. Teachers from 10 pre-schools and primary schools in Northern NSW and Queensland participated in the research, co-ordinated by a team from James Cook University in Townsville. At one school, a six-year old boy was observed clenching his fist and threatening to punch a girl who would not lend him her book. At another, a boy of six kicked and tripped up a visually impaired girl and then laughed at her (Alloway, 1995:92). One little boy clenched his fists, glared at his small friend and shouted furiously: "I'm tired of your stupidity, woman. Can't you ever get anything right?" (Alloway, 1995:86).

The Committee is conscious of the anxiety and suffering of students who experience sex-based harassment, or victimisation on the basis of race or disability. The Committee is concerned that these students may be prevented from reaching their full potential because of the harassment they are subjected to.

The Department of School Education has undertaken a number of initiatives to address the victimisation of these students.

The Department of School Education's *Procedures for Resolving Complaints About Discrimination Against Students* (1995a) include discrimination on the grounds of homosexuality, and also refer to the anti-vilification provisions of the Anti-Discrimination Act. School counsellors have access to appropriate referrals for students reporting victimisation.

The *Resources for Teaching Against Violence* kit (Department of School Education, 1996b) has been revised and distributed to all schools. The kit now includes a section on bullying, and strategies for its management. A further curriculum component in the *Resources for Teaching Against Violence* kit, entitled *Violence Against Homosexual Men and Women*, is recommended as being appropriate for students from Years 9 to 12.

During its Inquiry into Youth Violence, the Committee heard that while the kit is widely accepted as a valuable teaching aid, there was also concern regarding the extent to which it is being used in schools. The Committee recommended the Minister for Education develop strategies to encourage the introduction of the revised Resources for Teaching Against Violence kit in the Personal Development, Health and Physical Education (PDHPE) curriculum; and monitor its use and effectiveness (Standing Committee on Social Issues, 1995:266).

In response, the Committee was informed the kit will be promoted as appropriate for use in the PDHPE curriculum, and its usefulness for school programs will be monitored. The Board of Studies is producing a Board Bulletin article drawing teachers' attention to the links between the kit and the PDHPE syllabus (Cabinet Office, 1996:55).

6.4 DISCIPLINE IN SCHOOLS

Discipline within schools is a contentious issue impinging on the rights and needs of the child and further illustrates the requirement for enlightened advocacy. Balancing the rights of teachers and all students to a safe and productive teaching and learning environment with the rights of individual students who may be disruptive or require special attention poses particular difficulties. Both sides must be addressed before determining how to manage the needs of individual students or broad disciplinary policy.

Debate about the use of corporal punishment in schools led the then Minister for Education to ban its use in government schools in the early 1980s. Most private schools also responded to public rejection of corporal punishment by developing alternative discipline policies. Following some subsequent policy changes, the issue has been further clarified by the *Education Reform Amendment (School Discipline) Act 1995* which outlaws the use of physical punishment in the discipline of children in all public and private schools in New South Wales.

6.4.1 Suspension, Exclusion, and Expulsion

The Committee received considerable evidence regarding suspensions, exclusions and expulsions from school. Most submissions on this issue, both oral and written, were critical of current policies and practices. The Department of School Education's *Procedures Concerning Suspension, Exclusion and Expulsion of Students from School and Procedures for the Declaration of Place Vacant* contains the policy on these disciplinary actions, and has recently been revised and re-issued (Department of School Education, 1996a).

In discussing the 1994 version of the procedures, the New South Wales Federation of Parents' and Citizens' Associations suggested:

The policy (in that document) dramatically enhanced the powers of school principals to apply severe disciplinary measures on students who behaved violently or in otherwise unacceptable ways (Submission 17).

In its *Report into Youth Violence in New South Wales*, the Committee found there had been:

- a 94% increase in the number of long suspensions (five days or more) in government schools, from 1,732 in 1993 to 3,353 in 1994 (Standing Committee on Social Issues, 1995:69); and
- a 32% increase in the number of short suspensions (fewer than five days) in government schools, from 16,670 in 1993 to 22,083 in 1994 (Standing Committee on Social Issues, 1995:71).

The submission from the New South Wales Federation of Parents' and Citizens' Associations declared the information collected by the Department of Education on suspensions, exclusions and expulsions to be "inconsistent" (Submission 17).

The Committee is pleased to note the revised procedures contain more explicit directions to principals regarding the maintenance and reporting of information on suspensions, and the inclusion of a standard register.

However, the National Children's and Youth Law Centre contends that:

many students in New South Wales are unfairly and sometimes illegally being denied their basic right to an education and decisions are made which do not conform with the principles of natural justice (Submission 15).

In its *Report into Youth Violence in New South Wales*, the Committee raised concerns regarding the involvement of School Welfare and Discipline Committee and parents/caregivers in disciplinary decisions (Standing Committee on Social Issues, 1995:230-1). In response, the Government has contended the former and current procedures on Suspension, Exclusion and Expulsion of Students from School required full consultation through each stage leading to expulsion (Cabinet Office, 1996:45). The issue of appeal mechanisms is discussed in Section 6.5.

The Committee is also concerned regarding work programs for children on suspension, and their safety. Initiatives brought to the attention of the Committee during its Inquiry into Youth Violence included the Macarthur suspension support program which offers suspended students an academic and social skills program. The Committee also visited a number of alternative education facilities, including The Cottage, which is located on the grounds of Regents Park Public School, and offers a pre-suspension program. James Busby High School operates a Tutorial Centre for students from schools in the region who are on long suspensions, or have a history of failed interventions. The Committee was encouraged by this range of strategies, and supports their continued development and expansion.

The Committee believes improved advocacy is required for students facing disciplinary action in their school, and especially when suspension or expulsion is being contemplated.

- **Aboriginal and Non-English Speaking Background Students**

The discrimination experienced by Aboriginal people, and by people from non-English speaking backgrounds (NESB) is well documented. Children and young adolescents are particularly vulnerable to this discrimination and they often find themselves as unexpected targets of abuse. This can happen in the school yards, as well in the general community. This on-going discrimination can have devastating effects on the behaviour of Aboriginal and NESB children.

The rapid escalation of suspensions of school students in recent years has been particularly serious for Aboriginal students. Research conducted by the Aboriginal Education Consultative Group indicated that in a six year period an average of 28 Aboriginal students, 14 students from Non-English Speaking Background and 6 Anglo-Celtic students were suspended by government schools each week (Submission 17).

In its submission to the Inquiry, the Vietnamese-Australian Welfare Association of New South Wales documented the problems experienced by NESB students over matters of discipline. Information provided to the Association by community and youth workers

illustrates the nature of the problem and incidents which lead to suspension, exclusion or expulsion:

Most cases of dismissal cite the reason as a verbal or physical confrontation between parties, usually students. It is often reported by NESB students that "the other guy got away with it" because he is white or speaks English, despite both of them being equally responsible for the incident (Submission 33).

Language limitations also mean many students feel they could not make themselves understood to the school officials who handled the matter when they were given an opportunity to explain themselves; as a result, some accept accusations without challenge (Submission 33).

In its *Report into Youth Violence in New South Wales*, the Committee recommended that data be collected on suspensions to provide information on gender distribution and the incidence of similar reasons for suspensions (Standing Committee on Social Issues, 1995:73). The Department of School Education has been collecting this data from schools since Term 3, 1995. Additional data is also being collected on grade, Aboriginal and Torres Strait Islander and NESB status. This will enable the development of effective strategies and the related targeting of Departmental resources. This process will be completed by the end of 1996 (Cabinet Office, 1996:1).

One of the problems identified by the Vietnamese-Australian Welfare Association of New South Wales is the lack of time and resources schools spend on enacting the procedures of the New South Wales Department of School Education's Fair Discipline Code. This has particular significance in schools with large NESB populations which require more bilingual assistance. These schools are greatly in need of additional welfare and support services and programs in the discipline process (Submission 33).

The Committee believes particular assistance is required in schools with large populations of Aboriginal students and students from non-English speaking backgrounds to ensure they are not unfairly targeted by or discriminated against in disciplinary procedures.

RECOMMENDATION 22

That the Minister for Education ensure that Aboriginal students and students from a non-English speaking background are not unfairly targeted by disciplinary procedures in schools by:

- **providing adequate resources to schools with large Aboriginal and non-English speaking background student populations to enable full investigation of incidents, and appropriate welfare and counselling support; and**

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- **advising principals to contact a nominated student advocate, such as a youth or community worker, to assist in any procedures for suspension, exclusion or expulsion, including appeal procedures, for Aboriginal students or students from a non-English speaking background.**

6.4.2 Removal of Students Through Informal Means

The New South Wales Federation of Parents' and Citizens' Associations recognises that increases in the rate of suspensions may reflect the implementation of recording practices which legitimise the previous authority of principals to remove students informally.

However, anecdotal evidence suggests informal practices are still used to remove difficult and unpopular students. The Committee heard these practices may range from subtle "career counselling" approaches to the "time-honoured" threats of denying the child the School Certificate (Johnson Evidence - 3 May 1996).

In its *Report into Youth Violence in New South Wales*, the Committee recommended the issue of the unauthorised removal of students be examined at the regional level, with reports to the Minister (Standing Committee on Social Issues, 1995:234). In response, the Government informed the Committee that when the new procedures for dealing with suspensions, exclusions and expulsion were brought to the attention of principals and District Superintendents, the need to follow formal suspension procedures would be reiterated (Cabinet Office, 1996:46). However, no such direction was given upon the release of the revised procedures in June 1996. **The Committee believes that principals must use formal means to deal with student problems, with the associated guarantee of access to appeal mechanisms for the student concerned.**

The Committee was also concerned over evidence of the use of Declaration of Place Vacant. This procedure is used to remove students of a post-compulsory age when their attendance or effort is less than satisfactory. The Federation of Parents' and Citizens' Associations contend it is:

a set of bureaucratic procedures which give the impression of being objective but in fact are totally subjective (Brennan Evidence - 3 May 1996).

The Committee supported an independent review of these practices in its *Report into Youth Violence in New South Wales* (Standing Committee on Social Issues, 1995:232). The Government responded that in the context of the abolition of Department of School Education regions and the establishment of 40 district offices, the opportunity exists to monitor the application of the Declaration of Place Vacant policy across districts (Cabinet Office, 1995:45). Data concerning declarations of place vacant are to be reported by schools along with suspension and exclusion information. The Committee has been advised that these data will be collected by each district office at the end of each term and

monitored by the district superintendent, the Student Welfare Directorate and the State Executive. The first data to be collected following the issuing of the revised procedures will be for Term 3, 1996, and will be reviewed during Term 4 (Davidson, 1996).

The Committee was told that one of the consequences of the removal of children from the education system because of unacceptable behaviour, whether it be through formal or informal means, is that they have an increased likelihood of involvement in the juvenile justice system. Evidence to this Inquiry from an Official Visitor with the Department of Juvenile Justice, and a former district inspector of schools with the New South Wales Department of School Education, Mr Ray Bird, also addressed the issue of removal of a child from school and entry into the juvenile justice system. According to Mr Bird:

I am absolutely convinced that many youngsters end up in juvenile detention centres and in crime because of the schools kicking them out without going through due processes (Evidence - 29 November 1996).

