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**Adoption and Care and
Protection of Children: The
Proposed Legislative Changes**

by

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Briefing Paper No 10/2000

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EXECUTIVE SUMMARY

Major amendments were made to child protection legislation in 1998, culminating in the passage of the *Children and Young Persons (Care and Protection) Act* in December of that year. However, much of the 1998 Act remains to be proclaimed. Until this occurs the relevant legislation remains the *Children (Care and Protection) Act 1987* (pages 8-9). An extensive review begun in 1994 identified several areas in which improvements to the 1987 Act could be made, (pages 9-13) and suggestions as to how these could be achieved were outlined in the Review Team's Final Report. The Children and Young Persons (Care and Protection) Bill reflected in large measure the recommendations made in the Final Report (pages 14-15).

In the interim, the Minister for Community Services has announced possible changes to the 1998 Act to facilitate the adoption of children in care as a solution to the problem of children from abusive or neglectful families (pages 16-19). The Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill which was introduced on 21 June 2000 as an Exposure Draft for public comment has this as its aim (pages 19-22). A number of child protection professionals have already put forward their views on the Bill (pages 22-30). Similar proposals in certain overseas jurisdictions are discussed (pages 30-36). Whether the matter is ultimately proceeded with by legislation or through other means, if at all, will be determined by the Minister after the consultation process has been finalised.

The current position in relation to adoption in New South Wales is outlined on pages 36-38. A comprehensive examination of adoption law and practice was undertaken by the New South Wales Law Reform Commission, and in its 1997 Report, the Commission recommended a major overhaul of the *Adoption of Children Act 1965* (pages 38-40). A Bill to modernise the state's adoption law, and to bring it into line with contemporary community attitudes and views, was also introduced by the Minister for Community Services on 21 June 2000. The provisions of the Bill are largely based on the Law Reform Commission's recommendations (pages 40-42).

It should be pointed out that while the process of adoption is discussed in both Bills, the focus of each differs: the Adoption Bill applies to the adoption of all children in New South Wales, whereas the Permanency Planning Bill deals with of adoption as a placement option for children from abusive or neglectful backgrounds, who are in care.

INTRODUCTION

On 21 June 2000, the Minister for Community Services, the Hon F Lo Po' MP, introduced the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000 (referred to hereafter as 'the Permanency Planning Bill) into the New South Wales Legislative Assembly. This Bill proposes to amend the Children and Young Persons (Care and Protection) Act 1998:

to improve the case management of abused and neglected children and young persons who have been removed from their parents and placed in out-of-home care and for whom a return to their parents does not appear to be a viable option. The amendments made by the Bill will require the consideration of more permanent forms of care, including the possibility of adoption, for children and young persons in these circumstances.¹

In this context adoption is to be seen as one of a range of options for dealing with children in care. The Minister also introduced into the Legislative Assembly on 21 June, the Adoption Bill, which reflects in large measure the recommendations made by the Law Reform Commission in its 1997 Report into adoption. While the provisions of the Adoption Bill are relevant when considering the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000, it is important to stress that the Bills are not linked and the focus of each differs. The Adoption Bill covers the process of adoption for all children in New South Wales, while the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000 deals with adoption as a placement option for children in care.

The development of the legislative proposals is described in the first section of this paper. The incidence of child abuse and neglect is discussed in section two, and the relevant child protection legislation is outlined in section three. Section four examines the Permanency Planning Bill. The position in overseas jurisdictions where adoption is receiving a renewed focus as an answer to the needs of some children in care is presented in section five. The final section deals with adoption.

1 CHRONOLOGY OF KEY EVENTS

Before examining the provisions and potential impact of the Permanency Planning Bill, it is perhaps useful to outline the chronology of key events relating to the legislative proposals.

27 November 1992	The New South Wales Law Reform Commission (referred to hereafter as 'the NSWLRC') was given a reference by the then Attorney General, the Hon J Hannaford MLC, to review the Adoption of Children Act 1965.
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¹

Explanatory Note to the Bill as introduced into Parliament.

- April 1994 The NSWLRC released its Discussion Paper on Adoption² for public comment.
- Late 1994 The then Premier Hon J Fahey MP, and the then Minister for Community Services, Hon J Longley MP, jointly announced that the Department of Community Services (referred to hereafter as 'DOCS') would undertake a Review of the *Community Welfare Act 1987* and the *Children (Care and Protection) Act 1987* and regulations (referred to as the Community Welfare Legislation Review).
- December 1994 A Review Advisory Reference Group comprising representatives from key government and peak community groups was established to undertake the Community Welfare Legislation Review. Associate Professor Patrick Parkinson of the University of Sydney Law School was appointed as Review Chairperson.
- Late 1996 Dr Judy Cashmore was appointed to role of Deputy Chair on the Community Welfare Legislation Review.
- 12 December 1996 The first of the Community Welfare Legislation Review's three discussion papers, *Law and Policy in Child Protection* (Discussion Paper 1) was launched at Parliament House.
- 31 January 1997 The second and third discussion papers of the Community Welfare Legislation Review, *Children's Services: A Legal Framework* (Discussion Paper 2) and *Protecting Children in Employment: A Legal Framework* (Discussion Paper 3), were distributed to the public.
- March 1997 The NSWLRC presented the then Attorney General, Hon J Shaw QC MLC, with its Final Report³ on the adoption reference.
- 25 July 1997 The then Minister for Community Services, Hon R Dyer MLC, announced that the NSWLRC Report on Adoption would be considered by Government.

² New South Wales Law Reform Commission, *Review of the Adoption of Children Act 1965* (New South Wales), Discussion Paper 34, April 1994.

³ New South Wales Law Reform Commission, *Review of the Adoption of Children Act 1965* (New South Wales), Report 81, March 1997.

November 1997	An Options Paper was released by the Community Welfare Legislation Review.
December 1997	The <i>Report of the Review of the Children (Care and Protection) Act 1987</i> ⁴ was presented to the Minister for Community Services, the Hon F Lo Po' MP.
18 March 1998	The Minister for Community Services publicly released the <i>Report of the Review of the Children (Care and Protection) Act 1987</i> .
11 November 1998	The Children and Young Persons (Care and Protection) Bill was introduced into the New South Wales Parliament by the Minister for Community Services and progressed through the Second Reading stage. This Bill was passed in December.
25 October 1999	The British Panorama program on neglected children was shown on <i>4 Corners</i> on the ABC.
Mid February 2000	Plans by the Minister for Community Services to remove children from abusive or neglectful birth parents were referred to in the media.
6 March 2000	The Minister for Community Services announced that a Working Party of experts from the Attorney General's Department and DOCS was to be established to consider the need for any changes to legislation or the operation of the court system to increase permanency planning for abused children. ⁵
13 March 2000	The Minister for Community Services announced that the government was considering drug tests for abusive, neglectful parents with a history of substance abuse as a condition of keeping their children. ⁶
5 April 2000	The Minister outlined the permanency planning proposal in the New South Wales Parliament.

⁴ *Review of the Children (Care and Protection) Act 1987: Recommendations for Law Reform*, Legislation Review Unit, A project of the New South Wales Department of Community Services, December 1997.

⁵ Press Release, Lo Po'meets Attorney General on plan for child abuse', 6 March 2000.

⁶ Press Release, Government considers drug testing abusive parents', 13 March 2000.

- 17 April 2000 Certain provisions of the *Children and Young Persons (Care and Protection) Act 1998* commenced on this date, however, the majority are still to be proclaimed.
- 6 June 2000 The Minister indicated in response to a Question Without Notice that a Draft Exposure Bill on options for dealing with children from abusive and neglectful families would soon be introduced for public comment.
- 21 June 2000 The Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill 2000 was introduced by the Minister into the New South Wales Parliament. Although the Bill proceeded through the Second Reading stage, the Minister emphasised that the Bill was intended as an Exposure Draft to stimulate public debate, and that it would lie on the table for a period of three months.
- The Minister also introduced the Adoption Bill, the Children and Young Persons (Care and Protection) Miscellaneous Amendments Bill, and the Children's Court Amendment Bill. Debate on the first two Bills was adjourned, while the third Bill was passed on 29 June 2000.
- July 2000 The New South Wales Community Services Commission released a Discussion Paper on its Inquiry into the Practice and Provision of Substitute Care in New South Wales. Public submissions have been called for with a closing date of 18 August 2000.
- 28 July 2000 A Forum arranged by the Association of Childrens Welfare Agencies (ACWA), the New South Wales Council of Social Services (NCOSS), the Community Services Commission, and the New South Wales Committee on Adoption and Permanent Care Inc was held to discuss the Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Bill and the Adoption Bill with those working in the community sector.
- A message from the Minister was given to the Forum by the Director General of DOCS, Ms Carmel Niland. The Minister made it clear that while she was still of the view that adoption as a form of permanency planning needed to be encouraged, the means by which this was achieved was still open to discussion. The current Bill was intended only as an Exposure Draft and any final legislation put before the Parliament would reflect relevant suggestions made to the

consultation group set up within DOCS in the three month consultation period.

2 INCIDENCE OF CHILD ABUSE AND NEGLECT

Child abuse and neglect occur across all socio-economic, religious and ethnic groups. No one single source can be identified, and different types of child abuse have different features. However, the pattern of interaction between the adults, the children, and the corresponding environment provides some identifiable correlates. There are a number of situations where harm to a child is likely, namely: where it has been proven that another child was abused or neglected; where a person who has previously been known to abuse children has moved into the household; and where the mother of a new-born baby is drug or alcohol dependent, or suffers from a psychiatric illness, and her past history indicates that she finds it difficult to care adequately for the child.

Child protection is the responsibility of the Community Services Department in each State and Territory. Children who come into contact with the community services department for protective reasons include those who have been or are being abused or neglected, or whose parents cannot provide adequate care or protection for them. The Community Services Department provides assistance to these children and their families through the provision of, or referral to, a wide range of services. Some of these services are targeted specifically at children in need of protection (and their families), whereas others are available to a wider section of the population and attempt to deal with a broad range of issues or problems.

National Child Protection Statistics: An Annual Report ⁷ on child protection in Australia is prepared by the Australian Institute of Health and Welfare using national child protection data relating to: child protection notifications, investigations and substantiations; children on care and protection orders; and children in supported out-of-home overnight care. The main findings in the 1998/99 Report can be summarised as follows:

- The number of child protection notifications in 1998/99 was higher than in 1997/98 in the majority of States and Territories
- The majority of notifications were subject to an investigation. Although the outcomes of investigations varied across States and Territories, in all jurisdictions a large proportion of investigations were not substantiated: that is, there was no reasonable cause to believe that the child was being or was likely to be abused or neglected or otherwise harmed. In New South Wales over half the finalised investigations (54%) were not substantiated.

⁷ Australian Institute of Health and Welfare, *Child Protection Australia 1998/99*, Child Welfare Series, No 25, July 2000.

- Between 1997/98 and 1998/99 the number of substantiations decreased in New South Wales.
- While the quality of data on indigenous status varies between States and Territories, indigenous children were clearly over-represented in substantiations of child abuse and neglect.
- There were 8487 children admitted to care and protection orders and arrangements across Australia during 1998/99.
- Of those children admitted to care and protection orders and arrangements in 1998/99, 42% were aged under 5, with 13% aged less than 1 year.
- There were 3.8 children per 1000 aged 0-17 on care and protection orders in Australia at 30 June 1999.
- The rate of children on care and protection orders varied across States and Territories ranging from 2.1 per 1000 in Western Australia, to 4.4 per 1000 in New South Wales. In all jurisdictions the rate of indigenous children on care and protection orders was higher than the rate for other children.
- There were 15,674 children in out-of-home care at 30 June 1999. Most of these children (88%) were in home-based care arrangements with a further 8% in facility based care.
- The rate of children in out-of-home care at 30 June 1999 was 3.3 per 1000 aged 0-17. This rate ranged from 2.2 per 1000 in the Australian Capital Territory, to 4.0 per 1000 in New South Wales.
- Indigenous children were also over-represented among children in out-of-home care. For example, in New South Wales, indigenous children were 9 times more likely than other children to be in out-of-home care.

New South Wales Child Protection Statistics: The following details have been taken from the Department of Community Services, *Annual Report, 1998/99*.

- In 1998/99 DOCS received **72,762 reports**⁸ concerning children and young people, an increase of 8,117 (12.6%) over the previous year.
- Children under one accounted for 7,454 reports, **10.2%** of all reports and the largest proportion for a single age group. This is an increase of 1% on the previous year.

⁸ A report occurs when a person contacts DOCS either to inform DOCS of their concern about a young person or child (a notification), or to request assistance for themselves or a friend or family member (a request for service).