The failure of authorities to ensure effective follow-up and adequate support services leaves the offending child with little chance of avoiding further trouble. As the Committee found in its report, *Juvenile Justice in New South Wales*, many of the cases of young people who were coming before the courts had a history of problems with the education system (Standing Committee on Social Issues, 1992:37).

The Committee also heard that certain groups of children were being excluded from school on the basis of their domestic circumstances. Barnardos Australia, in a report prepared for the Inquiry into Truancy, "Dropping Out" and Exclusion from School, documented anecdotal accounts of young people in the Penrith area in outer western Sydney who are homeless and have been refused admission to schools. Barnardos suggests this happens because the schools request statutory declarations from adults taking responsibility for the young person before admission is allowed. According to Barnardos:

Workers feel that Principals often find 'excuses' for not accepting enrolments from homeless young people (Barnardos Australia, 1995:5)

The Committee is alarmed by this assertion and agrees with Barnardos Australia that no child should be excluded from education because of their domestic circumstances. The Committee urges the Minister to investigate and address this matter.

RECOMMENDATION 23

That the Minister for Education address as a matter of urgency the informal exclusion of young homeless people from schools in New South Wales due to their domestic circumstances.

In its *Report into Youth Violence in New South Wales*, the Committee recommended that the Minister for Education, in consultation with other relevant agencies, develop protocols in dealing with homeless young people attending school (Standing Committee on Social Issues, 1995:276). The Government has indicated support for this recommendation, and has already developed a number of related initiatives, including the development of further protocols with other support agencies as part of the Students at Risk (STAR) program (Cabinet Office, 1996:58).

The Committee was told that children in substitute care also experience difficulties in receiving adequate education, and are often alienated from school. Workers in Barnardos "Find-A-Family" program for state wards report that state wards appear to be categorised as "trouble-makers" by schools. According to Barnardos, the education system has some difficulty with coping with "children whose family circumstances have interfered so markedly with their education" (Barnardos Australia, 1995:6).

The Committee has been informed (Cabinet Office, 1996:58) that a protocol for the provision of educational services to students in substitute care is being developed by the Department of School Education and the Department of Community Services and the Committee welcomes this initiative.

6.5 COMPLAINTS AND APPEAL PROCEDURES

In evidence the Committee heard that the complaints procedures currently available to students and parents are inadequate. This applies to students facing disciplinary proceedings, and also to members of the school community, including parents, who may wish to raise matters of concern.

When they appeared before the Committee, representatives of the New South Wales Federation of Parents' and Citizens' Associations contended in evidence that the existing Suspension, Exclusion and Expulsion Procedures were "glaringly lacking" in any form of appeals process for students (Brennan Evidence - 3 May 1996). As previously indicated, the *Procedures on Suspension, Exclusion and Expulsion of Students from School and Declaration of Place Vacant* have subsequently been revised, and were released to schools as part of the kit entitled Student Welfare, Good Discipline and Effective Learning in July 1996. The New South Wales Ombudsman's annual report (1995), which discussed the suspension of a student at a New South Wales high school has been taken into account in the review of New South Wales procedures, and appeal procedures are now incorporated.

The New South Wales Federation of Parents' and Citizens' Associations was also supportive of a more active and equal partnership between parents and schools in resolving complaints. They contend parents often feel "stonewalled and ignored" by school staff

denying problems exist or have occurred when complaints are raised (Johnson Evidence - 3 May 1996).

The Department of School Education (1994) outlined its Complaints Procedures in a memorandum to school principals of 27 May, 1994. The procedures focus on conciliation, but provide for appeal to the level of Assistant Director-General.

In its analysis of this document, the Federation of Parents' and Citizens' Associations suggest that:

- the definitions of "formal" and "informal" complaints are not clear, and parents and students appear required to use the words "formal complaint" to gain access to the procedures;
- those wishing to complain are often not made aware of the complaints procedure documents and the relevant mechanisms for complaint;
- compliance with the terms of the procedures is inconsistent, with those complaining often not consulted regarding any decisions made when the matter has not been satisfactorily resolved through conciliation;
- there is no requirement that a person making a complaint receive a copy of the response from the staff member who is the subject of the complaint;
- there is no period specified in which a decision should be made if conciliation (which is to be completed within 12 days) fails, nor a period in which to notify the person bringing the complaint of the decision; and
- the policy and procedures are now outdated following the 1995 restructuring of the Department of School Education and the abolition of positions with responsibilities in the policy (Submission 17).

The former Director of the National Children's and Youth Law Centre also believes the procedure lacks the "essential element of independence". The requirement that any support person for the person making the complaint be allowed to attend only as an observer places many at a disadvantage and, in the case of students under the age of 18 years making the complaint, is in breach of Article 12 of the United Nations Convention on the Rights of the Child (see Appendix 1) which entitles children to a 'representative' to help them put forward their views (Submission 17).

CHAPTER SIX

In public schools in New South Wales, students are offered a further formal mechanism for complaints. The New South Wales Department of School Education (1995a) has distributed *Procedures for Resolving Complaints about Discrimination against Students* to all schools. The procedures state that the Department of School Education:

is committed to the provision of learning and working environments that are free from all forms of unlawful discrimination, harassment and vilification (Department of School Education 1995a:1).

The procedures provide that principals and other senior departmental officers must ensure that all staff under their supervision are informed of these procedures. Principals must also ensure that:

- *students, parents and others in the school community are aware of the details of these procedures and have access to them;*
- *the complaints procedures are incorporated into the range of strategies available within schools to assist students to resolve complaints; and*
- *an appropriate contact officer(s) for discrimination, harassment and vilification matters is appointed following consideration of expressions of interest from staff* (Department of School Education, 1995a:2).

In his evidence to the Committee Mr Bill Kyrios, Director of Legal Services at the Department of School Education told the Committee that while formal mechanisms for complaints are important and necessary, some students are uncomfortable about using formal procedures for complaints. He said it was equally as important that students could “go to the year adviser, the school discrimination contact officer or whomever else they feel comfortable with” (Evidence - 29 November 1995).

The Committee noted the Department of Education was aware of the needs of children to access both formal and informal procedures when they feel they have been unfairly dealt with or discriminated against.

The Committee remains to be convinced that the formal procedures are working effectively in the best interests of students. It therefore recommends the Department’s Complaints Procedures be amended and strengthened to provide members of the school community, and students in particular, with an enhanced means of protecting their interests.

RECOMMENDATION 24

That the Department of Education revise the Complaints Procedures document of 27 May, 1994 to ensure:

- the definitions of “formal” and “informal” complaints are clarified;
- those wishing to complain are made aware of the complaints procedure documents and the relevant mechanisms for complaint;
- those making complaints are consulted regarding any decisions made when the matter has not been satisfactorily resolved through conciliation;
- those making complaints receive a copy of the response from the staff member who is the subject of the complaint;
- a period is specified in which a decision should be made if conciliation fails, together with a period in which to notify the person making the complaint of the decision;
- a support person for a student under the age of 18 years making a complaint can assist that student in putting forward their views; and
- the policy and procedures reflect the 1995 restructuring of the Department of School Education.

6.6 STUDENTS WITH DISABILITIES

There is serious concern held by individuals and community interest groups that students with disabilities are being discriminated against and are not receiving adequate access to education facilities. A key community group, Kids Belong Together, focuses on the needs of students

who, because of intellectual, physical, communication or behavioural characteristics, may require changes to the regular curriculum, staffing; instructional strategies, access or equipment and/or who may require health related services (Submission 7).

community. It believes inclusive education, whereby children with disabilities are included in regular classrooms, is of greater benefit to the student, and is supported by most current research. The research also suggests that inclusion can have a positive impact on all other students.

The Australian Red Cross also outlines the importance of access and equity in the provision of services to the personal development of children with a disability. Its submission states:

by not providing adequate recreational facilities or by restricting access to existing facilities, children with disabilities may be denied their right to participate freely in cultural life and the arts (Submission 16).

The Committee heard that inclusion is supported by a number of pieces of legislation including, the Disability Services Act 1986, the Disability Services Act 1993, the State and Federal Anti-Discrimination Act (Epstein-Frisch Evidence - 3 May 1996).

One strategic aim of the current *Special Education Plan*, within the *Special Education Policy* of the New South Wales Department of School Education (1993), is to provide the most effective support services within regular and special schools for students with disabilities, learning difficulties and behaviour disorders. However, the Committee heard the current policy in New South Wales is weighted towards the segregation of students with high educational needs (Epstein-Frisch Evidence - 3 May 1996). In its submission, the New South Wales Council for Intellectual Disability states that:

the need and right of children to be educated in regular classes in local schools has not been adequately advocated for or protected. Students with high educational support needs are seldom made aware that the option to attend regular schools exists. Instead, many students are directed towards segregated education in supported or special school environments (Submission 14).

Representatives of the Council explained to the Committee that it is currently the role of the parents to justify the inclusion of their child into mainstream education. According to Ms Belinda Epstein-Frisch, the process of appeal if a child is rejected from a regular class is inadequate. She told the Committee:

The rights of the child are further denied through a process of internal appeals where anecdotal evidence indicates very strongly that no decision is ever overturned There are conflicts of interest that stop children with disabilities being able to be enrolled in a regular class and here the lack of advocacy is absolutely essential (Evidence - 3 May 1996).

The Committee recognises that the parent or principal care-giver is the most important advocate for the child, and it is therefore vitally important that those parents or care-givers also receive support.

The Committee understands that the Minister for Education has commissioned and is currently considering a feasibility study on integration and inclusion. Consideration of this report may lead to community consultation on a review of the Department's current Special Education Policy.

The Committee recognises that there are limits to the extent to which children with disabilities can comfortably be incorporated into mainstream educational environments. Such decisions involve sensitive and delicate considerations and a careful examination is required to ensure the best interests of the child predominate in every case.

The interests of teachers must be also regarded in decisions on the inclusion of children with disabilities within general classes. In any instance where a child with disabilities is included in a general classroom, the Committee believes appropriate support must be provided to the teacher to ensure that educational opportunities are maximised for that child and for the remainder of the class.

The Committee supports the need for improved advocacy to assist children and their parents or care-givers in accessing both mainstream educational services and special services. Special services in which modified curricula, increased staffing and specialist equipment have been appropriately resourced may be required to meet the special needs of particularly disabled children.

The Committee believes the Special Education Policy should be reviewed and the inclusion of students with disabilities in appropriately resourced mainstream classes should be a major focus. The internal appeals process undertaken when a child's application to attend regular classes is rejected should also be considered. In undertaking this review, the Minister for Education should ensure that community interest groups, education specialists and members of the school community, particularly children in mainstream classes and those with disabilities, are consulted.

RECOMMENDATION 25

That the Minister for Education undertake a review of the Special Education Policy to:

- **consider increasing the inclusion of students with disabilities in appropriately resourced mainstream classes; and**
- **review the internal appeals process undertaken when a child's application to attend regular classes is rejected.**

In undertaking this review, the Minister for Education should ensure that community interest groups, education specialists and members of the school community, particularly children in mainstream classes and those with disabilities, are consulted.

6.7 CHILDREN'S SERVICES

In a number of its previous Inquiries, including the Inquiry into Youth Violence, the Committee has stressed the importance of support for children in early childhood. During this Inquiry, a range of information was put to the Committee that the needs of children in this group are not being sufficiently protected and promoted. Many children in the state are unable to gain access to early childhood services, due to long waiting lists. Families in rural and remote areas face additional difficulties, as there may simply be no services for children at all (Goddard Evidence, 22.04.96).

Child care programs provide a unique opportunity to support families in their caring roles. They are able to provide a doorway into early intervention services for children with disabilities, learning delays and behavioural problems. Child care can also provide an important case work support for social welfare agencies working with children at risk of abuse and with their families.

An American study has estimated that one dollar invested in early childhood programs returns seven dollars to society in reduced government spending on welfare, criminal justice, remedial education and health care (in Zvirbulis, 1996).

The Economic Planning Advisory Commission (EPAC) Child Care Task Force (1996) has released an interim report recommending the operational funding of family day care schemes and long day care centres be replaced by a single, means-tested child-care payment direct to parents. The Committee believes that it is imperative that the NSW Government provide a strong submission to the EPAC proposals on the delivery of children's services.

With the re-allocation of federal child care priorities and the consequent withdrawal of operational subsidies for Community Based Long Day Care Centres, the Expanded National Child Care Strategy signed in 1995 has effectively ceased.

It is recognised that the Community Based Sector sets the standards and benchmarks for quality within the child care industry, and the Committee is concerned that the withdrawal of operational subsidies from Community Based Long Day Care Centres will affect the ability of low income and disadvantaged families to access affordable, quality child care. The Committee believes the availability of long day care for children under two years may be limited to those families that can pay a substantial fee.

The Committee is also concerned that families with children at risk may not be able to access long day care. Assisting children at risk, and keeping them from entering care, requires a preventative approach. The provision of child care places is an important means of supporting families, and providing real benefits for some of the most vulnerable children in our community.

The Committee is pleased to note that the State Government has indicated that it is committed to spending \$20 million in this field over two years. The Committee accepts that governments must remain committed to an affordable, available range of children's services that promote equity and accessibility.

The Committee acknowledges the current budgetary constraints on governments at all levels but there is an imperative that governments provide continued support for high quality, affordable community based child care services. In these budgetary contexts, a tension exists between the need to defend the quality of care for children and the demand for more places for all out of home care services.

As a general principle, the Committee is, however, firmly of the view that the care and protection of our children must be guaranteed by appropriate, agreed standards of care at the same time as every endeavour is made through co-operative State, Commonwealth and community action to increase the number and range of services for children and their families.

The Committee strongly believes that access, equity, standards of care and the protection of children's best interests should remain paramount in the delivery of all child care services.

6.7.1 Out of School Hours (OOSH) Care

Changing social and economic conditions have greatly increased the need for access to out of school hours care.

● **Community Wide Needs**

Another issue of concern relevant to the education of young people in New South Wales is the access to outside school hours care, including before school, after school and vacation care. Network of Community Activities, the peak organisation for Out of School Hours Services in New South Wales, believes children have few advocates in relation to their time out of school hours. That organisation considers that while it is understandable that governments direct the majority of resources to formal education, out of school hours services should be regarded as an important part of a child's intellectual and social development.

Network identifies the major concerns as:

- the inadequate premises of many services;
- low funding levels;
- the withholding of Commonwealth child care assistance for state-funded vacation care;
- the present emphasis on growth in the number of new places with no consideration of quality;
- a lack of services for children of non-working parents. Unemployed parents in housing estates, high rise areas and rural communities are unable to obtain financial support to provide safe environments for children to be with their friends and take part in activities (Submission 12).

Network suggests services may be planned to meet the needs of adults, not children, and models are often devised by people with little knowledge of the "real situation" without consultation with children or those who can speak on their behalf:

This low level of support from government for school age children during such an important stage of their development would appear to indicate poor advice to policy makers or a disregard for children's needs on behalf of decision-makers (Submission 12).

National child care standards have been agreed to by the states and are to be implemented during 1996. Network contends these standards will not contain sufficient quality requirements (Submission 12). Service providers are currently being surveyed by Network to determine how closely they conform to the national standards, and what steps will be required to effect an upgrade of New South Wales OOSH services.

One of the greatest concerns of Network is that OOSH services are not included in the children's services regulations. The regulations under the *Children (Care and Protection) Act 1987* have been reviewed in accordance with the requirements of the *Subordinate Legislation Act 1989*. A Regulatory Impact Statement and Draft Regulations were developed and released for community consultation. The revised regulations were required to be in place by 1 September 1996. Since the *Children (Care and Protection) Act* is under review, any amendment to, or replacement of, that legislation will be followed by further revision of the regulations made under that revised Act.

Outside school hours care is not currently regulated. A Voluntary Code of Practice was introduced by the New South Wales Department of Community Services in 1993, which Network believes is "a good beginning" which is limited by its voluntary nature. They contend regulations are needed to ensure acceptable standards of care and protection for children attending both community-based and private services (Submission 12).

The Committee agrees with Network's concerns in this area of children's services, and calls upon the Minister for Community Services to provide for out of school hours care providers to be subject to regulations under the Children (Care and Protection) Act to ensure standards of care are adequate.

- **OOSH Care for Disabled Children**

Several groups are concerned about the particular problem of access for children with a disability. One such group is the New South Wales Council for Intellectual Disability which quotes Network of Community Activities in their submission to the Committee. In a document, *We need care too! Out of School Services and Children with a Disability - A Position Paper*, Network (1995:4) argues:

there is no co-ordinated approach to ensuring children with a disability requiring OOSH care are able to access appropriate services. Current integration in most areas is haphazard and not adequately supported.

The New South Wales Council for Intellectual Disability believes that the inadequate provision of Supplementary Services (SUPS) Grants has resulted in a lack of specialist staff, poor quality premises and facilities, and limited transport for disabled children (Submission 14). The Committee notes that \$10 million has been allocated to support children with special needs in child care in the federal budget for 1996-97, and hopes children with disabilities requiring OOSH care will benefit from this allocation.

The Committee received a submission from a parent of a child with physical and intellectual disabilities living in rural New South Wales. Mr Greg Watts explained in his submission to the Committee there is a great need for OOSH services for school aged children with a disability.

He argued:

the present system presents barriers to children with disabilities to access and participate in OOSH care. These barriers impact on the quality of life of my daughter and the quality of life of our family. My daughter needs continuity of support and stimulation during school holidays. Access to quality care and play is a fundamental right of all children (Submission 8).

The Committee recognises that this is a right recognised by the United Nations Convention on the Rights of the Child. Article 31 provides for:

the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child.

Mr Watts blames the shortage of OOSH care for disabled children on inappropriate staffing ratios and the lack of co-ordination in the provision of special needs resources. He recommends funding be provided to allow for a staff ratio of 1:10 children in OOSH centres that provide a service for children with disabilities, plus additional carers to meet the needs of high support children. The Committee supports these proposals, and calls for increased funding for children's services to ensure the fundamental right of all children to adequate care and play is recognised.

The Committee believes out of school hours care programs must be extended and improved for children with a disability; children from non-working families; and rural communities.

6.8 CONCLUSION

The Committee considers enhanced and extended and include the child in a meaningful way to increase the dignity and status of the child within the education system. The relationship between the community and government should be a partnership to produce a better society, and children must be introduced into this partnership.

Children should have the right to participate in decisions affecting them within the education system, and the inclusion of and effective consultation with bodies such as Student Representative Councils should be encouraged.

The Committee believes the form of advocacy that exists for students through counselling services should be further enhanced by a range of strategies.

The Committee acknowledges the increasing awareness of children's needs within the education system. There is now a greater understanding within the community of the incidence of bullying and the damage that it causes, and the need for children to have

mechanisms they can access to deal with this problem and its consequences. The Committee supports a continuing focus and strong action in this area.

The Committee is concerned regarding the welfare, safety and support of students facing disciplinary procedures. Groups of students who are over-represented in suspension statistics, particularly Aboriginal students and those from non-English speaking backgrounds, require particular support in this regard. No student should be removed from school through informal means.

All students are entitled to have their voices heard, and complaints mechanisms must be reviewed to facilitate this basic right.

Access to education and child care services is a particular concern of the Committee. These services should promote equity by maximising opportunities for all children, and appropriate standards of care must be maintained.

The Committee appreciates that to meet the needs of all students and children in these areas, a significant injection of funding is required in a range of children's services, and calls on governments to meet their obligations in this regard.

CHAPTER SEVEN

DEPARTMENTS AND ORGANISATIONS RESPONSIBLE FOR CHILDREN'S ADVOCACY

The Terms of Reference issued to the Committee specifically requested it to inquire into and report on a number of agencies responsible for children's advocacy. Those identified included: the Office of the Ombudsman; the 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.

As the submission from the Community Services Commission noted, this term of reference highlights the fact that there are various agencies with an interest in, and involvement with, children. As a result, there is:

potential for lack of coordination, gaps in service, failure to take responsibility for issues and duplication of effort and resources (Submission 37).

As well as those identified in the terms of reference this Chapter will review a number of other agencies which, in the Committee's opinion, are actively involved in various facets of advocacy for children and young people. These additional bodies are the Community Services Appeals Tribunal and the Guardianship Board. The role of the Youth Branch of the New South Wales Cabinet Office is also considered.

7.1 INTRODUCTION

The Committee was asked to review the adequacy of the organisation and coordination of the agencies as outlined above. The Committee considered the term "adequacy" to be somewhat nebulous and difficult to assess objectively. It considered the most appropriate source of determining the adequacy of the agencies would come from those working in the area. Comments were therefore sought during the hearing process and by written submissions. It is such comments that form the basis of the Committee's assessment of the agencies' adequacy and coordination.

The Committee wishes to point out at the outset of this Chapter that each of the agencies discussed have been identified as being inaccessible to Aboriginal young people and young people of non-English speaking background. As Shireen Malamoo explained to the Committee (Evidence - 29 November 1995) in relation specifically to Aboriginal people:

it should be noted that generally these bodies remain inaccessible to indigenous people because of the history of the intervention of government agencies in their lives and the procedures which must be complied with in order to lodge a complaint or access the body. Such bodies seem a very long way away from the day to day struggles of mothers, families and communities trying to keep their kids out of trouble. Further, many people are unaware that such bodies even exist.

Numerous submissions stressed the need to differentiate between an advocacy service and an agency dealing with complaints only in an impartial and even-handed manner. Accordingly, the Office of the Ombudsman, the Community Services Commission and the Health Care Complaints Commission were frequently identified as complaints or “watchdog” agencies rather than advocacy bodies. The submission from the Office of the Ombudsman clearly supported this view:

investigation agencies cannot be partisan or be seen to be partisan without their independence and standing being adversely impacted (Submission 62).

Given this constraint, it was suggested that the ability of these particular three agencies to provide the sort of attention required by children’s interests is “limited” (Hogan Evidence - 9 November, 1995).

It was, however, generally recognised that these agencies can, and often do, play an important role in systems advocacy. The submission from the Community Services Commission noted its ability to fulfil this function by:

identifying the cause of problems for consumers of community services and seeking changes to redress the problems (Submission 37).

It did, however, note that “this is different from the role of an advocate who will stand by a child and represent their interests unreservedly” (Submission 37).