- The majority of reports (56.2%) were made up of general carer and family issues, an increase of 5.2% from 1997/98, and 43.5% (31,601 reports) related to harm or risk of abuse or neglect. Of these, there were **10,053 reports** where assessment determined abuse or neglect.
- The most frequent type of abuse was physical (28.8%), 2894 cases, down from 30% in 1997/98, followed by sexual (23.3%), 2346 cases. There was a 2% increase in reports where assessments determined neglect (2204 cases). Children in 0-5 age group made up 40.1% of reports where abuse or neglect was confirmed.
- In the reports where physical or sexual abuse was confirmed, and the abuser could be identified, birth parents were responsible in 44.1% of cases.
- The outcomes of reports where abuse or neglect was confirmed were: ongoing action and/or monitoring by DOCS in 28.3% of cases (2842); referral of 28.6% (2880) for action by other agencies; closure of 40.4% (4065) where it was determined that no further intervention was required; and decisions as to further action pending in 2.6% of cases (266).

In the majority of child protection cases, children remain with their parents after risk factors to the child's safety have been addressed. Community support services are utilised to assist the family and to promote the child's recovering from abuse and neglect. However, in some circumstances children cannot remain at home and are placed in out of home care.

- A total of **7,757** children were in care in the period 1998/99, compared with **6,663** in 1997/98. The increase in the number of children in care correlates with an increase in the number of reported cases of suspected child abuse. The improved willingness to report cases of suspected abuse in turn reflects a greater community awareness of child abuse.
- Of these 7,757 children, 38.7% were in other family/kinship arrangements and 32.3% were in foster care. Children placed for adoption made up only 1.1% of the 7,757 children.
- There were 2,022 children aged 0-4 years; 3,035 children aged 5-11 years; 1,956 children aged 12-15 years; 740 children aged 16-17 years; and 4 where the age was not known.
- Children entered care in 1998/99 for the following reasons: child at risk of abuse and/or neglect – 2,821 cases;⁹ carer unable to care due to alcohol/drug problems – 137 cases; carer unable to care due to incarceration – 137 cases; carer unable to care without periodic relief – 4,323; carer unable to care due to illness – 695 cases; significant family breakdown – 876; child homeless – 114 cases; and other reasons accounted for 445 cases.

⁹ As some children enter care more than once per year, the total number of cases is larger than the total number of children.

3 CHILD PROTECTION LEGISLATION IN NEW SOUTH WALES

Every child has the right not to be abused or neglected, and the State has the power to intervene to prevent or stop such abuse or neglect. In 1998 the New South Wales Parliament passed a new Act (the *Children and Young Persons (Care and Protection) Act 1998*) in relation to child protection, however, as much of this Act is still to be proclaimed, the provisions of the *Children (Care and Protection) Act 1987* ('the 1987 Act') remain current law.

3.1 The Children (Care and Protection) Act 1987

Some of the main features of the 1987 Act are:

- A child is taken to be in need of care if:
 1. adequate provision is not being made, or is likely not to be made, for the child's care;
 2. the child is being, or is likely to be, abused; or
 3. there is a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.

A child is also deemed in need of care if he or she has been residing in a non-government children's home for a period of 12 months or more, and there has been no substantial contact during that period between the child and the child's parents; or if the child is less than six months old and is in the care of an unauthorised fosterer.

- There is a mandatory reporting requirement imposed on specific professionals to notify the Director General of DOCS ('the Director General') of suspected abuse of children under the age of 16 years.
- The standard of proof in care proceedings is defined as 'very highly probable' that the child is in need of care. This standard of proof falls between the civil ('on the balance of probabilities') and the criminal ('beyond a reasonable doubt') standards of proof.
- Care applications before the Children's Court may be made by the Director General or by any parent of the child. The Court can dismiss a care application if it finds that the child is not in need of care. If the Court decides that the child is in need of care, the orders that can be made in respect of care applications include:
 1. An order accepting undertakings by either or both the child or the person responsible for the child
 2. An order placing the child under the supervision of an officer from DOCS
 3. An order placing the child in the custody of a suitable person willing to have the custody of that child; or
 4. An order declaring the child to be a ward under the Act, with the Minister for Community Services becoming the guardian of the child.

The last three orders can only be made in respect of children under the age of 16 years. In considering a care application the Court must have regard to a number of matters specified in the Act, including the need to protect the welfare of the child, the views of the child and the importance of encouraging continuing contact between the child and the persons responsible for the child. Orders can only be made if the Court is satisfied that they will result in a significant improvement in the standard of care being given to the child. Special provisions apply in relation to the care of Aboriginal children, ensuring that, as far as possible, the child is not separated from his or her immediate or wider Aboriginal community.

- If the Director General is of the opinion that a child is in need of care, s/he can make a Temporary Care Arrangement rather than taking the child to Court on a care application. These arrangements cannot be made for longer than 3 months, although there is provision to renew the arrangement for a further 3 months.
- The Court cannot make a custody or wardship order without obtaining an assessment report.
- In addition to the right of appeal, the child, the child's parents, DOCS, or a person with a genuine interest in the child's welfare can apply to the Children's Court to cancel or vary a wardship or other order. There is no restriction on the number of applications that can be made to the Children's Court seeking termination or variation of orders.
- The Community Services Commission also has the authority to carry out a review of the circumstances of a child in care.

3.2 The Community Welfare Legislation Review

In 1994 the Government announced the review of the *Community Welfare Act 1987* and the *Children (Care and Protection) Act 1987* and regulations. This review, known as the Community Welfare Legislation Review, was prompted by a number of factors including: recognition of the importance of ensuring that community welfare legislation reflects current community attitudes; that it takes proper account of advances in relevant research and professional practice; and that it is responsive to the needs of the children and families who use it. (This Paper only considers details relating to the *Children (Care and Protection) Act 1987*.)

A Review Advisory Group, comprising representatives from key government and peak community groups was established in December 1994, and Associate Professor Patrick Parkinson of the University of Sydney was appointed as Review Chairperson. In late 1996 Dr Judy Cashmore was appointed to the role of Deputy Review Chair. In May 1995 over 4,000 letters were sent to individuals and organisations concerned with the work of care and protection inviting them to identify issues to be addressed by the Review.

The first of three discussion papers, *Law and Policy in Child Protection* (Discussion Paper 1) was launched at Parliament House on 12 December 1996. Some of the relevant issues raised in it were:

- The need for the legislation to incorporate fundamental child protection principles and objectives. The *Children (Care and Protection) Act 1987* does not do this.
- The lack of clarity regarding the legal discretion DOCS has in deciding how to respond to ‘notifications’.

The primary means by which DOCS becomes involved with a family is through notifications. This occurs when the Department is contacted by an individual or an organisation concerned about the safety and welfare of a child. An officer of the Department then conducts an investigation to determine whether the allegation is valid. If the allegation is not confirmed, the Department takes no further action in respect of that family. If the allegation is confirmed, the Department puts into place various intervention strategies. The level of intervention will depend on the seriousness of the allegation.

Departmental research suggests that in most cases where the allegations were not confirmed after investigation, some kind of support was needed. The re-notification rate in New South Wales is also very high, which may be an indicator that the initial intervention strategy did not meet the needs of the family concerned.

The level of intervention for the confirmed notifications ranges from minimal through to registration as child protection cases. A registration indicates that concerns for a child have been confirmed and that there is a need for ongoing Departmental involvement. Of this group, only a very small proportion (approximately 5% of all notifications) resulted in a determination by the Children’s Court.

- The current legal definitions of ‘abuse’, and of the grounds upon which a child may be ‘in need of care’ need to be clarified. A number of criticisms have been made of the existing definitions of ‘child abuse’ and ‘neglect’ under the 1987 Act including that they are too vague; do not distinguish between cases of different severity; and do not identify the source of harm.
- The need for a provision which would allow a person to report concern that immediately following birth, a child is likely to be at risk of serious abuse or neglect. This would be an ‘anticipatory notification’ that, once born, the baby is likely to be at serious risk of harm.
- The possibility of providing ‘alternative dispute resolution’ as a complement to the work of the Children’s Court, which is the primary arbiter in care and protection matters in New South Wales.
- Ways in which court-related procedures could be streamlined and improved.
- As the 1987 Act restricts the right of appearance to persons responsible for the child it is very often the case that only the parents of the child, and the child have the right to appear before the Children’s Court. With modern family arrangements being so varied and culturally diverse, this restriction may often have the effect of preventing a significant person in the child’s life from being involved in court proceedings and having an input into major decisions affecting a child.

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- There are no provisions in the 1987 Act for the review of children once they have been placed into care.
 - The ‘very highly probable’ standard of proof which must be met when determining whether a child is in need of care under the 1987 Act, is a special statutory standard which is higher than the civil standard of proof on the balance of probabilities and lower than the criminal standard of proof of ‘beyond a reasonable doubt.’ The rationale behind this special standard of proof is that as the proceedings are not criminal proceedings the criminal standard of proof should not apply. However, in cases where the state is intervening in the lives of children and their families the civil standard of proof was seen to be insufficient and the higher standard of proof more appropriately imposed on the state. The very highly probable test, however is unique and has no parallel in other jurisdictions.
 - A number of problems associated with orders currently available to the Children’s Court in its ‘care and protection’ jurisdiction were identified. These included the general perception that the range of orders is very narrow, and that the legislation is overly restrictive in the way in which orders may be combined or enforced by the Court.
 - The changes in Australian family law regarding ‘parental responsibility’, guardianship, custody and access have implications for New South Wales legislation, as the changes have widened the range of persons and agencies with a legitimate interest in the protection and well-being of children.
 - That the 1987 Act does not require DOCS to submit firm, early proposals for the future management of cases (‘parenting plans’ and ‘restoration plans’) is seen as a weakness in current Court procedure.
 - Under the range of orders which currently exist the Court has a limited choice of: undertakings; supervision orders; placing a child in the custody of a third person; or wardship orders. The first two do not involve removal of the child from the home, however, where the Court considers that there is no option other than removal of the child from the home, the Court may either place the child in the custody of a person or make the child a ward. If a custody order is made the person in whose favour the custody order is made has the day to day care and control of the child but the parents remain guardians and have the right to be consulted about decisions concerning the long-term care of the child such as health, education, and religious upbringing. Where a wardship order is made, the Minister is the guardian of the child and also has the custody, unless this is delegated to another person. A number of criticisms of the existing orders were identified, including the fact that the current orders are mutually exclusive. This means for example that a Court could make an order for custody or an order for supervision. However, there are often instances where a Court may wish to make an order for custody with DOCS supervising the placement for a short period. Under the current legislation the powers of the Court are not clear.
 - The 1987 Act requires the Children's Court to obtain an assessment report before making any orders for custody or guardianship. However, the regulation which sets out

the matters that must be contained in the report is limited. The effect of this is that the Court is not fully informed of all matters relevant to the welfare of the child. The regulation does not make provision for: medical assessment of the child; psychological assessment of a child; psychiatric assessment of a parent with a history of mental illness; assessment of a drug using parent; assessment of the interests of siblings and the effect of separation from a sibling on the child; or the assessment of the implications of any disability of the child, siblings or parents.

- Under the 1987 Act, it is open to the Children's Court to make a limited term wardship order to see whether there is a prospect of returning a child removed from its home at the end of that period. In other situations indefinite wardship orders are made so that the Department can plan for the child's future on the basis of permanency planning and in a way that secures for the child continuity of care and stability.
- Under the 1987 Act there are no filters for applications for variation or rescission of orders. This means for example, that the birth parents are able to make an application for variation or rescission a week after the original order was made.
- In relation to those children who are placed in long-term care with little involvement at all from the birth parents, the question was posed in the Discussion Paper as to whether the law should recognise that there has been a permanent placement in a new family by the orders that it makes. The Discussion Paper goes on to ask whether these permanent arrangements should be formalised through adoption orders, and whether there should be a better interface between the *Adoption of Children Act 1965* and the *Children (Care and Protection) Act 1987* to enable adoption orders to be made. The question of not restricting adoption orders to the Supreme Court but permitting a Children's Court, cognisant of all the facts relating to a child, to make adoption orders, is also raised. Despite the raising of these issues in the Discussion Paper, there is no mention of them in the Final Report. Whether this indicates a lack of community input or a decision by the Review Team not to pursue these matters, is unclear.
- The need to clarify the legal rights and responsibilities of the various parties to substitute care (the children placed in substitute care; birth parents; foster carers and other service providers) was identified. Including the need for statutory review of a child's experience of substitute care, and a legislative requirement for children in substitute care to be adequately prepared for living independently or for the support of children and young persons after they leave care.
- The 1987 Act does not contain any specific aims and objects of substitute care.
- The need to improve an inter-agency approach to child protection was identified. Given that children at risk often come to the notice of other government Departments or non-government agencies unless these organisations inform DOCS of the difficulties within that family the subject child may continue to be neglected and/or abused, undetected by DOCS. This lack of co-ordination may also result in the lapse of considerable time before a matter comes to the attention of DOCS. By this stage considerable harm may have been done to a child resulting in the need for urgent coercive intervention. It may

often be the case, if the family had come to the attention of the Department earlier, and appropriate family support services put in place, coercive intervention may have been avoided.