It was also suggested that these watchdog agencies can provide citizen advocacy, although this is generally at a systemic level through their powers to make recommendations for reform in reports to Ministers of the Crown or Parliaments.

Of the six “advocacy” agencies the Committee was asked to review, only three were consistently considered to fulfil advocacy functions: the Official Visitors program; the Child Protection Council; and the National Children’s and Youth Law Centre. These agencies were seen as defending, upholding and promoting children’s views (Submission 41).

7.2 THE OFFICE OF THE OMBUDSMAN

Representatives of the Office of the Ombudsman made it clear to the Committee that they did not consider the Office to be “an advocate for complainants or special interest groups” (Andrews Evidence - 9 November, 1995 and Submission 62). As the Office’s submission noted:

the Ombudsman is not on anyone’s side, but rather is a neutral investigator whose duty is to establish the truth of allegations of misconduct and to make appropriate recommendations to fix the individual problems identified. In particular, the Ombudsman has no statutory responsibility for “children’s advocacy”. Rather the Ombudsman should be seen as a protector of/for watchdog for fairness and integrity in public administration (Submission 62).

The submission further stressed that:

we believe it is somewhat misleading to label the Ombudsman as a children’s advocate. This is not to say that the work of the Ombudsman and other investigation bodies is not critical to ensuring that the rights and needs of children are effectively protected. Rather it is an important philosophical distinction that indicates that the advocacy role does not sit well with the neutral, independent and objective role of the Ombudsman as an investigator. The requirement to be impartial and objective restricts any ability to act as an advocate for children (Submission 62).

7.2.1 Role and Function

The Ombudsman operates under several pieces of legislation, the most important being the *Ombudsman Act, 1974* and the *Police Services Act, 1993*. The former Act creates a right for any person, including a child or someone acting on behalf of a child, to make a complaint to the Ombudsman about some action or inaction of a public authority relating to a matter of administration that is considered to be wrong (Submission 62).

Conduct can be “wrong” in terms of the Act because it is:

- contrary to law;
- unreasonable, unjust, oppressive or improperly discriminatory;
- based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- based wholly or partly on mistake of law or fact; and/or

- conduct for which reasons should be given but are not given (Submission 62).

Conduct can also be wrong if the conduct is in accordance with established law and practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory (Submission 62).

The enabling legislation excludes from the Ombudsman's jurisdiction a number of bodies and types of conduct, some of which regularly deal with children and children's services. The Act, for example, prohibits the Ombudsman from investigating any conduct of a court or persons associated with a court; the conduct of a public authority or person acting as a legal adviser to a public authority; and the conduct of public authorities relating to the carrying on of proceedings before any court, including coronial inquiries and committal proceedings before a magistrate. As a result:

the Ombudsman has never been able to get involved in matters relating directly to care and detention proceedings, so the adequacy of children's representation before the courts is certainly not a matter that [the Office] has any expertise in or knowledge of (Andrews Evidence - 9 November, 1995).

Under the *Ombudsman Act*, the major areas that have traditionally produced complaints by or involving children have been Juvenile Justice Centres and the work of the Department of School Education and the Department of Community Services. However, with the introduction of the *Community Services (Complaints, Appeals and Monitoring) Act, 1993* the Ombudsman's jurisdiction with respect to the Department of Community Services has changed considerably in the last few years. The Community Services Commission and the Community Services Appeals Tribunal have largely taken over the role previously assigned to the Ombudsman in this area.

However, where a complaint concerns systemic misconduct or maladministration the Ombudsman retains jurisdiction. The Ombudsman will also continue to be able to exercise her "own motion" power to investigate certain matters involving the Department of Community Services if the need arises. This allows the Ombudsman to initiate an investigation whether or not she has a complaint from a citizen.

As the submission from the Ombudsman observes, there "remains some potential for overlap between the Ombudsman and the [Community Services] Commission". However, the submission notes that such a problem has not as yet arisen and "there is good liaison between the two bodies" (Submission 62).

The second area in which the Office receives and acts on complaints from or involving children is in the area of complaints of police conduct. As the Office's submission noted, the "vast majority" of complaints involving children and young people are complaints against police. In the 1994-95 financial year, the Office received 162 complaints from, or

on behalf of, children and young people concerning the police. This figure represents just over 3% of the 5056 complaints about police assessed and actioned during the year. The nature of the complaints included:

- allegations of juveniles being assaulted by police officers or being the subject of unreasonable use of force (approximately 80% of complaints);
- juveniles being injured while in police custody or being involved in self harm activities;
- juveniles escaping from police custody;
- juveniles being shot by police;
- allegations of police having sex with juveniles in custody;
- strip searching;
- wrongful arrest;
- unlawful questioning of juveniles; and
- general unfair treatment (Submission 62).

The *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993* enables the Ombudsman to monitor on-going investigations carried out by the Police Service into complaints about police conduct. The amendments have also enabled the Ombudsman to deal with complaints directly, rather than having to rely on the traditional method of using the Police Service to investigate complaints. The annual report of the Ombudsman suggests there are, however, difficulties in conducting direct investigations:

Due to our very modest funding, it is unfortunately not possible to conduct more than a few direct investigations each year, far less than we would like (NSW Ombudsman, 1994:40).

The other main source of complaints received is from children in Juvenile Justice Centres. However, they are "much fewer" in number than complaints received about the police (Andrews Evidence - 9 November, 1995). In the 1994-95 financial year the Office received 19 formal and 139 informal complaints involving the Department of Juvenile Justice (Andrews Evidence - 9 November, 1995). The formal complaints covered a range of issues including the implementation of smoking bans in the centres, and allegations of assault by youth workers (Andrews Evidence - 9 November, 1995).

Representatives from the Office of the Ombudsman visit every Juvenile Justice Centre at least twice a year. The Committee was told that, in comparison with adult correctional centres, "there is far less awareness of the rights and avenues of complaint among detainees [in Juvenile Justice Centres]". It was felt this could be due to the short stay of the majority of young detainees which mitigates against their bringing unresolved issues to the attention of outside bodies (Andrews Evidence - 9 November, 1995).

The Ombudsman does not have any statutory education or prevention functions and, as was pointed out to the Committee in the Office's submission, it "has not been provided with any resources to undertake such work". The submission further notes that:

this is something that some commentators who may have been critical of the effectiveness of the Ombudsman in terms of children's advocacy in past years, have failed to appreciate (Submission 62).

Statistics provided showed that many of the advocacy bodies which could make good use of the Ombudsman have, over the years, not done so. As the Committee heard, these agencies have "brought very few matters to [the Ombudsman's] attention" (Andrews Evidence - 9 November, 1995).

Over the past 20 years, the Ombudsman has dealt with 95,000 formal complaints and two to three times that number of informal complaints. Amongst the formal complaints were:

- 1 complaint from the Child Protection Council;
- 1 inquiry from the NSW Federation of Parents' and Citizens' Associations;
- 2 complaints from the National Children's and Youth Law Centre;
- 1 complaint from the Juvenile Justice Advisory Council; and
- 7 complaints from the Public Interest Advocacy Centre (Submission 62).

The various community legal centres have also referred relatively few children's complaints to the Ombudsman, although these agencies regularly make complaints regarding adults. The Committee was advised that the Ombudsman has received the following complaints from community legal centres on behalf of children:

- 6 complaints from the Redfern Legal Centre;
- 9 complaints from the Marrickville Legal Centre;
- 8 complaints from the Macquarie Legal Centre; and

- 2 complaints from the Kingsford Legal Centre (Submission 62).

The Office considers such statistics to be “almost infinitesimal” (Andrews Evidence - 9 November, 1995). While the submission suggests these figures could be:

evidence of the good work these bodies do advocating for children directly with service providers to resolve problems, ... we do not know for sure. Certainly, there is not a record of any of those bodies actively seeking the Ombudsman's assistance on a variety of matters over time (Submission 62).

Evidence presented to the Committee suggests that existing investigation agencies, such as the Office of the Ombudsman, could “have a much greater impact if other children’s advocacy groups used them better” (Andrews Evidence - 9 November, 1995).

7.2.2 Adequacy of the Office

As discussed above, the Ombudsman has traditionally received and investigated complaints concerning children and young people and a number of government authorities such as the Departments of School Education, Community Services and the Police Service. With the partial transfer of the Ombudsman’s jurisdiction to the Community Services Commission, it was suggested that there is the potential for such complaints to “fall through the jurisdictional cracks” (Submission 62). The submission from the Office of the Ombudsman asserts that mechanisms are in place to prevent such a problem occurring. The Ombudsman is, for example, a member of the Community Services Review Council and there is “close liaison and cooperation” between the Commission and the Ombudsman (Submission 62).

The Committee understands that the Office, in conjunction with a number of other relevant agencies, has put in place mechanisms to enhance coordination and reduce overlap including:

- the major complaints handling organisations (the Ombudsman, the Community Services Commissioner, the Health Care Complaints Commissioner, and the Legal Services Commissioner) meeting on an informal but regular basis to discuss issues of common concern. The group tries “to sort out particular problems of coordination and overlap” (Andrews Evidence - 9 November 1995). They also share information about their operations, cross-referral processes, training, public education and information. The group aims to “avoid duplication, and to work in a complementary and collaborative way” (Submission 37);
- the Office of the Ombudsman referring to the Community Services Commission any complaints made to them about the Department of Community Services; and

- attempts being made to “set up and coordinate a relationship to make it easier to investigate and get matters resolved” with those agencies, such as the Department of School Education, that produce a significant number of complaints regarding children (Andrews Evidence - 9 November 1995).

The extent to which these mechanisms prevent complaints from falling through cracks has not been determined. It does, however, appear that these coordination measures are largely ad hoc and generated from either the Ombudsman’s Office or any other agency which considers it may be useful at any particular time to establish inter-agency contact.

Possibly due to its watchdog, rather than advocacy, role, the Ombudsman’s Office received very little comment in both written submissions and oral testimony. Burnside did, however, consider it to be an “important” agency (Submission 23).

Burnside identified two shortcomings with the Office:

- lack of resources leading to delays and a lack of awareness in the community of the role the Office can play; and
- the inadequate powers given to the Office under its enabling legislation which, in Burnside’s opinion, hampers its ability to investigate complaints properly and provide adequate and appropriate remedies for complainants (Submission 23).

The Youth Justice Coalition notes that delays in handling cases which may be politically sensitive means that groups of young people are left in unacceptable conditions. (Submission 34). They also suggested:

it is difficult to get a child to agree to make an individual complaint. Their fear of reprisal especially from the police inhibits action (Submission 34).

The Committee has previously recommended in reports on *Juvenile Justice in New South Wales* and *Youth Violence in New South Wales*, that a position be created, with the status of Deputy Ombudsman, in the Office of the Ombudsman. This position would have responsibility for the co-ordination of complaints from young people. During this Inquiry, the New South Wales Child Advocate supported the consideration of specialist positions in the Office of the Ombudsman, but noted this is likely to be “costly, cumbersome and only partly successful” (Submission 35).

The Office of the Ombudsman does not support the concept of a separate, specialist Ombudsman for children’s complaints, believing it likely to fragment existing expertise and jurisdictions and lead to duplication of resources and effort. It could also set a precedent for other special needs Ombudsmen (Submission 62).