The public distribution of the second and third discussion papers *Children's Services: A Legal Framework* (Discussion Paper 2) and *Protecting Children in Employment: A Legal Framework* (Discussion Paper 3) began on 17 January 1997. During February and March 1997, the Review Team undertook a program of community consultation via a series of Information Meetings and Public Hearings held at 20 locations across New South Wales. During April and May 1997, consultations took place with groups which were concerned with particular issues (eg members of the disability community, major ethnic groups and youth representatives).

The Review received in excess of 350 written submissions, and the Final Report, *Review of the Children (Care and Protection) Act 1987: Recommendations for Law Reform*, was presented to the Minister for Community Services in December 1997. The Report proposed wide-ranging reforms including the enactment of new child protection legislation. The Recommendations made in the Report included:

- Specifying a set of core legislative responsibilities which DOCS must meet in the work of child protection;
- Outlining proposals to maximise opportunities for DOCS to resolve care and protection issues before they reach the Children's Court;
- Expanding the range of professionals required to report child abuse to include those providing health, welfare, education, child care or residential services to children or young people;
- Abolishing 'wardship' in its current form and replacing it with a more flexible system which will allow shared responsibility between parents and the State;
- Increasing the involvement of Aboriginal and Torres Strait Islander people in the decisions made about the care and protection of Aboriginal and Torres Strait Islander children and young people; and
- Identifying early intervention strategies to help prevent relationship breakdowns between adolescents and their parents.

(For a more detailed list of key recommendations see **Appendix A.**)

In publicly releasing the Final Report on 18 March 1998 the Minister said that it:

... proposes a sea-change in the approach to child protection in New South Wales ... it recommends the complete overhaul of New South Wales child protection legislation to take into account significant changes to community standards and expectations ... it

recognises child protection as a whole-of-government responsibility.¹⁰

3.3 Children and Young Persons (Care and Protection) Bill

The matter was duly considered by Cabinet, and on 11 November 1998 the Children and Young Persons (Care and Protection) Bill was introduced by the Minister into the New South Wales Parliament. This Bill gave effect to the principal recommendations made in the Final Report. Its object was to provide for the care and protection of, and the provision of services to, children and young persons and establish principles and key responsibilities governing child protection intervention.

According to the Minister,¹¹ the Children and Young Persons (Care and Protection) Bill 1998 signalled a shift to prevention of child abuse and neglect and an improvement of the systems for responding when abuse has occurred. The changes included:

- a Children's Guardian to ensure all children in out-of-home care have regularly reviewed care plans;
- abolition of wardship orders in favour of 'parental responsibility orders', which allow the Children's Court to allocate specific aspects of parental responsibilities to different parties if necessary;
- Court 'list days' to be replaced with individual Court appointments for families involved in care proceedings;
- Children's Registrars to facilitate conferences and refer cases to mediation;
- The establishment of a Children's Court Clinic to provide independent psychological assessments of children involved in care proceedings;
- Alternative dispute resolution through conferencing and counselling outside the formal Court environment;
- The expansion of mandatory reporting of children at risk of abuse and neglect to a wider group of people working with children;
- The power of the Children's Court to make compulsory assistance orders for children or young persons. The order will allow for intensive supervision for limited periods. It will be used as a last resort, as a life saving measure or to prevent serious harm to the child or young person.

¹⁰ Minister for Community Services, Press Release, Overhaul of child protection laws

¹¹ Press Release, Overhaul of child protection laws in New South Wales; 11 November 1998.

(For a more detailed list of the Bill's provisions see **Appendix B.**)

The features of the Bill were comprehensively covered in the Minister's Second Reading speech.¹² In relation to the removal of children from the home the following comments are relevant:

Many parents of children who come into care have not been malicious to their children or have not intended to cause them serious harm. Often they are suffering problems in their own lives whether they be with drugs, alcohol, or a mental illness and are simply unable for the time being to care for their own children. We do not think the law should deprive such parents of all parental responsibilities and involvement in these children's lives. In many cases, although primary responsibility for the care of the child must necessarily rest with the Minister and the foster care system, parents will still have some involvement in the life of their children. For example, the right to be involved in decision making about their education and training, attend parent-teacher meetings, make medical treatment decisions, not of an urgent nature and the right of contact as long as it is in the best interests of the child.

... This Bill also contains provisions relating to the important area of restoration of children to their families. The requirements for restoration plans contained in clauses 83 to 85 recognise the reality that most children who come into care do not stay in care for a long time.

Of course there will be some children for whom there is no realistic possibility of restoration in the immediate future given the extent of the abuse they have suffered or because of the parents incapacity to care for the child. For these children it is important that there be planning for long term care from the beginning to minimise the disruption and uncertainty in the child's life. However there will be many others where there is a realistic possibility of restoration if the parents can resolve some of the problems in their own lives or make changes which will make it safe once again for the child to return to their care. For these children there will be a restoration plan which will set out not only the minimum outcomes the parents need to achieve but the services which will be provided to assist them to achieve these outcomes.

Necessarily, such active restoration planning must have time limits. Children can not live in uncertainty and lack of permanency merely

¹² NSWPD, LA, 11 November 1998, pp9758-9767.

in the hope that they will, sooner or later, be reunited with their families.¹³

The Children and Young Persons (Care and Protection) Act was passed in December 1998, however, it was not proclaimed immediately so as to allow the implementation of a number of administrative and procedural matters including training and information seminars for those working in the child protection field. At the time of writing (11 August 2000) only a small number of provisions have commenced, with the majority still to be proclaimed.

3.4 Proposed amendments to the Children and Young Persons (Care and Protection) Act 1998

In the meantime significant amendments to the 1998 Act have been proposed. In mid February 2000, the Minister for Community Services' plans to remove children from abusive or neglectful birth parents were being widely reported in the press.¹⁴ In an article written by her, Mrs Lo Po' said that:

... in the last year alone more than 7,000 children have been placed in foster care. Just 19 were adopted. The number of reports concerning abuse of children in New South Wales has more than doubled in recent years to 72,000. What really disturbs me is that in so many cases, the abusive parents are usually given numerous chances to get their act together

... it is believed children are invariably better off with their own family, rather than foster-care or some other out-of-home placement. For the vast majority, this is certainly true – the bond between a parent and a child is an extremely strong one. It is the social glue which gives most of us a good start in life, our inner strength. For the sad minority of families, however, this may not be the case. My Department works hard to maintain that all important parental bond, but in some cases returning the child to the parents is not a safe long-term option.

Many of the children from abusive or neglectful families spend long periods of time in foster care. By its very nature, foster care is a temporary arrangement. It involves a number of different foster families, interspersed with failed attempts to return the child to his or her natural parents ... despite the goodwill, energy and devotion, this is still viewed as a 'temporary' arrangement by all

¹³ Minister for Community Services, *NSWPD*, LA, 11 November 1998, pp9762-9763.

¹⁴ Parent test', *Daily Telegraph*, 18 Feb 2000; DOCS in a spin over families plan', *Sydney Morning Herald*, 19 February 2000; Giving children every chance', *Daily Telegraph*, 19 February 2000; Removing the worst of both worlds', *Sydney Morning Herald*, 19 February 2000.

concerned ... inevitably the children never feel as if they really belong in the family.

My real concern lies with whether we are jeopardising the future of these children by denying them a loving, secure and stable environment during their most formative early years ... I know many child protection experts in this State will disagree, but I think it is time to debate our approach to child protection. I suspect that we have become far too focussed on the needs of the parents. We now need to become more concerned with the needs of the children.¹⁵

Similar concerns were expressed by Justice Fogarty in his 1993 report on Victoria's child protection system. Justice Fogarty felt that the emphasis placed by social workers on a child remaining within the family at the expense of the child's protection was making children's rights subservient to those of their parents. He said:

The concern now, however, is that the pendulum may have swung too far the other way and that there is a failure to take action to remove a child where that is necessary and that undue primacy is placed on the 'rights' of the parents.¹⁶

In March the Minister announced that a Working Party of experts from the Attorney General's Department and DOCS was to be set up to examine the proposal,¹⁷ and that consideration was being given to carrying out drug tests on abusive, neglectful parents with a history of substance abuse as a condition of keeping their children.¹⁸

The recommendation in relation to drug addicted parents came about following the finding of the New South Wales Child Death Review Team that over a 3 ½ year period, 86 children of drug dependent families had died.¹⁹ The Report found that although many of the cases reviewed indicated that substance-dependent parents had made multiple attempts to treat their addictions through detoxification, rehabilitation and methadone programs, recovering from substance dependency could take many years, during which time parenting remains inadequate. However, the Report did not recommend compulsory drug testing for parents. Commenting on the findings of the Child Death Review Team, Mrs Lo Po' said:

¹⁵ Giving children every chance', *Daily Telegraph*, 19 February 2000.

¹⁶ *Protective Services for Children in Victoria*, A Report by Justice Fogarty, Judge of the Family Court of Australia, Melbourne, 1993, pp86-93.

¹⁷ Press Release, Lo Po' meets Attorney General on plan for child abuse', 6 March 2000.

¹⁸ Press Release, Government considers drug testing abusive parents', 13 March 2000.

¹⁹ New South Wales Child Death Review Team, *Annual Report*, 1998/99.

The report found that some parents can change – but not in time to meet the developmental needs of their children ... I'm yet to be convinced by anybody that the rights of the parents are more important than the rights of their very vulnerable children. If drug testing is a viable way of rescuing children from destructive and potentially fatal environments – I can see no reason why the government shouldn't be considering this option seriously.

Let me be clear though – I'm not talking about random drug testing for all parents. We're talking about drug testing that group of parents who have already had their children removed because their drug use has led to child abuse or neglect. They need to demonstrate that they have mended their ways before we can risk returning the children – and drug testing may help in assessing the risk.²⁰

Responding to this announcement, Dr Alex Wodak, Director of Alcohol and Drug Services at St Vincent's Hospital, said that drug testing parents would be costly, hard to supervise, easy to subvert and a black market in 'clean urine' would be exploited.²¹ The Chief Executive Officer of ACWA, Mr Nigel Spence, commented that 'just because people are taking illegal drugs does not automatically disqualify them from parenting. The decision has to be based on whether they can provide adequate supervision and care.' Major Brian Watters, Chairman of the Australian National Council on Drugs, said:

Mrs Lo Po' recommended that the children of such parents should be kept from them until they prove by testing that they are drug free. I heartily endorse that proposal, provided that the parents be given treatment and help to become drug free. It is not that these people are essentially bad people or bad parents, rather it is that people in active addiction cannot be responsible for their actions and do not make the rational decisions that caring for a child requires.²²

The first parliamentary reference to the Government's plans to increase adoption of children from abusive or neglectful families was on 5 April 2000. The Minister said:

What really disturbs me is that in so many cases the abusive parents are usually given numerous chances to get their act together. They are offered help and support while their children spend their most formative early years bouncing between foster carers and their parents, trapped in a cycle of abuse and temporary

²⁰ Press Release, Government considers drug testing abusive parents; 13 March 2000.

²¹ Experts cool on drug tests for parents; *Sydney Morning Herald*, 15 March 2000.

²² Guiding society with a clear conscience; *Daily Telegraph*, 23 March 2000.

care. It is believed that children are invariably better off with their own families rather than in foster care or some other out-of-home placement. For the vast majority that is certainly true: the bond between a parent and a child is an extremely strong one. It is the social glue that gives most of us a good start in life, and gives us inner strength. However, for the sad minority of families this may not be the case.

... I know many child protection experts in this State will disagree, but it is time to debate our approach to child protection. I suspect that we have become too focused on the needs of the parents. We now need to become more concerned about the needs of the children of abusive parents ... I am talking about people who ash out their cigarettes on babies' bodies; who hold babies' hands in pots of boiling water; who pass on to their children their sexually transmitted diseases.