The Committee understands that the Office currently has a range of staff to call upon who have some special expertise in relation to children's matters, such as staff who have worked as District Officers with the Department of Community Services, been involved in children's services in the local government or community sphere, or have a background in teaching or educational psychology (Submission 62).

As discussed above, the Ombudsman receives relatively few complaints from young people. A lack of knowledge of the Ombudsman's role may restrict access by young people. The Office's submission acknowledges that the problem of being more accessible to young people has been "long recognised" despite it being a "common problem" experienced by all investigation and watchdog bodies (Submission 62).

In an attempt to increase awareness, a special edition of *Legal Eagle* on the Ombudsman was published by the Law Society of New South Wales in 1992 for use as a resource in secondary schools, in association with the legal studies syllabus (Submission 62).

Ongoing problems in raising the Office's profile were also identified by the Joint Parliamentary Committee on the Office of the Ombudsman (1994) in their report on the Access and Awareness Inquiry.

In response, the Ombudsman also developed a three year strategic plan to improve access to, and awareness of, the New South Wales Ombudsman by specific target groups, including young people. The Office sought enhancement funding in 1995/96 to employ a specialist Youth Liaison Officer to implement the strategic plan with respect to children and young people. This bid was unsuccessful, but funding of \$60,000 per annum for two years was made available in the 1996-97 budget to allow this appointment to proceed. The Committee welcomes this initiative.

The Office hopes that at the end of the two-year appointment, the Youth Liaison Officer will have implemented strategies that can be carried on by other staff to ensure the continued development of young people's awareness of the Ombudsman's role.

The submission from the Office of the Ombudsman suggested that despite limited resources, advocacy agencies can still advance children's interests by bringing selected complaints to the Ombudsman:

the limited resources of the investigation agencies such as the Ombudsman are also more likely to be put to effective use if instead of being responsible for dealing with all complaints from children and young people, they are encouraged to take up specific complaints that are seen by advocacy agencies to have significant public interest or second stage matters where the advocacy agency's endeavours to have grievances dealt with appropriately and adequately by the service provider directly have failed (Submission 62).

In order to encourage complaints of this nature to be brought to the Office of the Ombudsman, the Committee believes that on-going funding must be provided to allow education and publicity campaigns developed by the Youth Liaison Officer to continue into the future. On-going liaison with peak groups providing advice and services to young people is also vital to ensure the continued development of their awareness of the Ombudsman's role in relation to complaints by young people.

RECOMMENDATION 26

That the Government provide the Office of the Ombudsman with on-going funding for:

- education and publicity campaigns;
- liaison with peak groups providing advice and services to young people; and
- the selection of staff with particular skills and interest in these issues to deal with their complaints.

This would ensure that awareness of the Ombudsman's role in relation to complaints by young people continues to be developed.

7.3 THE CHILD PROTECTION COUNCIL

Of the six agencies the Committee was requested to report on, the Child Protection Council is, as Cashmore notes, "alone" in providing an inter-departmental and inter-disciplinary approach (Submission 45).

7.3.1 Role and Function

The Child Protection Council was established in 1985 to coordinate, monitor and evaluate child protection programs. The establishment of the Council was recommended in the Report of the New South Wales Child Sexual Assault TaskForce (1985). The Council was to place special emphasis for the first four years on a comprehensive program to help victims of child sexual assault. The goals of this Child Sexual Assault program were to reduce the incidence of child sexual assault, and facilitate the optimum recovery of victims of child sexual assault and their families. Objectives of the Program included:

- to ensure crisis intervention services, medical services, legal services, police services, accommodation services and counselling services were available to meet the needs of child sexual assault victims and their families;

- to raise community awareness of the incidence, dynamics, effects and unacceptability of child sexual assault;
- to facilitate and co-ordinate trainers and the training of people working with victims of child sexual assault and their families;
- to monitor the 1985 child sexual assault legislative reforms; and
- to sponsor and co-ordinate research into child sexual assault (NSW Child Protection Council, 1991:8-9).

The Child Protection Council was to assist in the implementation of programs in all relevant government departments, authorities and non-government agencies, for example, regional training programs; the development of inter and intra-departmental guidelines; and services to victims in rural areas. The Council was also to provide pre-budget advice to the Minister and Treasurer.

The Council does not focus on individual issues affecting a particular child. Rather it advocates for children at the broad, systemic level. In taking on such a role, it:

advises the government through the Minister for Community Services on matters of child protection It attempts to provide strategic leadership in the State around child protection issues within its advisory capacity to government (Ford Evidence - 9 November, 1995).

The Council's major focus is on inter-agency collaboration:

the Council has a very extensive role in working at a senior government and non-government level, both centrally and around the State, in trying to build collaboration and cooperation amongst all agencies and government bodies involved in child protection (Ford Evidence - 9 November, 1995).

The Council has no statutory base. The Committee was advised that it is considered to be only an advisory committee to the Minister for Community Services and:

depending on the attitudes and political agendas of a particular administration at a particular time, this definition can be interpreted more or less literally (Submission 35).

The Council meets monthly and membership is drawn from both government organisations and agencies and the community. Government representatives are nominated by their departments and appointed by the respective Minister. The Departments of Community Services and Health have two representatives, and the Departments of School Education, Juvenile Justice, Attorney-General, the Police Service and the Department for Women

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have one representative. The remainder of the Council's membership consists of community representatives appointed by Government. In this sense, the Council "is able to present its points of view to a number of departments" (Submission 35).

Secretariat and support services are provided by the Department of Community Services.

The Council, in collaboration with the Department of Community Services, has also established 20 area committees which replicate council membership at the local level. This structure enables :

the local key agencies, both government and non-government [to] meet regularly to look at their particular child protection issues and again ... advocacy issues are brought through [this avenue] but within the confines of child protection (Ford Evidence - 9 November, 1995).

There is also facility for informal "interest" groups to meet which can raise directly with the Council:

issues of children who are often caught up in systems in which their needs are not being attended to, and the groups ask for those to be addressed (Ford Evidence - 9 November, 1995).

7.3.2 Adequacy of the Council

The Youth Justice Coalition considers the Council to carry out "excellent" work in training and research and provide "high quality" advice to government (Submission 34).

In terms of coordination, the Council is in "close collaboration" with at least three bodies: the Community Services Commission, Community Visitors and the Child Advocate (Ford Evidence - 9 November, 1995).

A number of shortcomings were, however, brought to the attention of the Committee. Cashmore, for example, sees the Council as "limited" to issues concerned with child protection and the prevention of abuse and neglect (Submission 45). The Youth Justice Coalition also considers the coordination role of the Council to be "limited" in that it is a "captive" of the portfolio administration within which it operates (Submission 34). In evidence before the Committee the Council's Chair noted that the Council:

raises issues of children's rights and advocacy but it is really confined to the issues around child protection. And significant as they are, they are not the whole picture. There are also issues around health and law in particular that are outside the child protection areas that we are not in a position to address (Ford Evidence - 9 November 1995).

Dr Ferry Grunseit, who, over the ten years of the Council's existence, has held a range of positions on the Council including Health representative, Community representative, Chairman, member of the Executive and, more recently, Child Advocate, raised a number of concerns regarding the independence of the Council. He observed that:

in the past the Department of Community Services has been represented not only on Council but also on the Executive, a practice which gave rise to questions regarding the freedom of the Council to advocate for children at all times. The Council has been seen by some as being an "extension" of the Department of Community Services and although we have strenuously argued against this perception, we were not always able to sound convincing enough (Submission 35).

He further noted that he had:

encountered significant constraints and problems at times. These were particularly obvious when issues about children's rights or best interests as seen by me or by "us" were not seen as in the best interests of the Minister, the Director General, the Department of Community Services or the Department of Health for example. Many of the Council's documents were endlessly debated and reviewed until they more or less agreed with Departmental policy and were not controversial or more than mildly critical (Submission 35).

By way of example to support his concern, Dr Grunseit cited a situation in which the Council had been asked to conduct a consultation for the Department on proposed changes in child protection strategy and philosophy. He was very clear that the Council:

should not be seen as a kind of facilitator or broker for the Department of Community Services, but should present its own views to the Minister, and the Department should conduct its own consultations, on its own policy (Submission 35).

Dr Grunseit called for "a more obvious separation" of Council from the Department and an opportunity for the Council to be "free to offer sensible and balanced but unhampered advice on what are seen to be children's best interests" (Submission 35). He does not wish to see the Council become a "loose cannon", admitting that "it should be under ministerial control, but within reason one should be able to express views" (Grunseit Evidence - 29 November 1995).

Dr Grunseit also told the Committee how:

in 1991 we published a three-year annual report in which we said a few things about the Department and about wards. I was chairman then. We made a mild statement of fact. We nearly got the whole Council sacked (Grunseit Evidence - 29 November 1995).

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The 1991 report stated that further cutting of resources from child protection programs should not be acceptable, and noted the Council had also been affected by constraints and staff cuts. The report rejected a political, partisan approach to child protection, and called for a continuing, consistent and genuine commitment, with “the Council providing a stable body which can advise and monitor what goes on in important child protection matters”. The Council called for governments to ask for advice to ensure the Council continues to fulfil its terms of reference (Child Protection Council, 1991:11).

In comparing the Child Protection Council with the Community Services Commission, Grunseit notes that the Commission has a statutory base and is *able to carry out its functions and obligations ... without being hindered by bureaucratic controls*. Further, the Community Services Commissioner “has expressed strongly independent views on many occasions without being castigated for it, contrary to our experience on the Child Protection Council” (Submission 35).

The Youth Justice Coalition is also concerned with the extent to which the very existence of the Council provides opportunities for government departments with responsibilities for child protection work to abrogate their responsibilities. As has been noted, the Council has to rely upon the Department of Community Services for its secretariat and support services. In the opinion of the Youth Justice Coalition this “reduces its effectiveness” as a coordinator of child protection policies and programs across the portfolios of health, education, law and justice and care and protection. As the Youth Justice Coalition notes:

these Departments have important policy leadership roles to play in child protection work, however these roles are unclear (or unrecognised) in their relationship with the Department of Community Services (Submission 34).

Given these shortcomings the Youth Justice Coalition would like to see the current functions and structure of the Council reviewed and consideration given to alternative ways of fulfilling the functions of the Council.

In conclusion Dr Grunseit considered:

the present strength and significance of the Child Protection Council [is] debatable (Submission 35).

Currently, the Child Protection Council reports directly to the Minister for Community Services and is not a part of the Department of Community Services. Whilst the Committee considers that the Council should remain independent, it believes that it should be responsible to the Premier. This issue is further considered in Chapter Eight which examines systemic advocacy within government.

7.3.3 The New South Wales Child Advocate

In 1994, the New South Wales Minister for Community Services appointed a Child Advocate, Dr Ferry Grunseit, for an initial period of three years. The position is administratively attached to the Child Protection Council. However, no additional financial or administrative assistance was provided to the Council to support the position. Further:

the publicity given to the Office was minimal and the existence of a Child Advocate has remained largely unknown. I have endeavoured to fulfil this role to the best of my ability under the circumstances ... however I have not been satisfied that the Office of Advocate has been taken seriously so far (Submission 35).