... As we enter the new century there has never been a more urgent need to find a circuit-breaker, to get our bearings and to seek a way out of this insidious maze. Child protection experts around the world will attest to the fact that by the age of three most of the psychological and physical damage has been inflicted on young victims of abuse.²³

A draft exposure Bill, the Children and Young Persons (Care and Protection) Amendment Permanency Planning) Bill, was introduced and progressed through the Second Reading stage on 21 June 2000.²⁴

4 COMMENTARY ON THE PERMANENCY PLANNING BILL

4.1 Provisions of the Permanency Planning Bill

The Explanatory Note sets out the provisions of the Permanency Planning Bill as follows:

Overview: The object of this Bill is to amend the *Children and Young Persons (Care and Protection) Act 1998* to improve the case management of abused and neglected children and young persons who have been removed from their parents and placed in out-of-home care, and for whom a return to their parents does not appear to be a viable option. The amendments made by the Bill will require the consideration of more permanent forms of care, including the possibility of adoption, for children and young persons in these circumstances.

²³ Minister for Community Services, *NSWPD*, LA, 5 April 2000, pp 4240-4241.

²⁴ *NSWPD*, LA, 21 June pp7327-7329.

Principles to be applied in the administration of the Act: The Bill proposes an amendment to the *Children and Young Persons (Care and Protection) Act 1998* to reinforce the principle that the safety, welfare and well-being of the child or young person must be the paramount consideration. It provides that in particular the safety, welfare and well-being of a child or a young person who has been removed from his or her parents are paramount over the rights of the parents. The Bill would amend section 9 to include principles relating to the appropriate placement of a child or young person in a planned permanent arrangement, and the entitlement of a child or young person who is placed in out-of-home care to a safe, nurturing, stable and secure environment.

Care orders: The Bill adds to the grounds on which the Children's Court may make a care order under section 71 of the Act on the ground that the parents are incapable of providing a nurturing, stable and secure environment for the child or young person.

Care plans and monitoring by Children's Court of orders concerning parental responsibility: The Bill amends section 78 to introduce a requirement that a care plan must assess the possibility and benefits of the permanent placement of the child or young person to whom it relates, including the earliest time at which a permanent placement could reasonably be made. The assessment is to have regard solely to the circumstances of the child or young person preceding the time the care plan is presented to the Children's Court. A recommendation for permanent placement may address the possibility of an application being made for the adoption of the child or young person under the *Adoption of Children Act 1965*. If a permanent placement is not recommended, the care plan must include full reasons why it is not recommended. The Bill amends section 82 to introduce the same requirements in relation to written reports ordered by the Children's Court in monitoring arrangements for the care and protection of a child or young person after an order has been made that allocates or re-allocates parental responsibility for the child or young person.

Restoration plans: The Bill amends section 83 in relation to the preparation of restoration plans. Before a final care order is made in a case concerning a child or young person that is before the Children's Court, the Court must make a determination (in accordance with the principles set out in section 9 of the Act) whether there is a realistic possibility, having regard solely to the circumstances of the child or young person preceding the making of the order and such factors as may be specified by the regulations, of the child or young person being restored to his or her parents. If there is such a possibility, the Director General is to prepare a restoration plan and submit it to the Court for its consideration. If there is not such a possibility, the Director General is to prepare a plan for another form of permanent placement for the child or young person and submit it to the Court for its consideration. In preparing such a plan, the Director General is to consider whether or not to support an application for the adoption of the child or young person.

A new section would be inserted (section 85A) which requires the review of a restoration plan in order to determine whether its provisions should be changed, particularly with respect to the length of time during which restoration should be actively pursued, whether arrangements should be made for the permanent placement of the child or young person to whom the plan relates, and whether any consequential application should be made for a care order or for the rescission or variation of a care order.

In the Second Reading speech²⁵ the Minister emphasised that the Bill does not seek to alter the practice of removing children from their birth families as a last resort. Rather the focus of the Bill is on the management of these children's placements after they have been removed from their birth parents because of demonstrated abuse or neglect. While the aim remains to restore children to their birth families, where this is not feasible it is important to maximise the chances of permanent placements as research has shown that multiple placements have a detrimental effect on children. The Minister said:

Adoption is one option in the spectrum of out-of-home care services and it needs to be actively considered in this light. It has a place for some children, and it should be part of a seamless array of services on offer, available to meet the individual needs of each child as required. This Bill is significant in that it directly challenges the prevailing assumption amongst some child protection professionals that eventual restoration to birth parents is the goal to be pursued at all costs, in every single case. I accept that restoration will continue to be - and should continue to be - the best option for most children who are removed from their birth parents due to abuse or neglect. However, I simply do not accept that restoration is an outcome that must be sought in every case, no matter how hopeless it appears, and regardless of the risks posed to the child.²⁶

In essence what is being proposed is that if it is clear from the outset that there is no realistic possibility of the child returning to its birth parents, then the sooner the decision is made the better. Arrangements can then be made for a permanent placement of the child. Long-term foster care is one means of achieving this, adoption is another. The arguments in favour of adoption are that it creates a greater degree of security for the child as the future is less uncertain, and it increases the sense of belonging. Moreover, when a child is in foster-care there is always the possibility of the birth parents taking legal action to recover the child. This is destabilising for the child. If a child is adopted the legal ties with the birth parents are severed and future challenges to the placement of the child are no longer available. However, 'open adoptions', where a degree of contact or connection with the birth family is maintained, can be provided for if it is in the child's best interests.

While adoption is currently an available option under the existing legislation, it would appear that it is seldom used in this context. One of the underlying rationales behind the Bill is to highlight this possibility to magistrates in the Children's Court when determining suitable arrangements for children who may need to be removed from abusive and neglectful birth parents. On this point the Minister said:

The adoption of children in long-term foster care has always been technically possible, although not well utilised, under our existing

²⁵ NSWPD, LA, 21 June 2000, pp7327-7329.

²⁶ Ibid, p7328.

system. These proposals aim to more actively encourage consideration of adoption as an option for children who may otherwise spend their entire childhood in long-term foster care.²⁷

It would appear that another issue arising in practice for those sitting in the Children's Court concerns the balance between what may be described as competing 'rights' – the rights of the parents to retain their child, and the rights of the child to a safe and secure environment. It could be argued that as the 1998 Act already stipulates that whenever a decision is made concerning a child's welfare the focus has to be on what is in the child's best interests, this will take precedence over any competing interests. The Bill wishes to emphasise this point and proposes a reference to 'the rights of a child who has been removed from his or her parents must be paramount over any rights of the parents'. While the additional words may not be strictly necessary, the intention is made clear.

4.2 Responses to the Permanency Planning Bill

When the Minister's plans were announced in February 2000 it was suggested that birth parents would be given limited chances to alter their abusive behaviour before their children were permanently removed, and that removal of children up to the age of three would be particularly targeted on the basis that certain scientific research has shown that the experiences a child undergoes in these early years are crucial to healthy brain development.²⁸ Not all commentators agree on the findings of this research.²⁹

A leading proponent of the view that there is long-term impact on the brain development of very young children who are exposed to stress and trauma is Dr Bruce Perry, a child psychiatrist and neurobiologist from the Baylor College of Medicine in Houston. On a recent visit to Sydney, Dr Perry addressed the New South Wales Premier and Cabinet on his research findings in this area. However, there are those that contend that this approach is unduly pessimistic about the life chances of children whose first three years are less than optimal, and that the brain research is still far from conclusive.

What would probably be generally accepted by a range of professionals working in the area of child protection is that prevention and early intervention programs which provide intensive help for at risk families enjoy a large measure of success in reducing the rates of child abuse and neglect. Indeed the New South Wales *Families First* programme, which is a whole-of- government strategy to improve support services to families with children under eight, is based on the research which shows that children's experiences in the first three years of life can have a profound effect on their later life including their health, educational attainment, employment prospects and possible participation in crime. The *Families First* service network includes: services for parents/carers who are expecting or

²⁷ NSWPD, LA, 21 June 2000, p7328.

²⁸ Parent test', *Daily Telegraph*, 18 February 2000; DOCS in a spin over families plan', *Sydney Morning Herald*, 19 February 2000.

²⁹ You're kidding', *Sydney Morning Herald*, 13 May 2000.

caring for a new baby or young children; services for families who need extra support; and services to strengthen the connections between communities and families.³⁰

In the Permanency Planning Bill which was introduced on 21 June 2000 there are no references to time limits or other specific measures by which a birth parent's actions and behaviour can be judged. This contrasts with the position in some overseas jurisdictions which is described below in section 5.

Maintenance of families: Much of the initial reaction to the Minister's announcement appears linked to what is perceived as a change in approach to the problem of dysfunctional families, namely a return to the system of breaking them up rather than trying to repair them. While there is probably agreement that in most cases it is better for a child to remain with its birth family, opinions differ as to the point at which assistance is withdrawn, and the child removed. On the one hand it is argued that the state has an obligation to provide assistance, on the other that resources are limited and cannot go on indefinitely. Some critics of the Permanency Planning Bill have suggested that the approach proposed by the Bill is motivated more by economic considerations than social ones, as it shifts the costs and responsibilities from the government onto private individuals.³¹

Concerns have also been raised by some that the inquiry into the removal of Aboriginal children identified the damage suffered by them as a consequence of not growing up in their birth families, although the action was justified at the time as being done 'in the best interests of the child'. To compare the removal of children from abusive or neglectful environments today with actions taken in the past in relation to Aboriginal children is not appropriate. The systematic separation of Aboriginal children from their families and communities was undertaken with a deliberate intent to remove children from the influence of their culture, it was not done to protect individuals from specific instances of child abuse or neglect. (Although of course individual cases of removal because of abuse did occur.)

Dispensing with consent to adoption: It should also be remembered that under current legislation, the Supreme Court has the power to dispense with consent of the parent/s in relation to adoption in certain circumstances, in particular, where it appears to the Court that:

the person is, in the opinion of the Court unfit to discharge the obligations of a parent or guardian by reason of the person's having abandoned, deserted, neglected or ill-treated the child.³²

or

³⁰ Department of Community Services, *Annual Report*, 1998/99, p21.

³¹ The former Opposition spokesman for Community Services, Mr S ODoherty MP was reported as saying that the government proposal was budget driven because adoptions were cheaper for the State than foster care. DOCS in a spin, *Sydney Morning Herald*, 19 February 2000.

³² Section 32(1)(c).

the child is in the care of a foster parent or foster parents, the child has established a stable relationship with that person or those persons and the interests and welfare of the child will be promoted by the child's remaining in the care of that person or those persons.³³

In the Adoption Bill a more general provision is included in the section dealing with the dispensing of consent. Clause 67(1)(c) permits the Court to dispense with consent: 'if the person is a parent or guardian of the child – it is in the best interests of the child to override

Competing rights: The question of 'rights' and the difficulty of balancing competing rights has also been raised. On this point, Professor Vimpani, a child health expert from Newcastle University, said: 'The pendulum has swung a long way in favour of the natural rights of parents, it's time for it to swing back to taking the best interests of the children as³⁴ This view is shared by many.

In this situation there are three sets of rights: those of the child, those of the parents and those of the state. While it is true that parents have certain rights in relation to their children, the emphasis has changed to focus more clearly on parents' responsibilities. Children certainly have the right to a safe and secure environment, and where this is put at risk, the state as the ultimate guardian of children, has 'the right' to intervene to remove the child. Moreover, decisions to be made concerning children have as their paramount consideration 'the best interests of the child'. This means they take precedence over the rights or wishes of the parents.

It has also been argued that children and parents have certain 'rights' under the United Nations Convention on the Rights of the Child regarding family relationships. However, it is clear in the Convention that the primary consideration is 'the best interests of the child' and where there is a conflict, this fundamental principle will override all others.

Some key stakeholder views: Dr Judy Cashmore raised a number of concerns following the Minister's announcement in February, saying that however well intentioned the policy may be, it needs to be assessed in the light of history, overseas experience and implementation of the Children and Young Persons (Care and Protection) Act 1998, which is still to occur.³⁵ She wrote:

History provides a number of examples where apparently well intentioned policies of removing children from their families have had disastrous consequences for children. This is especially clear

³³ Section 32(1)(d).

³⁴ DOCS in a spin over families plan', *Sydney Morning Herald*, 19 February 2000.

³⁵ Lets not jump the gun on child care and adoption', *Sydney Morning Herald*, 23 February 2000.

for indigenous children. Of course, children should not remain within their families at all costs, but we need to learn from history about the long-term consequences of depriving children of contact with, and information about, their families of origin. The critical issue is what works best for children in both the short and long term to meet children's needs and rights to safety, a secure identity and stability – all important foundations for children's intellectual, emotional and social development.

Before following the British example, we need to know much more about the long term outcomes for all types of intervention for abused and neglected children, including adoption and long term foster care. While one British study found that most children who were adopted were doing quite well several years later, other longer term research has found that about 20% of adoptions overall break down.