The position's Terms of Reference were developed after discussion with the Council's Secretariat and the Department of Community Services' Executive. The Terms of Reference given to the Child Advocate are:

to speak and act on behalf of children and children's rights, and at all times aim for the best outcomes for the child. Whenever there is conflict about best interests the Advocate will steadfastly represent those of the children (Submission 35).

The Child Advocate has powers to report annually on compliance with the United Nations Convention, to raise the status of children and young people, and promote the well-being of children and young people with special needs. The Advocate also advises the Minister for Community Services on matters relating to children which might need investigation and review.

It is the Committee's understanding that the Advocate has limited resources and capacity to advocate on behalf of children and young people. Further, as the Youth Justice Coalition notes, the powers and appointment of the Advocate have not been advertised widely (Submission 34).

The Director of the Public Interest Advocacy Centre observed in evidence before the Committee, that the appointment was "an interesting and, in principle, welcome decision" (Hogan Evidence - 9 November 1995). However, the position has no statute, no resources, no identity and provides no services to children and families. But:

at least the last government seemed to accept the need for a children's advocate. But if government is going to be serious about that need, government needs to give a children's advocate teeth, resources and a capacity to provide services to children and families (Hogan Evidence - 9 November 1995).

The Child Advocate informed the Committee that the position:

has a fairly low profile because the appointment was made when the whole childhood protection system was being minimalised. In one sense that was serendipitous and in another sense incongruous (Grunseit Evidence - 29 November, 1995).

The Committee has made recommendations for the future direction of children's advocacy in Chapter Eight. In that Chapter it recommends that a fully resourced and staffed office, with close liaison with a range of groups, located within the Premier's Department and, answerable to the Premier, be established. In light of these recommendations the Committee recommends that the position of Child Advocate be deleted.

RECOMMENDATION 27

That the position of the Child Advocate be deleted when the Office of the Status of Children and Young People is established (See Recommendation 31).

7.4 THE COMMUNITY SERVICES COMMISSION

The Community Services Commission was established in 1994 to promote the rights and welfare of citizens (including children) who are subject to community welfare legislation. The Commission is an independent watchdog for consumers of community services in New South Wales established under the *Community Services (Complaints, Appeals and Monitoring) Act, 1993*. As the Commissioner advised the Committee, the Commission is "only part way through an establishment process that we would expect to take of the order of three years" (Evidence - 29 November, 1995).

7.4.1 Role and Function

The Commission's specific role with children includes:

- dealing with complaints from children or involving children who are receiving or are eligible to receive community services;
- carrying out reviews of individual children in residential or foster care;
- coordinating the Community Visitors program, discussed below;
- advising the Minister about systemic problems and issues in the delivery of community service to children;
- educating service providers about best practice in handling complaints from their consumers;

- informing children of their rights to complain and ways of accessing complaints systems; and
- supporting and encouraging advocacy services and programs for children (Submission 37).

In 1994-95 the highest proportion of complaints received by the Commission concerned children. Of the 548 complaints received, 27% related to child protection, with a further 25% concerned with children in care (Community Services Commission, 1995a:17). While exact data are not available, it would appear children rarely initiated these complaints.

Child protection complaints involved issues about the adequacy of Department of Community Services investigation of alleged child abuse, and ongoing supervision and support for abused children and their families. Children in care issues were concerned with the inadequacies in the substitute care system, poor communication between the service provider and both children and their natural parents, and their non-involvement in decision-making (Community Services Commission, 1995a:17).

7.4.2 Adequacy of the Commission

During the course of the Inquiry, the Committee received a number of positive statements concerning the work of the Commission. The National Children's and Youth Law Centre is, for example, a "strong supporter" of the Commission and considers it to do "excellent work although it has certain constraints" (Ludbrook Evidence - 9 November, 1995). The Association of Child Welfare Agencies perceives the Commission as doing an:

admirable job ... exploring opportunities for young people's voices to be heard and ... showing an independence that is admirable and welcomed (Young Evidence - 9 November, 1995).

The Youth Justice Coalition views the establishment of the Commission as an expansion of the opportunities for accountability in the provision of services for children and young people (Submission 34). And finally, Dr Cashmore's experience with the agency has "shown the commitment and sensitivity of its staff to children's issues within its ambit" (Submission 45).

In terms of coordination, the Commission meets with the other major complaints handling organisations. In addition, the Committee was advised that the Commission has met with the staff of the Ombudsman's office who are undertaking an inquiry into juvenile justice facilities and that it is in "close contact" with the Child Protection Council, the Child Advocate and the National Children's and Youth Law Centre (Submission 37).

Despite the comments received by the Committee supporting the work of the Commission, a number of shortcomings were identified. Burnside, for example, identified the Commission's lack of resources to investigate comprehensively and resolve complaints (Submission 23). Grunseit, while acknowledging the Commission to be "an excellent idea" noted that it was not "especially set up to look after children" (Grunseit Evidence - 29 November 1995). The Youth Justice Coalition felt the usefulness of the Commission to be limited without adequate advocacy services to facilitate access by children and young people (Submission 34).

The Commission has recently appointed a permanent Children's Liaison Officer. The duties of this Officer are to:

- design, implement and evaluate programs for children who are consumers of community services and their advocates about consumer rights, how to complain effectively and how to resolve grievances at a local level;
- explore and promote a range of advocacy approaches to promote the rights of vulnerable children who are consumers of community services;
- support and facilitate advocacy, consumer and peak organisations in their efforts to promote the rights of children as consumers of community services; and
- provide advice and support to government and non-government community service providers in establishing and/or improving their systems for complaints handling, consumer service and standards/quality assurance, in accordance with their responsibilities under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*.

The Committee welcomes this initiative. The creation of this position is an important step in addressing the need for improved advocacy for children, and increasing children's access to complaints mechanisms.

The Executive Director of the Association of Child Welfare Agencies discussed two other "handicaps" of the Commission in his evidence to the Committee. The first concerned the Commission's inability to cross portfolios:

children and young people in the care system who have a grievance or complaint about the way they are treated in the Department of School Education or the Department of Health may not find the Commission helpful in that area (Young Evidence - 9 November, 1995).

Similar comments were made by the Chair of the Child Protection Council who considered a shortcoming of the Commission to be its limited focus:

a child may have a problem that is not being addressed well enough in Community Services. Matters of that nature often involve other departments or other agencies, and they are stymied from being able to do anything about it. If the Commission can only look at matters relating to community services, the grievance is only part heard. That would be the concern about that most prominent structure that is being created (Ford Evidence - 9 November, 1995).

The submission from the Office of the Ombudsman also raised concerns with the legislative basis of the Commission noting that it is "far more restricted in [its] powers than the Ombudsman". The Commission's enabling legislation provides that it must not make any determinations or recommendations that are beyond the resources appropriated by Parliament for delivery of community services, inconsistent with the way resources have been allocated by the Minister or Director General in accordance with government policy, or inconsistent with government policy. As the submission notes, this is a "serious impediment" given that the Commission is seen to have a general advocacy role on behalf of children (Submission 62).

A second issue of concern identified by the Association of Child Welfare Agencies concerned the Commission's review process which gives:

the Commissioner the power to review the circumstances of children in care selectively, that is somebody may apply to him or he may choose to review a case. There is no systematic or universal obligation under his legislation (Young Evidence - 9 November, 1995).

The Association was particularly concerned with the "selective" nature of the review process and the lack of "universal obligation". Young considered the establishment of a Children's Board of Review to be a more comprehensive mechanism to review children in care:

The [unproclaimed] Board of Review requirement in the Children (Care and Protection) Act obligates the President ... of the board to review every child in care at six months and then annually. Until you can review the circumstances of children in care, you do not know what those circumstances are. If it relies on a system that is proactive either on the part of the commission or somebody in the community, or the child, you may not necessarily be providing a review of those most in need of a review. That is the problem I have with the legislation under which the Commissioner operates (Evidence - 9 November, 1995).

The Committee has recommended Boards of Review be implemented in Chapter Three.

7.5 COMMUNITY VISITORS PROGRAM

7.5.1 Role and Function

The Community Services Commission also co-ordinates the Community Visitors program. The Community Visitors program, established under the *Community Services (Complaints, Appeals and Monitoring) Act, 1993* is an expansion of a "very small scheme" of official visitors that dealt with the large residential institutions, such as Ormond and Minali, run by the Department of Community Services (West Evidence - 29 November 1995). Under the legislation the program has been expanded to cover all visitable services, that is, places of full-time accommodation for children and adults in care, excluding foster care. The program provides a way for children and young people in institutional care to seek assistance and to complain formally about their circumstances and treatment.

Community Visitors are independent representatives from the community appointed by the Minister for Community Services. As the Minister for Community Services has stated in an open letter to service providers introducing the Visitors:

Community Visitors will advocate on behalf of residents to improve the quality of their lives. In particular, they will try to help those residents who have little or no family or other support. Community Visitors will also work with service providers and residents to resolve any complaints (Dyer, 1995).

In June 1995, 38 Visitors were appointed to visit services across the state. They include people who were in care themselves, people with disabilities, Aborigines, family members of people with disabilities, advocates and people with professional experience in community services (Minister for Community Services, 1995). Some focus exclusively on children in residential care, others visit services for children with disabilities.

There are over 750 services within New South Wales considered under the Act to be "visitable". Not all services are visited at the same rate. Factors determining the rate of visitation include:

- the number of residents living together;
- the age of the residents;
- the type of disability;
- geographic isolation of services; and
- complaints to the Community Services Commission (Community Services Commission, 1995b:4).

The Committee understands that Community Visitors will:

- talk and listen to what residents, their family and advocates have to say about their service;
- advocate on behalf of residents to improve the quality of their care;
- bring issues that have an impact on residents to the attention of management and staff;
- provide information and support to residents wanting to raise matters with the service providers about the quality of care they receive;
- where appropriate, assist both the resident and the service provider to resolve any complaint a resident may have about their service; and
- report to the Community Service Commission and the Minister for Community Services on the quality of services and any serious issues raised by residents (Community Services Commission, 1995b:1-2).

Under the enabling legislation, the Visitors have the authority to:

- enter and inspect any visitable service at any reasonable time. Notice of a visit is not required;
- talk alone with any resident or person employed at a service; and
- inspect any document held in a service which relates to the operation of the service (Community Services Commission, 1995b:3).

The first step in attempting to resolve an issue brought to the attention of a Visitor is to seek resolution within the Centre. Where this is not possible, the case is then brought to the attention of the Commissioner, the Department of Community Services or the Minister where relevant.

7.5.2 Adequacy of the Program

While acknowledging that Visitors have an “important” advocacy role for individual children and young people, the Youth Justice Coalition considers there to be constraints on their role such as the limited extent to which Visitors are acknowledged and remunerated as advocates (Submission 34).

The *Systems Abuse* Report highlighted the extent to which children and young people in residential care are reluctant to complain for fear of retribution, or being picked upon. The Committee strongly agrees with the Youth Justice Coalition who suggest that there:

is no use having a system of review if the potential users are too scared to use it
(Submission 34).

In addition, the Committee understands that the Program does not extend to young people in foster care who make up most of the children and adolescents in substitute care. As the submission from SNYPIC observes:

the main limitation we see with (the Community Visitors Scheme) is that it only targets children and young people in residential care and group homes. It does not target children in foster homes, and given that the majority of children and young people in care are in foster homes, that leaves a lot of very isolated children and young people (Submission 41).