Are the consequences of failed adoption more serious for children than a failed long term foster care placement? What happens to these children when they are older and less attractive propositions for adoption or long term care? Would contact with birth families be available under an open adoption policy? For how many children in long term foster care has adoption been considered but stalled because of difficulties with the paperwork and the process? How often are foster parents discouraged from adopting because they cannot afford to lose the meagre allowance they receive? What back-up would be provided to support adoptive families to care for these children, many of whom have special needs and behavioural problems? Will the costs of caring be shifted to adoptive parents?

We need also to allow the new Act a chance to work. The aim of this Act is to encourage early intervention to involve families in finding solutions, and to encourage the relevant agencies to use their best endeavours to support families to care for their children. When children need to enter care, one of the first requirements is a consideration of whether or not there is 'a realistic possibility of the child being restored to his or her parents'. If so, a restoration plan must be prepared, specifying minimum outcomes, what services are to be provided to support restoration and how long any attempts should be pursued. The Act will also allow flexibility in the way various aspects of parental responsibility can be shared between the parents, relatives, carers and if necessary, the Minister (exercised by a new office called the Children's Guardian). If a child has been in stable care for at least five years, the carer will be able to apply for sole parental responsibility to provide some certainty without the need for adoption.

Mr Robert Fitzgerald, the Community Services Commissioner, is reported to be of the view that speeding up the adoption process will only affect 'a handful' of children at risk of abuse. He puts the figure at about 100, a figure he believes is almost insignificant in a system that last year dealt with 72,000 notifications of possible child abuse or neglect and 10,000 confirmed cases.³⁶

However, other child protection professionals such as Mr Stephen Scarlett, the former Senior Magistrate at the Children's Court, were reported to support the Minister's approach.³⁷

Since the introduction of the Bill, a number of the peak community welfare organisations such as Barnardos Australia, NCOSS and ACWA, have expressed support for its objectives, however, reservations about the Bill itself remain. A recent media release by Mr Nigel Spence, Chief Executive Officer at ACWA, illustrates this point:

ACWA and its member agencies are committed to the right of all children in care to have a stable and permanent arrangement in place for their future ... The Association supports Minister Lo Po's objectives of changing practice and we believe this can be helped with improved legislation. What we are very worried about is the tabling of a hurriedly put together Bill to amend the 1998 Act that is not yet proclaimed.

The *Children and Young Persons (Care and Protection) Act 1998* was developed over a period of time with extensive consultation and largely has broad based support for a new approach to working with children and families ... It has the foundations for a much improved care and protection system and encourages, and indeed requires, better practice on issues for children entering care. Concerns that there should be additional provisions to secure permanency for children are misguided ... We believe that the amendments will not achieve the laudable objectives that the Minister has articulated. The framework for sound planning, permanency and stable decisions including the possibility of adoption where appropriate are all possible with the 1998 Act as passed by Parliament in conjunction with the *Adoption Act*.

The Children and Young Persons (Care and Protection) Permanency Planning (Amendment) Bill 2000 tries to bring in imperatives that are inappropriate for the wider population of children entering care ... Onerous requirements to look at

³⁶ Little comfort for kids at risk', *Sun Herald*, 18 June 2000.

³⁷ Child custody reform plan', *Daily Telegraph*, 26 February 2000.

adoption so early in every case may have the opposite consequences from what the 1998 legislation set out to achieve.³⁸

Professor Parkinson is also of the belief that the Permanency Planning Bill is unnecessary as the Minister's policy goals could be achieved through implementation of the *Children and Young Persons (Care and Protection) Act 1998*, together with a Ministerial directive to consider adoption specifically as one of the options in permanency planning. This and other views were outlined by Professor Parkinson in a paper presented to the Forum arranged by peak community welfare organisations on 28 July 2000.³⁹ While he is quite critical of many aspects of the Permanency Planning Bill, Professor Parkinson did express support for the Minister's objectives which are consistent with those behind the reforms proposed in the *Children and Young Persons (Care and Protection) Act 1998*. According to Professor Parkinson:

... ensuring early permanency planning for children who were unlikely to return home was one of the principal objectives of these reforms. A range of different provisions were designed to ensure that cases were resolved as quickly as possible, especially where very young children are concerned, that the hard decisions were taken early about whether there is a realistic possibility of restoration, and that where restoration is to be attempted, it should be active, properly resourced and monitored.⁴⁰

In Professor Parkinson's opinion, the Bill:

- Deprives all children in out-of-home care of the right to maintain close relationships with people significant to them such as grandparents, brothers, sisters and family friends for an 'interim period.' After that interim period, efforts will be made to ensure the retention of those relationships only in some cases.
- Undermines the clarity of the fundamental principle that the safety, welfare and wellbeing of a child is the paramount consideration.
- Waters down the Government's commitment to the Aboriginal Child Placement Principle.
- Provides that in deciding whether there is a realistic possibility of restoration, the Court is not permitted to consider whether the parent has the potential to address the issues which have led to the child coming into care (unless the regulations permit this).

³⁸ ACWA, Media Release, 20 July 2000, accessed on their website at: www.acwa.asn.au

³⁹ This paper can be found on the NCOSS Website at: www.ncoss.org.au

⁴⁰ Professor Parkinson's paper on *The Children (Care and Protection) Amendment (Permanency Planning) Bill 2000*, p1.

- Lengthens considerably the time taken to conclude all care proceedings by insisting that the Court must first decide whether there is a realistic possibility of restoration *before* either a restoration plan or a permanency plan can be prepared. This could add weeks or even months to the length of every case.⁴¹
- Makes rescission applications more lengthy, expensive and complex, thereby destabilising placements and upsetting children unnecessarily.
- Allows the Court to make a sole parental responsibility order in favour of an authorised carer the day after a care order has been made, without any safeguards or requirements for the scrutiny of the placement, as long as the parents consent.
- Reduces the number of cases in which a sole parental responsibility order is an option, when the Minister wants to increase the use of sole parental responsibility orders.
- Contains various provisions which will make placements less stable.
- Contains various other provisions which seriously undermine the clarity and effectiveness of the *Children and Young Persons (Care and Protection) Act 1998*.

Professor Parkinson goes on to list what he says are some unintended consequences of the proposed amendments including the following:

- It will be a serious offence for a child to give information to his or her own mother or father about where he or she is living without the consent of the foster carer in the first six months of a placement. The penalty is the same as for abuse and neglect offences or leaving children in locked cars on a hot day.
- DOCS will have to explore the benefits of a permanent placement even when it only seeks a care order for a short period. An example is where the mother requires hospital treatment for severe depression. She has no-one who can care for her three children. DOCS considers it needs a short term care order to ensure that the children are properly cared for. The Bill will require that Departmental officers should consider the possibilities and benefits of a permanent placement, and will need to decide the earliest time at which a permanent placement can be made. They will also need to discuss the possibility of adoption with the mother, which is unlikely to assist her in overcoming her depression.
- A Magistrate who needs to go into hospital for a serious operation would not be allowed to adjourn a case for this reason.
- Parents who place their children in voluntary care for a period while they get help to sort out their lives could be prevented from knowing where their children are for up to

⁴¹ Professor Parkinson states that although some of the Minister's other amendments were apparently designed to reduce court delays, they will in fact not achieve this.

six months. The only way to resolve this would be for the parents to withdraw their consent to the placement even though it may be in the best interests of the children for that placement to continue.

- The Bill could be interpreted to mean that departmental officers should prevent any child in out-of-home care from having contact with grandparents, brothers, sisters or friends for an 'interim period' after he or she comes into care, and perhaps forever.

While Professor Parkinson agreed with the Minister that adoption has been under-utilised as a strategy for providing permanency for children in recent years, he was keen to stress that permanency planning applies to all children in care and that adoption is only one of a range of options available, which may not be suitable in all cases. Professor Parkinson made the point that:

The Children and Young Persons (Care and Protection) Act 1998 is about the child protection system as a whole, not just severely abused or neglected babies. It must be based upon sound policy for all children who at some stage need out-of-home care.⁴²

Because the research on brain development has highlighted how important it is to ensure the first three years of a child's life are positive, the need to remove young children from abusive and neglectful environments early has received much attention. Moreover, experience shows that adoption of young children is easier than those who are older, particularly as older children who have been in and out of care are more likely to have behavioural and emotional difficulties. The permanent placement issues for a young child are different to those for an older child, who will have much more developed attachments to their birth families.

The Children and Young Persons (Care and Protection) Act 1998 provides long-term placement alternatives to adoption. One option is to give parental responsibility to a relative such as an aunt or uncle [section 79(1)(a)], which has the same effect as an order giving parental responsibility to a relative under the *Family Law Act 1975*. Another option is the sole parental responsibility order [section 149], which has much the same effect as an adoption, without severing the legal relationships between the child and the birth family.⁴³ The rationale behind this option is that children may benefit from contact with other family members who love and care for them even though the birth parents are abusive or neglectful. Adoption into a new family would prevent such contact, unless specific orders were made.

⁴² Professor Parkinson's paper on *The Children (Care and Protection) Amendment (Permanency Planning) Bill 2000*, p6.

⁴³ In Victoria, permanent care orders are available under the *Children and Young Persons Act 1989*, which grant permanent guardianship and custody of a child to a third party. Unlike adoption orders, permanent care orders do not change the legal status of the child, and they expire when the child turns 18 or marries. There is also provision for an application to be made to revoke or amend a permanent care order.

Professor Parkinson also emphasised that while other long-term placement options were not as final as adoption, the *Children and Young Persons (Care and Protection) Act 1998* had made rescission of such placements by the birth parents more difficult. A parent now has to seek the leave of the Court before bringing a rescission or variation application, and must satisfy the Court as a threshold issue whether there has been a significant change in any relevant circumstances since the order was made or was last varied. No order can be revoked unless it promotes the safety, welfare and wellbeing of the child or young person to do so [section 9(a)]. The best interests of the child or young person always has to be the ultimate test, and that includes consideration of what the child or young person wants.

The Shadow Minister for Community Services, Mr B Hazzard MP, who attended the Forum on 28 July commented in Parliament that:

... the majority of the views expressed at that meeting were that permanency planning legislation would turn back the clock and to some extent damage the 1998 package of children and young persons care and protection legislation.⁴⁴

The Minister has indicated that while she is still of the view that adoption as a form of permanency planning needs to be encouraged, the means by which this is achieved is still open to discussion. The current Permanency Planning Bill was intended as an Exposure Draft only, and if pursuing this action by legislative means is still considered necessary, then any final legislation put before the Parliament will reflect relevant suggestions made in the three month consultation period.

5 OVERSEAS POSITION

In discussing the permanency planning proposals reference has been made to the position in the United Kingdom and the United States.

5.1 United Kingdom

According to Department of Health statistics, about 53,000 children in England are looked after in statutory care at any one time, and approximately 32,000 children's names are on a Child Protection Register at any one time because they require a child protection plan.⁴⁵

The Children Act which was passed in 1989 requires that those responsible for the upbringing of children should safeguard and promote their welfare. And the majority of the Act is concerned with the practices and procedures when Courts and local authorities intervene in the lives of children and their families with a view to safeguarding and promoting children's welfare. The key underlying principles are:

⁴⁴ NSWPD, LA, 8 August 2000, [proof], p59.

⁴⁵ *Framework for the Assessment of Children in Need and their Families*, Department of Health, Department of Education and Employment and the Home Office, March 2000 available on the Department of Health website at: www.doh.gov.uk/quality.htm.

- It is the duty of the State through local authorities to both safeguard and promote the welfare of vulnerable children
- It is in the children's best interests to be brought up in their own families wherever possible
- Whilst it is parents' responsibility to bring up their children, they may need assistance from time to time to do so
- Parents should be able to call upon services, including accommodation, from or with help of the local authority when they are required.

This Act has been seen as signalling a move away from taking children into care or placing them for adoption and instead putting a legal duty on local authorities 'to promote the upbringing of such children by their families'. It has been said that this places parents rights above children's rights, even where children are known to be at risk of harm.

In response to how this provision in the Children Act was being interpreted, the Government sent a circular to all local authorities in 1998⁴⁶ which pointed to the importance of getting the balance right:

Where a child is in the care of a local authority, the Children Act 1989 places a duty on them to make all reasonable efforts to rehabilitate the child with his or her family whenever possible, unless it is clear that the child can no longer live with his family or that the authority has sufficient evidence to suggest that further attempts at rehabilitation are unlikely to succeed. In this context, there is a common perception among too many in the field that efforts to rehabilitate a child should be constrained by no timetable; that every effort should be made and all possibilities exhausted to try to secure the return of the child to his family – no matter how long it might take.