Most submissions noted that, given the recent change to the program, it is too early to assess how successful it will be in adequately advocating for those children in care covered by the scheme.

7.6 COMMUNITY SERVICES APPEALS TRIBUNAL

7.6.1 Role and Function

The Community Services Appeals Tribunal is constituted under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*. It is part of the independent review and appeals system in the community services area which includes the Community Services Commission, the Community Services Review Council and the Community Visitors Scheme.

The Community Services Appeals Tribunal hears appeals against decisions of the Minister and the Department of Community Services. An application for an order for the termination of wardship or guardianship can be made either to the Children's Court or to the Minister. The Tribunal hears appeals against the Minister's refusal to terminate his guardianship and decisions to remove a child from the custody of any person, such as foster parents. The Tribunal also has jurisdiction to hear appeals against the granting, suspension or revocation of child care, fostering agency and children's residential care licences and the placement of conditions on those licences.

As soon as an appeal is launched at the Tribunal that involves children, they are visited so that the Tribunal proceedings can be explained in an appropriate way. They are asked whether they would like to participate either by informing the Tribunal of their views or

wishes in the matter, or attending the Tribunal. The Tribunal selects an advocate for the child with particular skills and taking into account any special needs of the child. The advocate supports the child or participates in the Tribunal's proceedings if the child is not able to directly attend or participate. Advocates have been drawn from:

- The State Network of Young People in Care;
- Voluntary child care and protection agencies;
- Legal Aid Commission Social Workers;
- Individual professionals selected for their skills and experience with children in contact with the substitute care system (Submission 39).

The Tribunal intends to set up a panel of non-lawyer advocates who can act for children. Such a panel could also serve the needs of bodies other than the Tribunal.

7.6.2 Adequacy of Organisation

The Committee heard that while the Tribunal may address the needs of children who are the subject of or involved in proceedings, these proceedings are not child-focused:

we become involved with those children only once the parents' or the foster parents' rights are challenged, or if the foster parents or the birth parents bring an appeal Although the children's rights are met, once the right of appeal arises it is a very parent-focused right (Evidence - 29 November 1995).

The child has no right of appeal against a decision to place that child with a particular foster parent, or against the termination of their wardship if it is against their wishes.

In evidence to the Committee, a solicitor appearing on behalf of the Youth Justice Coalition contended that while the Community Services Appeals Tribunal had been successful in addressing the needs of children involved in proceedings, its powers are very limited and must be extended. She recommended the creation of an Administrative Appeals Tribunal to review administrative decisions made by schools, the Department of Community Services, and other government agencies (Evidence - 22 April, 1996).

RECOMMENDATION 28

That the Minister for Community Services appoint a Children's Liaison Officer to the Community Services Appeals Tribunal for an initial period of two years to develop a publicity campaign to make children and young people aware of its functions and to advise the Tribunal in making its proceedings involving children more child-focussed.

7.7 THE HEALTH CARE COMPLAINTS COMMISSION

The Complaints Unit was established in January 1984 within the New South Wales Department of Health to provide a clear avenue to resolve complaints about the delivery of health services. The Unit was restructured in 1994 and became known as the Health Care Complaints Commission. The Commission is established under the *Health Care Complaints Act, 1993* and is an independent statutory body reporting directly to the Health Minister and the Health Care Complaints Parliamentary Committee.

7.7.1 Role and Function

The Commission combines a three-fold approach that includes receiving complaints, investigation and, where appropriate, prosecution (Health Care Complaints Commission, 1995:15). The Commission is able to take disciplinary action or bring matters of concern to the attention of the Director-General of the Health Department or the Minister for Health.

Under its enabling legislation the Commission has the following functions:

- to receive and deal with complaints relating to the professional conduct of health practitioners or health services;
- to assess complaints and refer them for conciliation or investigation;
- to prosecute complaints through a variety of forums;
- to report on action to be taken following the investigation of a complaint if the complaint is found to be justified in part or whole;
- to publish and distribute information to the community on the process of making a complaint;
- to provide information to health service providers and professional and educational bodies concerning complaints;
- to monitor, identify and advise the Minister on trends in complaints and recommend changes in policy arising out of cases investigated;
- to consult with groups with an interest in the provision of health services;
- to develop a Code of Practice; and

- to investigate the frequency, type and nature of allegations made in legal proceedings of malpractice by health practitioners (Health Care Complaints Commission, 1995:15).

The Commission collects detailed information about complaints and maintains a comprehensive database about complaints and their outcomes. However, until recently, the information collected did not include age-related information. It is therefore not possible to provide statistics on how frequently children complain, or others complain on behalf of children about health care services (Submission 38). According to Ms Marilyn Walton, Commissioner of the Health Care Complaints Commission, the agency “rarely” gets complaints from children (Walton Evidence - 29 November 1995).

7.7.2 Adequacy of the Commission

As has been noted earlier, the number of watchdog agencies could lead to overlap and duplication of services. However, from the perspective of the Commission, overlapping is not experienced as “we understand each other’s jurisdiction” (Walton Evidence - 9 November 1995):

the Commission has sole responsibility for health professionals, those that are regulated under the Nurses Act and the Medical Practitioners Act. As soon as a person has been identified as a doctor, nurse, chiropractor, physiotherapist, or whatever, he or she clearly comes into our jurisdiction. No-one else would want to touch it anyway because it is so complex (Walton Evidence - 29 November 1995).

A number of criticisms were levelled at the Commission from those making submissions, or giving evidence, to the Committee. Burnside, for example, considered the Commission to be “chronically” short of resources to investigate the volume of complaints it receives. It also claims that it lacks staff experienced in dealing with children and young people and has a limited range of remedies available to complainants (Submission 23).

The Youth Justice Coalition suggested to the Committee that the Commission does not necessarily provide an “easy” avenue of redress for children or young people. The Coalition identified long delays in dealing with complaints, the large and bureaucratic nature of the Commission and a process that is intimidating to young people to manage on their own (Submission 34). Similar comments were made by Cashmore, who notes there is little indication that children and young people use the service (Submission 45).

The Commissioner commented in evidence before the Committee that:

it is not a question of there being no system. The problem is access. Getting children to us is the problem (Walton Evidence - 29 November 1995).

The Youth Justice Coalition suggested the Health Care Complaints Commission should consider appointing a Youth Liaison Officer to promote young people's interests, and educate young people and workers in the youth sector about the Commission's services (Submission 34). As discussed above, a position has been created in the Office of the Ombudsman for a two year period to carry out similar functions in improving access to and awareness of that agency among young people. The Committee believes this model would be equally appropriate for the Health Care Complaints Commission.

RECOMMENDATION 29

That the Government provide additional funding over two years for the appointment of a Children's Liaison Officer in the Health Care Complaints Commission to:

- **conduct education and publicity campaigns; and**
- **liaise with peak groups providing advice and services to young people.**

This would ensure that an awareness of the Health Care Complaints Commission's role in relation to complaints by young people is developed.

7.8 THE OFFICIAL VISITORS PROGRAM

7.8.1 Role and Function

The current official visitors scheme was established in September 1992 by the then Office of Juvenile Justice. The scheme's statutory base comes from section 8A of the *Children (Detention Centres) Act 1987*. That section provides that:

- 8A (1) *The Minister may appoint a person to be an Official Visitor for a detention centre.*
- (2) *A person is eligible for appointment if, in the opinion of the Minister the person is expert in some branch of juvenile justice and demonstrates concern for persons within the juvenile justice system. However, an officer is not eligible for appointment.*
- (3) *An Official Visitor holds office for such period not exceeding 2 years as is specified in the instrument of appointment and is, if otherwise qualified, eligible for re-appointment.*

- (4) *An Official Visitor may, as regards a detention centre for which the Official Visitor is appointed:*
- (a) *enter and inspect the detention centre at any reasonable time; and*
 - (b) *confer privately with any person who is resident, employed or detained in the detention centre; and*
 - (c) *furnish to the Minister advice or reports on any matters relating to the conduct of the detention centre; and*
 - (d) *exercise such other functions as may be prescribed by the regulations.*
- (5) *A copy of any advice or report furnished to the Minister under subsection (4)(c) is to be forwarded to the Minister for School Education if the advice or report related to any part of an educational establishment that is under the control or direction of the Minister for School Education.*

Currently, there are 10 Official Visitors, one appointed to each Juvenile Justice Centre in the state. Each Official Visitor is required to visit his or her nominated detention centre twice a month and report to the Minister every six months.

During the course of the Inquiry the Committee received evidence from the coordinator of the Official Visitors Scheme, and two Official Visitors, Shireen Malamoo and Ray Bird. The Committee heard that:

The annual reports for 1993-94 and 1994-95 show that official visitors dealt with 1,000 complaints and 750 complaints in the respective years. Inquiries have ranged from food quality and non-smoking policies in centres to compensation for loss of property by detainees (Matthews Evidence - 29 April 1996).

7.8.2 Adequacy of the Official Visitors Scheme

A number of submissions commented that the Official Visitors Scheme, in contrast to many of the other agencies identified above, has a real child advocacy role. The submission from SNYPIC for instance, argued that:

the Official Visitors program and the National Children's and Youth Law Centre work more as advocates who defend, uphold and promote children's views (than the NSW Ombudsman, the Community Services Commission and the Health Care Complaints Commission). Their advocacy role may start off as a complaint, but they are there for the child only. These services also have a role in promoting the needs and views of all children as well as individual children (Submission 41).

Similarly, the submission from the Youth Justice Coalition stated that:

[Official] Visitors have an important advocacy role for individual children and young people ... Visitors also have an important role to play in referring children and young people to appropriate advocates when necessary (Submission 34).

Despite evidence of the positive advocacy function that Official Visitors can play, the Committee also heard of shortcomings within the scheme that limited its role. The Youth Justice Coalition commented that:

there are constraints on their role, including the limited extent to which Visitors are acknowledged and remunerated as advocates (Submission 34).

In relation to the situation for Aboriginal young people, Shireen Malamoo (Evidence - 29 November, 1996) commented that:

The impact of the juvenile justice system on indigenous juveniles is a compelling problem for indigenous communities and the wider community in this state. I am of the opinion that the Official Visitor's program, like many other programmes which attempt to address this problem, lacks the urgency which should characterise government's efforts to address juvenile justice issues. I also feel that the role of indigenous official visitors should be given greater acceptance. The potential for such visitors to contribute significantly to solutions and initiatives to deal with the clear problem of juvenile justice and Aboriginal children should be given greater currency and support by the Government.

7.9 THE NATIONAL CHILDREN'S AND YOUTH LAW CENTRE

The National Children's and Youth Law Centre was established in 1993 at the initiative of the Public Interest Advocacy Centre (PIAC) and was developed by a consortium made up of the Centre and the law schools of Sydney University and University of New South Wales. The two universities and PIAC have provided financial support or support in kind to the Centre which was "crucial" in its formative years (Submission 3).

A three year seeding grant was provided from the Australian Youth Foundation to "address the vast unmet need for advocacy for disadvantaged children and young people and their legal rights" (National Children's and Youth Law Centre, 1995:3). This funding expired at the end of 1995 and could not be renewed. The Commonwealth government has offered funding through the Attorney-General's Department as part of the government's Justice Strategy. The Justice Strategy, for the first time, recognised the special legal needs of children and young people by providing funding for five specialist youth advocate positions, two of which have been offered to the Centre (Submission 3).