Such a perception lacks proper balance. Time is not on the side of the child. Efforts to return a child to his or her family should of course be reasonable and will require intensive work; time spent in such work with families and children should be constructive and should be recorded in detail. A stage is reached in many cases, however, when it is apparent that rehabilitation is unlikely to be successful. Experienced practitioners are aware that knowing when the time is right to plan for alternative forms of care is one of the many skills expected of social services staff; that it includes an awareness of the importance of time in the rehabilitation

⁴⁶ Local Authority Circular, *Adoption – Achieving the Right Balance*, LAC(98)20, 28 August 1998, accessed on: www.doh.gov.uk/scg/lac.

process and of the damage which might be done to children where time is allowed to pass without any visible signs of their future being secured. Where it is clear that they can no longer live with their birth family, decisions about placing children with permanent families should be made as a matter of priority. Managers should therefore include effective measures to monitor progress of these cases, ensuring that they are formally reviewed at regular intervals to prevent a child drifting in the care system. [Emphasis added.]

However it is not just the interpretation of the Children Act provisions by community welfare officers which gives rise to children remaining or being returned to their parents. The Courts also consider the Act when making determinations, and on occasion it would appear that although section one of the Act refers to the welfare of the child being paramount, undue emphasis has been placed on keeping birth families together to the detriment of the children.

In June 1999, the Blair Government announced that it intended to introduce maximum limits on the time between when children entered into care and when they could be released for adoption.⁴⁷ The Health Minister, Mr John Hutton, announced to the House of Commons that the targets would be one of a set of indicators which would help to measure adoption services, develop national standards and increase the use of adoption by local authorities. The indicators will measure the percentage of looked-after children being adopted each year, the average time children are looked after before being placed for adoption and the breakdown of adoption placements. The Government proposals were welcomed by the Opposition.

On 18 February 2000 a review of adoption laws was launched by the Prime Minister, Mr Tony Blair.⁴⁸ One of the issues to be considered is whether legislative amendments are necessary to address what some perceive to be an unbalanced approach, which sees the Courts favouring retention of a child by birth parents, even where there is a history of neglect and abuse. In April 2000, an 'adoption summit' was held at Downing Street between relevant Ministers, social service managers, adoption agencies and children's charities. A public consultation paper is to be released later in the year, with legislation to follow.

5.2 United States

Until amendments in 1997, the relevant legislation was the Adoption Assistance and Child Welfare Act of 1980. The primary goals of which were to prevent the unnecessary separation of children from their families, improve the quality of care and services for vulnerable children and their families, and ensure that children did not languish in foster

⁴⁷ Press Release, 'New measures to tackle poor performance on adoption', 16 June 1999, Department of Health, accessed at: www.doh.gov.uk

⁴⁸ 'Drive to abolish the barriers that delay adoption', 18 February 2000, *Electronic Telegraph* at: www.telegraph.co.uk:80/et

care. The Act placed major new responsibilities on the Courts to oversee child welfare cases more rigorously than before and, as a result, the number of hearings expanded dramatically.

Concerned with the state of foster care, President Clinton issued an Executive Memorandum to relevant Government Departments on 14 December 1996, seeking advice on how the number of children who are adopted or permanently placed each year could be increased, and how children from foster care could be moved more quickly into permanent homes. The Executive Memorandum focused most specifically on children in foster care who, often because of abuse or neglect, cannot return home safely. The President stated that returning home was not an option for about 100,000 of the over 450,000 children in the foster care system, yet only approximately 20,000 were adopted in the last year, and approximately 7,000 were permanently placed in legal guardianships. The President directed the Secretary of the Department of Health and Human Services to report to him with specific recommendations for strategies that would move children more quickly from foster care to permanent homes, and at least double, by the year 2002, the number of children who are adopted or permanently placed each year.

In February 1997 a report entitled *Adoption 2002* was released by the Department of Health and Human Services, which recommended the following actions:⁴⁹

- The aim is for states to set specific numerical targets leading to doubling by the year 2002, the number of children adopted or permanently placed each year. \$10 million will be made available to assist states in reaching their targets. In addition, to encourage and reward states for their efforts, legislative provisions will be put in place which give new financial per-child bonuses to states that increase the number of adoptions from the public child welfare system.
- Under the legislation current when the report was written states were required to make 'reasonable efforts' to both prevent the unnecessary removal of children from their families and to reunify children who have been placed in foster care with their natural families. Changes to the federal legislation will be made to clarify the 'reasonable efforts' provision: to explicitly include the health and safety of the child as the first priority in determining whether a child should be removed from his or her home; and to introduce a new standard that 'reasonable efforts' be made by states to secure permanent homes for children in foster care who cannot return safely to their homes and for whom adoption is the goal.
- To speed up the process of reviewing a child's status in foster care federal legislation will be amended to require that a court hearing be held no later than 12 months after a child enters the foster care system. This hearing will be a 'permanency planning hearing' to encourage the focus of deliberations for the child to be on finding a permanent, safe home.

⁴⁹ Accessed from the US Department of Health and Human Services at: www.acf.dhhs.gov/programs

- States will also be assisted in identifying and addressing barriers to permanency which include: delays in making timely permanency decisions resulting from high caseloads for judges and caseworkers; incorrect beliefs and outdated assumptions about the adoptability of children; the limited pool of permanent families for children with special needs and the varied interpretation of the ‘reasonable efforts’ requirement to reunify a child in foster care with his or her birth family before another goal, such as adoption, can be pursued for the child.

The guiding principles of *Adoption 2002* are centred around the needs of the child and include the following: that every child deserves a safe, permanent family; that the child’s health and safety should be the paramount consideration in all placement and permanency planning decisions; and that foster care is a temporary situation.

Arising from the *Adoption 2002* Report, new federal legislation, the Adoption and Safe Families Act (ASFA), was enacted in November 1997. This was the first major reform of Federal child welfare policy since 1980, and the Act brought about fundamental changes in the way the foster care system was managed.⁵⁰ Under the amended provisions, states are required to find children in foster care a safe, permanent home more quickly. Two key provisions particularly affect those children who are unable to safely return home within a reasonable time. First, states need not pursue efforts to prevent removal from home or to return a child home if a parent has already lost parental rights to that child’s sibling; has committed specific types of felonies, including murder or voluntary manslaughter of the child’s sibling; or has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, and sexual abuse. In these egregious situations, the courts may determine that services to preserve or reunite the family (the ‘reasonable efforts’ requirement) are not required. Once the court makes such a determination, the state must begin within 30 days to find the child an alternate permanent home.

Second, states must begin the process of terminating parental rights by filing a petition with the courts if an infant has been abandoned; the parent committed any of the felonies included in the first provision; or the child has been in foster care 15 of the last 22 months. States may exempt children from this requirement if the child is placed with a relative; the state has not provided services needed to make the home a safe place for the child’s return; or there is a compelling reason why filing a petition to terminate parental rights is not in the child’s best interests. As states begin the process of terminating parental rights, they must also find the child a qualified adoptive family.

There are seven kinds of hearings which may occur in cases dealing with child welfare matters as the issues in these cases are ongoing and changing.

1. A preliminary protective hearing: to decide whether or not the child can be immediately and safely returned home while the trial on the alleged maltreatment is pending. In

⁵⁰ General Accounting Office, Report to the Chairman, Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives, *Foster Care: States’ Early Experiences Implementing the Adoption and Safe Families Act*, December 1999. Accessed at: www.gao.gov

most states, this hearing is held with 1 to 3 working days after a child is removed from the home.

2. An adjudication hearing: to determine if allegations of abuse or neglect are sustained by the evidence presented and are legally sufficient to support state intervention on behalf of the child. This hearing should be completed no later than 60 days after a child is removed from the home.
3. A disposition hearing: to decide who will have custody and control of the child and to review the reasonable efforts made to prevent removal of the child from the home. This hearing should be completed within 30 days of the adjudication hearing.
4. Review hearing: To periodically review case progress to ensure children spend the least possible time in temporary placement and to modify the family's case plan, as necessary. Federal law requires these hearings to be held at least every 6 months.
5. Permanency planning hearing: To decide the permanent placement of a child, such as returning home or being placed for adoption. The ASFA requires this hearing to be held no later than 12 months from the time a child is considered to have entered foster care.⁵¹
6. Termination of parental rights hearing: To end the rights of the parents to visit, communicate with, and obtain information about the child or to ever regain custody. This hearing should be initiated whenever there is strong evidence that a child will never be able to safely be placed with his or her parents and that adoption is in the child's best interests. Under the ASFA, states are now required to file a court petition to terminate parental rights if the child has been in foster care for 15 of the most recent 22 months.
7. Adoption hearing: To build a new legal relationship between the child and the individuals who are to become the child's adoptive parents. Courts should make special efforts to ensure adoptions are concluded without undue delay once parental rights are terminated.

6 ADOPTION

Adoption is a legal process by which a child ceases to be the child of their parents and becomes the child of the adoptive parents. This change in 'parentage' is permanent. Historically adoption was seen as the means for providing a family with an heir who could inherit the family property. The child was also given 'legitimacy' as a full member of the adoptive family. These days, however, adoption is essentially about permanency and the confirmation in law of parent-child relationships.

⁵¹ A child is considered to have entered care on the earlier of: (1) the date of the first judicial finding that the child has been subjected to abuse or neglect, or (2) 60 days after the date on which the child is removed from the home.

It is through adoption that the law recognises the adopters as ‘parents’ of the child, not just as legal guardians and custodians of the child. Adoption is often seen as an expression of the higher level of commitment and belonging that the child is offered by an adoptive family. At the same time, it is also seen as offering the adopters and the child a greater degree of security in the permanency of the adoptive relationship.

The focus of adoption has changed over the years from a service to adults (often childless couples) wishing to have a child of their own, to a service for children who, for whatever reason, are unable to grow up in the care of their birth parent(s).

With this greater focus on the needs of the child has come some questioning of the appropriateness of adoption, particularly when the child is to remain a member of the extended birth family. When the child has a meaningful relationship with members of the birth family and this is likely to continue, adoption may not be the most appropriate option. Adoption therefore is one of the legal options in providing for the long-term care of a child, and its appropriateness should be assessed according to the needs and wishes of the parties (especially the child) and the existing relationships.

An adoption order brings about the following important changes in legal relationships:

- The birth family loses all rights concerning the child except those specifically preserved under the adoption legislation or granted by a Court;
- The adoptive parents have parental responsibility for the child as well as the duty to maintain the child (where the adoption provides for continued contact to be given to birth parents, this is called ‘open adoption’);
- The child has a new birth certificate in their adopted name, with the details of the adoptive parents and their other children (if any) shown on the certificate rather than the birth family;
- The child’s right to inherit from the birth family will cease (unless referred to by name) and be replaced by a right to inherit from the adoptive family. This change does not affect any ‘vested’ rights.

In the majority of cases adoption cannot occur without consent of the birth parents. However, section 32 of the *Adoption of Children Act 1965* permits the Court to dispense with consent in the following circumstances:

- After reasonable inquiry the person cannot be found or identified
- The person is not capable of giving consent because of their physical or mental condition
- The person abandoned, neglected or ill-treated the child and, in the opinion of the court, is unfit to meet the obligations of a parent or guardian

- The person has failed to meet the obligations of parent or guardian for a period of not less than one year
- The child is in the care of foster parents or some other person and the child's welfare will be promoted by adoption
- A notice of intention to seek a dispensation order has been served on the person who has not responded within 14 days (by filing a notice with the court)

Adoption statistics: A number of societal changes have resulted in fewer Australian-born children being made available for adoption, and there has been a substantial fall in the number of adoptions since the early 1970s. The trend continued in 1998/99 with the number of adoptions across Australia decreasing 6% from 577 in 1997/98 to 543 in 1998/99.⁵² Factors contributing to this overall fall in adoptions of children include:

- effective birth control leading to a decrease in the number of unplanned pregnancies;
- the provision of income support for single parents and changed community attitudes to single parenthood, resulting in other alternatives to adoption;
- changes to legislation and practices in relation to step-parents within States and Territories whereby step-parents are encouraged to use arrangements other than adoption; and
- the introduction of alternative legal orders which transfer permanent guardianship and custody of a child to a person other than the parent.

The main features regarding the national adoption figures in 1998/99 are:

- 68% (371) were 'placement' adoptions⁵³ and 32% (172) 'known' child adoptions⁵⁴
- 55% of adoptions were of local children (299), and 45% were of children from outside Australia (244)
- of the 172 'known' child adoptions, 67% were adoptions by step-parents, 28% by carers and 5% by other relatives

⁵² Australian Institute of Health and Welfare, *Adoptions Australia*, 1998/99.

⁵³ Placement adoptions' are adoptions of children who are legally available and placed for adoption, but who generally have had no previous contact or relationship with the adoptive parents.

⁵⁴ Known' child adoptions are adoptions of children who have a pre-existing relationship with the adoptive parents and who are generally not available for adoption by anyone other than the adoptive parent(s). These include adoptions by step-parents, other relatives and carers (foster parents and other non-relatives). Previously carers were included with adoptions by non-relatives.

- there were 127 ‘placement’ adoptions of local children, and 244 ‘placement’ adoptions of children from outside Australia
- whereas the majority (65%) of ‘known’ child adoptions were of children aged 5-14 years, most children placed for adoption were in the younger age group – under 5 years of age (85%)

In New South Wales in 1998/99 there were a total of **92** adoption placements (66 intercountry; 21 local; and 5 special needs) compared with a total of 83 adoption placements in 1997/98 (54 intercountry; 21 local; and 8 special needs).⁵⁵

6.1 New South Wales Law Reform Commission Review

In November 1992 the New South Wales Law Reform Commission was given a reference by the then Attorney General, the Hon J Hannaford MLC, to review the *Adoption of Children Act 1965*. A Discussion Paper was released for public comment in April 1994,⁵⁶ and the Final Report presented to the Minister in March 1997.⁵⁷

Relevant recommendations are:⁵⁸

- Adoption should be maintained as one in a range of care alternatives for children
- The principle that the best interests of the child is the paramount consideration in adoption law and practice should be maintained in the legislation, expressed in the phrase ‘best interests’ rather than ‘welfare and interests’.
- The Court should not make an adoption order unless it considers that the making of the order would make better provision for the best interests of the child than parenting orders under the *Family Law Act 1975* or any other order for the care of the child.
- In determining what is in the child’s best interests in adoption, the Court should have regard to the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour, or being present while a third person is subjected or exposed to abuse, ill-treatment, violence, or other behaviour.

⁵⁵ New South Wales Department of Community Services, *Annual Report*, 1998/99, p24.

⁵⁶ New South Wales Law Reform Commission, Discussion Paper 34, *Review of the Adoption of Children Act 1965*, April 1994.

⁵⁷ New South Wales Law Reform Commission, Report 81, *Review of the Adoption of Children Act 1965*, March 1997.

⁵⁸ *Ibid*, pxxiv.

- The legislation should expressly state that adoption is a service for children, not a service for adults wishing to acquire the care of a child.
- In relation to applications to adopt children in care:
 - a) Section 18(2) of the *Adoption of Children Act 1965* (which requires applicant/s to obtain agency support for the making of an adoption application) should be retained.
 - b) The Court should not make an order for adoption in favour of the child's foster parents unless:
 - i) The Director General and/or the agency have made a report to the Court, and
 - ii) The order makes better provision for the best interests of the child than parenting orders under the *Family Law Act 1975* or any other order for the care of the child.
- Where the child to be adopted is in foster care or in a private placement, the birth parents or guardians of a child may give consent to either the adoption of the child by any persons (general consent) or, the adoption of the child by the child's foster parents or carers (specific consent), providing those foster parents or carers have had care of the child for not less than 2 years.
- Legislation should provide that consent to the adoption of a child under 18 years should be obtained from every person who is a parent or guardian of a child or who has parental responsibility for the child, except in certain circumstances including where the consent has been dispensed with by a Court order
- The section dealing with dispensing of consent (section 32(1) of the *Adoption of Children Act 1965*) should be amended as follows:

The Court on application made in accordance with subsection (1A), may, by order, dispense with the consent of a person (other than the child) to the adoption of a child where it appears to the Court that:

- (a) after reasonable inquiry, that person cannot be found or identified;
- (b) that person is in such a physical or mental condition as not to be capable of properly considering the question whether the person should give his or her consent
- (c) the court is satisfied that it is necessary to override the wishes of the parent or guardian in order to give effect to the best interests of the child

On 25 July 1997 the then Minister for Community Services, the Hon R Dyer MLC, said that the NSWLRC's Adoption Report would receive careful consideration.⁵⁹ It would appear that no further governmental action was taken until the Adoption Bill was introduced on 21 June 2000. The Bill appears to be based in large measure on the recommendations made by the NSWLRC in its Final Report. However, it should be remembered that these recommendations were made in the context of the debate in 1997. Whether the same set of recommendations would be put forward if the report were drafted today is perhaps of some relevance.

6.2 The Adoption Bill

The approach taken in the Adoption Bill reflects the attitudes held by many in the community today. As the Minister for Community Services stated in the Second Reading speech:

The current *Adoption of Children Act 1965* was enacted some 34 years ago in an era when community attitudes towards ex nuptial birth, the role of men and women in society, de facto relationships, and many other aspects of family life were vastly different from the community attitudes and expectations of today. The nuclear family, headed by a legally married husband and wife, was not only perceived to be the norm but was considered by many to be the only truly acceptable form of family life ... Since that time legislation in many fields has been enacted or amended to reflect social change. This is particularly apparent in the area of the care and protection of children, family law, law relating to indigenous people, anti-discrimination and reproduction technology.⁶⁰

The main points made in the Second Reading speech can be summarised as follows:⁶¹

- The new law will actively involve parents in planning a secure and loving home for their child's future and does not undervalue the importance of continuing to maintain a relationship with their child.
- The welfare and interests of the child are to be the paramount considerations, and clear objects and adoption principles to guide the Court and other persons and bodies in making a decision about the adoption of a child are provided.
- In determining the best interests of a child, a decision maker must, among a number of considerations, have regard to the need to protect the child from physical or psychological harm caused by being subjected to abuse, ill treatment, or violent or other

⁵⁹ Press Release, 'Adoption of Children Act', 25 July 1997.

⁶⁰ Hon F Lo Po; *NSWPD*, LA, 21 June 2000, p7329.

⁶¹ *Ibid*, pp7329-7331.

behaviour. In such circumstances, the Court, if satisfied that it is in the best interests of the child, can override the wishes of the parent.

- Adoption is a service to provide a child with the most appropriate and secure family, it is not about the rights of adults to a child. Except in extreme cases, an adoption order will be made only when it makes better provision for the best interests of the child than other care arrangements and parenting orders under a law of the Commonwealth or the State.
- Provision is made for the parties to the adoption to agree on an adoption plan (which can contain provisions for matters such as exchange of information, and the means and nature of continuing contact between the parties to an adoption) before an order is made.
- Recognition is given of a child's capacity and right to participate, commensurate with his or her age and level of maturity, at all stages of the adoption proceedings and to have his or her viewpoint respected.
- The secrecy surrounding adoption in the 1960s and 1970s is no longer sanctioned, and the Bill promotes openness and honesty.
- The Adoption Information Act 1990 is to be merged with this bill as recommended by the NSWLRC. Integrated legislation reinforces the lifelong nature of adoption, and the interrelationship of adoption services before and following an adoption.
- The rights and entitlements of birth parents are clarified.
- The jurisdiction for the making of adoption orders will remain with the Supreme Court of New South Wales, and provision is made for the prescribing of circumstances when a preliminary hearing to address issues prior to the final hearing can be undertaken. Parties to the adoption have access to the court at any stage of the adoption process, and the court will now have the power to appoint a guardian ad litem, and provide representation for the child in appropriate cases.
- A step-parent will be able to make sole application without having legal effect on the custodial parent's relationship with the child.
- The period of time before consent can be given has been extended from three to 30 days after the birth of the child. The order for adoption cannot be made before the expiration of a further 30-day revocation period. The 60 day period will enable adoption counselling for the parent, and for better consideration to be given to the most appropriate caring arrangement for the child.
- The criteria for selecting adoptive parents have been made less restrictive with the focus now on choosing the best and most appropriate parent and care arrangement for a child. Certain minimum eligibility requirements are specified in the Bill. Couples living in a heterosexual relationship or recognised traditional and customary marriage, and single

people, will be able to express an interest in adoption and be assessed as to their suitability to adopt. A foster parent who has had the care of a child for a period of more than two years under an approved adoption plan will be able to adopt.

- All adoption placements need to be culturally appropriate for the children. Special provision is made for Aboriginal and Torres Strait Islander children, and for children who enter Australia from another country, as well as Australian-born children of another culture.
- In keeping with the cultural recognition principle, all adoptive parents are required to have the capacity to assist the child to develop a positive, healthy cultural identity; a willingness to learn about, and to teach the child about, the child's cultural heritage; a willingness to foster links with that heritage in the child's upbringing; and the capacity to help the child if the child encounters racism or discrimination.
- There is provision for a review to be undertaken by the responsible Minister as soon as possible after the period of five years from the date of assent of the bill to ensure the policy objectives of the legislation remain valid and the terms of the legislation remain appropriate for securing those objectives.
- The legislation will not come into force immediately as a number of administrative and procedural matters have to be implemented prior to commencement of the Act. The delayed enactment will also facilitate the remaking of the regulations and enable co-ordination with the commencement of the *Children and Young Persons (Care and Protection) Act 1998*.

There has been limited coverage of the response to this Bill. In large part this can be attributed to its being overshadowed by the proposals in the Permanency Planning Bill. However the introduction of both Bills at the same time has led to confusion in the minds of some as to the exact content of the Adoption Bill. Of those who are across the detail in the Adoption Bill, there appears to be a general level of support. Many in the community recognise that the provisions of the Adoption of Children Act 1965 are out of date and do not reflect current attitudes on adoption, and welcome the amendments, the majority of which were recommended by the Law Reform Commission in its 1997 Report. Some have expressed the view that new adoption legislation should not be introduced until after the Legislative Council's Standing Committee on Social Issues has handed down its findings into the adoption practices of the 1960s and 70s. Others are of the opinion that this Bill too, should be treated as a Draft Exposure, to allow input from the community on its provisions. When the Bill came back on for Debate on 8 August 2000, the Shadow Minister for Community Services, Mr B Hazzard MP, said that it should 'be put out for public discussion'.⁶² The Minister has made it clear, however, that unlike the Permanency Planning Bill, the Adoption Bill is not an Exposure Draft, and will therefore proceed in the current parliamentary session.

⁶² NSWPD, LA, 8 August 2000, [proof], p57.

7 CONCLUDING REMARKS

There appears to be a general consensus that decisions surrounding the long-term future of a child removed from an abusive or neglectful environment have to be made sooner rather than later, and where it is determined that restoration with the birth family is not feasible, permanent planning options need to be considered. The point of departure seems to emerge in regard to the preferred placement option. Critics of the Permanency Planning Bill say that the *Children and Young Persons (Care and Protection) Act 1998* provides for a range of options including adoption, and that the choice in any particular case will be determined by what the Court considers is in the best interests of the child. Others are of the view that the availability of adoption as an option in the child protection context is not sufficiently clear under the current legislation and welcome the direct and unambiguous references in the Permanency Planning Bill. At the end of the day acceptance of the Permanency Planning Bill measures may come down to:

... whether child protection professionals are prepared to support the Minister's presumption in favour of adoption as the normal means of providing stability and security for children who are unlikely to return home.⁶³

⁶³ Professor Parkinson's paper on *The Children (Care and Protection) Amendment (Permanency Planning) Bill 2000*, p8.

Chapter 1 - General principles:

- The Government should enact new legislation on child protection rather than attempting piecemeal reform of the 1987 Act.
- The Act should define a child as 13 or under and a young person as 14 to 17.
- The Act should contain objects and principles to guide the interpretation of the legislation.
- The legislation should give the Premier certain responsibilities for the coordination of an all-of-government approach to child protection.
- The legislation should give the Director General a certain number of responsibilities for the provision of services which will prevent child abuse and neglect and which will ensure that when such abuse or neglect occurs, assistance is given to the child or young person and family to prevent further abuse occurring.
- The Act should contain a principle concerning children's participation in decision making.

Chapter 2 - Reporting and Investigation:

- Either a parent or a child or young person should be able to seek the assistance of the Director General to enable the child or young person to remain in, or return to family care.
- The Act should use the word 'report' in place of the currently used word 'notification' and should provide a definition of the term 'report'.
- The Act should require the Director General to make an assessment of whether the child or young person is in need of protection, (rather than merely to investigate the ground of reporting) and should determine what action should be taken to safeguard or promote the child or young person's wellbeing.
- The Act should make provision to enable a person to make a report before the birth of a child that it may be in need of protection after the birth. The role of DOCS will be to ensure that the pregnant woman receives assistance and support.

Chapter 3 - The Children's Court System and Possible Alternatives:

- The Act shall provide new grounds for care proceedings which reflect the differences between the circumstances in which a child or young person might be reported as being in need of protection and the circumstances in which a child or young person should be made the subject of a care order.