The Commonwealth funding however provides approximately one-half of that previously provided by the Foundation. As a result of this reduced funding the Committee was advised that the Centre has had to:

cut back its services and has had to retrench or let staff go. It is not now being funded at a level that is viable to operate effectively nationally or to provide the services at a State level that it gets called upon to do (Hogan Evidence - 9 November 1995).

Further, although the funding offered by the Commonwealth government is described as "recurrent", there is no guarantee that funding will continue after 1 November 1996. The conditions attached to the federal funding will see the Centre refocus its work on advice, information and legal casework with reduced opportunities for policy work and new publications (Submission 3).

7.9.1 Role and Function

The objectives of the Centre are:

- to improve the conditions and opportunities of Australian children and young people, especially the disadvantaged, by identifying the major legal issues facing them and by using and improving the law, legal systems and legal services for the promotion and enforcement of their rights;
- to promote through advocacy and education the comprehensive implementation throughout Australia of the United Nations Convention on the Rights of the Child;
- to provide accessible and independent expert advice, advocacy and referral for children and young people especially the disadvantaged, and for organisations and individuals seeking to assist them;
- to provide an information exchange service on a national basis to collect, produce, disseminate and promote information on laws, legal processes and legal services affecting children and young people; and
- to undertake, sponsor and publicise critical research, policy review and development and lobbying in relation to laws, legal processes and legal services affecting children and young people (National Children's and Youth Law Centre, 1995:4).

The Centre's core program includes the following components:

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- policy and law reform which aims to undertake policy analysis and reviews of laws and to lobby in relation to the reform of laws, legal processes and legal services affecting children and young people;
- casework and litigation which provides expert advice, advocacy and referral on appropriate test case litigation to organisations and individuals concerned with the rights of children and young people; and
- information and research aimed at providing a national information service, to collect, produce, disseminate and promote information and research on laws, legal processes and legal services for children and young people (National Children's and Youth Law Centre, 1995:9-12). The Centre handled 1,664 advice and information calls in 1994 (Submission 3).

The Centre identified six areas of priority in its submission to the Committee. These include:

- the United Nations Convention on the Rights of the Child;
- education and students' rights;
- children in institutional care;
- advocacy for children and young people;
- juvenile justice; and
- discrimination and disability (Submission 3).

The Centre has been very involved in the development of an Australian Charter of Rights for Children and Young People. The Charter's supporting document includes discussion on:

- fundamental rights;
- culture, language and religion;
- children and families;
- standard of living;
- health;
- children with a disability;

- education;
- employment;
- juvenile justice; and
- punishment of children (Australian Youth Foundation, 1995:11-24).

Among the list of fundamental rights is advocacy for children's views which states that:

children have the right to choose an appropriate advocate to assist them in putting their views forward. If children lack the capacity to put forward their views or to instruct an advocate then a suitably qualified advocate must be appointed to represent them based on their interests (Australian Youth Foundation, 1995:12).

Those drafting the Charter propose that it become part of Australia's domestic law. They also see a number of other factors as necessary in implementing and enforcing the Charter. These include:

- an audit of existing legislation conducting to identify where existing laws do not meet the standards identified in the Charter. Action to bring existing legislation into line with the Charter would be necessary, as would assessments of all future legislation;
- the preparation of Child Impact Statements in relation to all proposed legislation and budget packages;
- the establishment of an Office of the Child in the Department of the Prime Minister and Cabinet, and in the Premier's Department at state or territory level. The Offices would be responsible for fulfilling governments' responsibilities under the United Nations Convention to educate the community about the Convention;
- the development of a national agenda for children to look at the practical issues confronting children in the implementation of their rights under the Charter; and
- the establishment of an independent Commissioner for Children with statutory responsibility to advocate for children and young people and promote their interests (Australian Youth Foundation, 1995:54-56).

7.9.2 Adequacy of the Centre

During the course of taking evidence, the Committee received strong support for the work undertaken by the Centre. The Director of Public Interest Advocacy Centre, for example, told the Committee that the Centre provides a “significant service to children and families” (Hogan Evidence - 9 November 1995). The Executive Director of the Association of Children’s Welfare Agencies considered the National Children’s and Youth Law Centre to have the “potential” to be a strong advocacy organisation for children (Young Evidence - 9 November 1995). The Youth Justice Coalition informed the Committee that the Centre had played a “vital role” in the provision of advocacy for children and young people and that it had:

identified issues of national importance and taken a leadership role in the development of policy affecting children and young people (Submission 34).

Burnside claimed the Centre to be an “outstanding agency”. Its work in the areas of community education, publications, policy and law reform are considered “extremely admirable” (Submission 23).

The major shortcoming identified by those appearing before the Committee related to the national orientation taken by the Centre, with many feeling it was not resourced adequately to fulfil such a mandate. The Executive Director of the Association of Children’s Welfare Agencies, for example, considered the Centre to be “bound” by its national and legal framework (Young Evidence, 9 November 1995).

Burnside noted that:

given its resources (which have just been significantly diminished) and its national role, any expectation that it can be in any way an effective advocate for individual children and young people is misplaced (Submission 23).

7.10 THE GUARDIANSHIP BOARD

7.10.1 Role and Functions

The Guardianship Board functions as an independent tribunal, established under the *Guardianship Act 1989*. The Board's role is to assess applications for the appointment of substitute decision makers for people over 16 years of age who have some degree of incapacity. Substitute decision-makers may include guardians to make decisions about matters such as accommodation and medical treatment, or financial managers. Guardianship orders can be designed to overcome a lack of competent advocacy or conflict between people purporting to be advocates.

The Guardianship Board has a range of powers of guardianship under the *Guardianship Act*. These are:

- limited guardianship (with defined powers and scope for specific directions to a guardian);
- plenary guardianship; or
- temporary, interim, short or long term orders, with mandatory reviews.

The Board is able to set out a plan for each person for whom a guardianship order is made, with time frames for action, and adopts a multi-disciplinary approach. The Committee heard that in the first instance a guardianship order can only be made for up to twelve months, with the Board conducting a review hearing at the end of that period which provides a monitoring role (Brown Evidence - 29 April 1996).

7.10.2 Adequacy of the Board

A number of witnesses suggested in evidence that elements of the Guardianship Board's model of advocacy could have advantages in areas concerning children outside the disability area. In supporting this model, the Community Services Commission noted:

The current model for guardianship of children through the children's court lacks this flexible, multi-disciplinary approach, or the capacity to provide for clear plans for the future of a child (Submission 37).

However, the Committee also heard from solicitor, Leonie Miller that the Guardianship Board is bound by systemic limitations in what it can achieve for children under its jurisdiction:

the Guardianship Board has no power currently for persons appearing before it to provide services; it can only advocate whatever we establish, the end result must be something better for the client base, not the system that has been established. When a person goes before the Guardianship Board, they can only have the Guardianship Board advocate the services. The Guardianship Board is not a direct service provider (Miller Evidence - 22 April 1996).

7.11 YOUTH BRANCH, NEW SOUTH WALES CABINET OFFICE

Under the previous government, the Office of Youth Affairs existed as part of the Ministry of Education and Youth Affairs. After the 1995 state election, the youth policy staff of the Office were transferred to the Cabinet Office, and following a restructure, a Youth Branch was created.

7.11.1 Role and Function

The Youth Branch provides advice to the Premier on youth issues and undertakes the following functions:

- co-ordinating the implementation of the Government's commitments and developing youth policies;
- reviewing priorities and funding for "at risk" young people;
- developing measures to ensure services are appropriate and responsive to young people; and
- developing initiatives to address emerging youth needs.

The Youth Branch also co-ordinates youth policy initiatives through:

- the Youth Advisory Council which provides advice to the Premier on issues affecting young people;
- an Interdepartmental Committee with representatives from ten key youth affairs agencies;
- inter-governmental liaison via the Ministerial Council on Employment, Education, Training and Youth Affairs Taskforce; and
- intersectoral liaison through regular meetings with peak non-government organisations like the Youth Action and Policy Association (Cabinet Office, 1995:22)

7.11.2 Adequacy of Branch

The Youth Branch or the Youth Advisory Council were not raised in submissions or evidence to the Committee as major sources of advocacy for children in New South Wales. This may reveal a lack of knowledge regarding their role, or a belief that they lack the independence from government to be effective advocates for children. Certainly, it reveals their profiles are limited.

In its Report, *Youth Violence in New South Wales* (Standing Committee on Social Issues, 1995), the Committee expressed concern regarding the division of policy and program responsibilities between the Youth Branch of the Cabinet Office (policy) and the Youth Program Unit of the Department of Training and Education Coordination (programs). The Committee was concerned regarding the message the closure of the Office of Youth

Affairs sent to the youth of the state, and regarding the appropriateness of splitting the coordination of policy and programs.

The Committee supports the identification of children's and youth affairs as a distinct policy area by governments. The Committee also believes a separate bureaucratic structure within government is required to respond effectively to children's needs. In its current form however, the Committee feels the Youth Branch has not been effectively developed as a children's advocacy forum. In Chapter Eight it makes a number of recommendations regarding the establishment of the Office of the Status of Children and Young People. It considers that in order for the Office of the Status of Children and Young People to function effectively, the Youth Branch in the Cabinet Office should be disbanded and/or incorporated into the recommended office (See Recommendation 31).

7.12 CONCLUSION

Although a number of the agencies identified above offer some advocacy for children, the Committee is concerned that there is still an uncoordinated and reactive approach, with advocacy overall being largely ad hoc and piecemeal. This in itself represents a clear example of the inadequacy of children's advocacy in this state.

As the Committee was told:

these organisations respond to the issues or needs of individual children, rather than the collective welfare of all children, or special groups of children. They are ... remedial and grievance driven, rather than being positive and proactive in their advocacy (Submission 15).

In its submission, Centacare identified a number of problems in relation to the lack of a coordinated approach to advocacy for children. It argues that the plethora of agencies and processes working on behalf of children is "part of the problem":

for children and parents or carers, the consumers of such services, what results is a picture that is bewildering and far too compartmentalised (Submission 15).

The Committee concurs with this view. It is also concerned by the fact that the current advocacy bodies rely on the children, their parents or other interested parties to raise issues or grievances.

To increase access to and awareness of complaints agencies among young people, the Committee supports the establishment of a Youth Liaison Officer in the Office of the Ombudsman. The Committee recommends on-going funding for education and publicity campaigns, and liaison with peak groups providing advice and services to young people. The Committee also calls for a similar initiative for the Community Services Appeals Tribunal and the Health Care Complaints Commission.

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The Committee considers that successful advocacy requires a proactive and preventative strategy. The Committee recognises that this requires increased support for parents and families. This is especially the case for children at risk of entering the care or juvenile justice systems.

The Committee recognises the original objectives of the NSW Child Protection Council included the development of proactive strategies to respond to child sexual assault. The Committee believes that the Council's influence will be enhanced as an integral part of the Office of the Status of Children and Young People. It also considers that the relocation of the Youth Branch to this Office will result in a higher profile for youth issues.