- The Act should provide that only the Director General shall bring care proceedings. The Director General shall not bring care proceedings unless satisfied that no adequate alternative means are available to provide for the wellbeing of the child or young person. The Act should require the Director General to furnish the Court with details of the support and assistance provided and the options which were considered prior to bringing the matter to Court and provide an explanation as to why these options were discarded.
- The Act should require that the care application must state the order or orders sought and the grounds for the order. The child and those with current parental responsibility for the child should be told clearly what the concerns about them are and what effect the orders sought will have on residence, contact, parental responsibility and supervision.
- The Act should provide for the use of alternative dispute resolution mechanisms to assist the child or young person, those with parental responsibility for a child or young person, others significant to the child or young person and DOCS, to develop care plans for children or young people by consent. Alternative dispute resolution should be available as an early intervention strategy without the need for a care application to the Court.
- Where plans are developed for the care and protection of the child or young person which requires the Court to make orders under the Act, then the Act should provide a means for the plan to be registered, and the requisite orders made with the consent of all the parties to give effect to the plan, unless the Court determines that it is contrary to the interests of the child or young person to do so.
- The Court should have a structure which allows it to identify as soon as possible the areas of agreement between the parties, any issues in dispute and the most appropriate means of resolving them. Preliminary conferences, chaired by a Care and Protection Registrar, should clarify the issues which are in dispute, refer matters to alternative dispute resolution where appropriate, or set a hearing timetable.
- The Act should enable anybody with a genuine concern about the wellbeing of the child or young person either to become a party to the proceedings or to be heard in the proceedings with the leave of the Court.
- The Act should require that the standard of proof be on the balance of probabilities.
- The current provisions relating to adjournments not exceeding 8 days and the 42 day rule should be abolished. The Act should provide that all matters proceed without delay, and that the Court establish a timetable and give whatever directions are considered appropriate to ensure that the timetable is adhered to. The Act should allow for such adjournments as are considered to be in the child or young person's best interests or are otherwise necessary in all the circumstances of the case.

- The Act should require leave for a rescission or variation application. The threshold should be that the applicant can demonstrate a significant change in circumstances. The Act should provide that at any time the Court may order that no further application may be filed without leave of the Court.

Chapter 4 -Orders:

- The Act should be amended to require that where appropriate and before removing a child or young person, the Director General must have considered the option of requesting the police to make an application for an apprehended violence order to provide protection for the child. Such an order might have the effect of requiring an adult perpetrator of abuse to leave the home pending court orders, rather than the child. Only if an apprehended violence order would be insufficient to protect a child or young person from an immediate risk of serious harm should the child be removed without a warrant.
- The rule which requires a care application to be lodged within three days of the removal of a child should be deleted. Instead the Director General will have the option of seeking an emergency protection order, an assessment order or filing a care application.
- The Court should be able to appoint an expert to assess the capacity of a person with parental responsibility, or seeking parental responsibility for a child or young person to carry out those responsibilities. The participation in the assessment should be voluntary.
- The Children's Court should continue to have the power to make interim orders following the lodgement of a care application until the matter is finalised.
- The Children's Court should have a much greater range of orders available to deal with the circumstances of each case appropriately.
- The Children's Court should have the power to make orders for services with the consent of the service provider.
- The Children's Court should have the power to make prohibited steps orders in relation to a child or young person found to be in need of care.
- The Act should require that a care plan be presented to the Court before final orders are made whenever the Director General is seeking an order involving the removal of a child or young person from the care of his/her parents.
- The Court may require a report within six months of a placement being made to ensure that it is satisfactory.
- In determining what orders to make, the least intrusive disposition principle as

expressed in sections 72 and 73 of the 1987 Act should continue to apply. **Orders involving the removal of children from parental care ought not to be made unless there is no feasible alternative which is less intrusive, and orders placing the child in the care of the State are a last resort.** [Emphasis added.]

- The Act should provide for restoration plans. There was strong support for the proposal that the Director General should put forward a restoration plan where there is a realistic possibility of restoration. The Director General should prepare a restoration plan for the consideration of the Court **unless** the Director General considers that there is no realistic possibility of restoration within the foreseeable future. The Court could then examine the proposed restoration plan, or require one to be prepared, if it considers there is a realistic possibility of restoration in the foreseeable future. An active restoration plan would need to have time limits on it, so that appropriate permanency planning may occur if it is necessary.

Chapter 5 –Substitute Care:

- A child or young person, a parent, relative or other person connected with the child or young person should be able to request the Children’s Guardian to review a decision of the Director General or the designated substitute care agency concerning contact or any other matter relating to the wellbeing of the child or young person.
- The Act should make provision for foster carers to apply to the Children's Court for Sole Parental Responsibility Orders in relation to children or young people who have been in their care for a minimum period of five years and with the consent of the parent/s and the child or young person. Such an order would have the effect of formalising a child or young person’s place within the foster family and, unless the Court ordered reviews, would cease the ongoing supervision of the placement by the designated agency. The order would not sever legal ties between the child or young person and the birth family. This means that relationship to birth siblings would not be affected. **A sole parental responsibility order is therefore something less than adoption.** It would, however, be appropriate to recognise that the foster child has become part of the family in a secure and successful placement, and that the need for supervision and monitoring is not there to the same extent as would have been appropriate before. The child or young person should be consulted and want the order to be made. The parents should also consent. The foster family would not be able to leave the jurisdiction permanently without the permission of the Court. The Court would also be able to order such follow up or review of the arrangement as the Court sees fit.
- The Act should specify that the identity and whereabouts of foster families should be made available to the parent/s unless there are reasonable grounds to fear for the safety of the child, young person or foster family.
- There should be a statutory duty to review the circumstances and wellbeing of children and young people in substitute care to ensure that their wellbeing is being promoted in the placement.

Chapter 6 – Aboriginal Children and Families:

- The Aboriginal Child Placement Principle should apply to all non-voluntary placements of Aboriginal and Torres Strait Islander children. There should be an exception for emergency placements made to protect a child or young person from the serious risk of immediate harm, and other placements required for less than two weeks. The Aboriginal Child Placement Principle sets out the steps that must be followed before Aboriginal children are separated from their families. Removing a child or young person should be the last resort and the following options must be considered, in descending order, in each individual case:
 1. The child is placed in the care of a member of the child’s extended family or kinship group, as recognised by the Aboriginal community to which the child belongs
 2. The child is placed in the care of a member of the Aboriginal community to which the child belongs.
 3. The child is placed in the care of some other Aboriginal family residing in the vicinity of the child’s usual place of residence.
 4. The child is placed in the care of a suitable person approved by the Director General after consultation with members of the child’s extended family and Aboriginal Welfare organisations involved in the case.

Each placement option can only be dismissed if it can be shown to be ‘not practicable’ or detrimental to the child.

- Where placement is with a non-Aboriginal or Torres Strait Islander carer, the following principles should determine the choice of carer:
 1. Reunion with the family or community is the fundamental objective
 2. Continuing contact with the child or young person’s Aboriginal or Torres Strait Islander family, community and culture must be ensured.

Chapter 7 – Adolescents:

- The principle that should govern this part of the Act is that the parent/s or guardian of the child or young person under the age of 16 years should have responsibility for that child or young person unless it is not in the best interests of the child or young person for his or her parent/s or legal guardian to have responsibility for them.
- An application should be accompanied by a plan setting out proposed alternative arrangements to meet the needs of the child or young person.
- Where a plan has been agreed to by all parties, and no orders are necessary to give effect to it, the plan ought to be able to be registered with the Court. If the plan breaks down, the matter ought to be able to be relisted with the Court without the necessity to make

a new application, and the Court should be able to make whatever orders are necessary in the circumstances.

- It created the Office of Children's Guardian and specified the functions of the Children's Guardian, particularly with respect to the exercise of parental responsibility for children and young persons.
- It defined a 'child' as a person who is under 16, and a 'young person' as a person 16 or above but under 18.
- To provide consistency with other legislation such as the Family Law Act 1975 it replaced the expression 'guardianship' with the expression 'parental responsibility' and 'foster care' became a type of 'out-of-home care'.
- It established a principle concerning the participation of children and young persons in decision-making that applies to all persons who exercise functions under the proposed Act.
- It set down placement principles for Aboriginal and Torres Strait Islander people which included the right to participation in placement decisions.
- It recognised the right of children and young persons and their parents to seek assistance from DOCS, and set out the general nature of the responses that may be made to a request for assistance.
- It set out the circumstances in which persons involved in their paid employment with children are obliged to report circumstances in which a child may be at risk of harm.
- It required the Director General to investigate and make an assessment of a report to determine whether a child or young person is at risk of harm.
- It set out the range of actions the Director General may take to ensure the protection of a child or young person who may be in need of care and protection. It established principles of intervention to give the Department more flexibility in the way in which it responds, so that it can give priority to those children and young persons who are most at risk. It sought to ensure that children and young persons are protected by using the least intrusive option. It provided a range of measures, such as recourse to alternative dispute resolution and the development of a care plan, that may avoid or reduce the need for Children's Court proceedings.
- It set out a range of measures that would enable a prompt response to be made to ensure the care and protection of children and young persons who are at immediate risk of serious harm.
- It enabled the removal of children and young persons from circumstances that cause them to be in immediate need of care and protection. The Director General is to assume their care and protection and must make prompt application to the Children's Court for an order for their care and protection.

- It enabled the Children's Court to make orders for the emergency protection of children and young persons who have been removed.
- It enabled the Children's Court to make an order that will enable the removal of a child or a young person who is in immediate need of care and protection.
- It enabled the Children's Court to make certain orders for the medical and other examination and assessment of a child or young person who is removed.
- It provided for the making of applications to the Children's Court for an order for the care and protection of a child or young person, and set out the grounds that must exist for the making of such an order. It expanded the range of care and protection orders previously available under the *Children (Care and Protection) Act 1987* including orders for the provision of support services, orders to attend therapeutic or treatment programs, orders for supervision, orders allocating parental responsibility, contact orders and the making of interim orders as well as final orders. It also provided for the making of care plans and restoration plans, and enabled the making of applications for the rescission and variation of care orders and the making of appeals.
- It specified the procedures that were to be followed in proceedings before the Children's Court. Generally, proceedings were not to be conducted in an adversarial manner and with as little formality and legal technicality and form as the circumstances of the case permit. The Children's Court would not be bound by the rules of evidence. It provided for the attendance of the parties to a care application, rights of appearance and legal representation, the appointment of guardians ad litem, the right to be accompanied by support persons, the presentation of the views of siblings, the admissibility of certain evidence and the examination and cross-examination of witnesses. It also provided for the exclusion of the general public from proceedings and made it an offence of strict liability to publish the name or other identifying information that might lead to the identification of a child or young person involved in proceedings before the Children's Court.
- It made special provision for circumstances where the safety, welfare and well-being of a child or young person was in jeopardy because: there is a serious or persistent conflict between the child or young person and his or her parents, or the parents are unable to provide adequate supervision for the child or young person.
- It provided for the reporting of the homelessness of children and young persons to the Director General.
- It regulated the provision of compulsory assistance, (a form of intensive care and support for a child or young person that is necessary to protect the child or young person from suicide or other life-threatening or self-destructive behaviour).
- It regulated the provision of accommodation to children and young persons in out-of-home care (previously known as foster care). Placement of children in out-of-home care may only be effected by an accredited body, called a 'designated agency', or the

- It required the designated agency responsible for the placement of a child or young person with an authorised carer to conduct periodic and other reviews of the placement.
- It set out the care responsibility of an authorised carer and specified the circumstances in which a person having parental responsibility for, or the authorised carer of, a child or young person may restrain the child or young person because, if not restrained, he or she might seriously injure himself or herself or another person or might cause the loss of or damage to any property.
- It enabled the provision of assistance to persons on leaving out-of-home care, and required the designated agency having supervisory responsibility for a child or young person to prepare a plan to be implemented when the child or young person leaves out-of-home care and it entitles such a child or young person to have access to, or possession of, personal records relating to him or her.
- It enabled the medical examination of children believed to be in need of care and protection and the provision of emergency medical treatment.
- It provided for the appointment by the Governor of a Children's Guardian and an acting Children's Guardian.
- It specified the functions of the Children's Guardian with respect to parental responsibility, the removal of daily care and control of a child or young person from an authorised carer, the making of applications to the Children's Court for the rescission and variation of orders and the resolution of certain disputes arising in the administration of the proposed Act.
- It enabled the making of annual reports and special reports to Parliament by the Children's Guardian.
- It reproduced the former provisions of the Children (Care and Protection) Act 1987 as amended by the Commission for Children and Young People Act 1998 in relation to the Child Death Review Teams.
- It created offences involving children and young persons including the abuse and neglect of children and young persons.