

Mr Elton Humphery
Secretary
Senate Community Affairs References Committee
Suite S1 59
Parliament House
CANBERRA ACT 2600

Dear Mr Humphery

I am writing regarding the Committee's inquiry into children in institutional care.

I enclose a submission to the Inquiry. As requested in the submission guidelines, I am also forwarding an electronic copy to the Committee Office.

With the Committee's approval, I would like to place a copy of the submission on the Commission's website. Making work such as this publicly available is one mechanism I use to be accountable to the children and young people and Parliament of New South Wales. I would appreciate your seeking the Committee's consideration of this request at an appropriate time.

I would be happy to have further discussions with the Committee on the issues raised by the inquiry's terms of reference.

If you require any further information, or to make arrangements for a meeting, please contact the Commission's Manager, Policy, Mr Stephen Robertson, on 9286 7270 or stephen.robertson@kids.nsw.gov.au.

Yours sincerely

Gillian Calvert
Commissioner
July 2003

**A response by the
Commission for Children and Young People**

to the

**Senate Community Affairs References Committee
Inquiry into Children In Institutional Care**

July 2003

CONTENTS

1.0 INTRODUCTION

- 1.1 NSW Commission for Children and Young People
- 1.2 The Commission's Response to the Inquiry

2.0 THE CONTEXT OF INSTITUTIONAL CARE

- 2.1 Foster Care
- 2.2 Institutional Care
- 2.3 Detention

3.0 TERMS OF REFERENCE

- 3.1 (a) in relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children: ...
- 3.2 (b) the extent and impact of the long-term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing remedies and support mechanisms;
- 3.3 (f) whether statutory or administrative limitations or barriers adversely effect those who wish to pursue claims against perpetrators of abuse previously involved in the care of children;
- 3.4 (g) the need for public, social and legal policy to be reviewed to ensure an effective and responsive framework to deal with child abuse matters in relation to: ...
 - 3.4.1 Outcome based funding.
 - 3.4.2 A shortage of 'high quality' foster carers in Australia.
 - 3.4.3 The adversarial nature of judicial processes in Australia's Family Court and states' Children's Courts.
 - 3.4.4 The lawful corporal punishment of children.
 - 3.4.5 The inappropriate and unnecessary use of detention of children in some circumstances.

4.0 CONCLUDING COMMENTS

5.0 APPENDICES

6.0 REFERENCES

1.0 INTRODUCTION

1.1 New South Wales Commission for Children and Young People

The Commission for Children and Young People (the Commission) is constituted under the New South Wales *Commission for Children and Young People Act 1998* (the Act). The philosophy of the Commission is reflected in the Act's principles and functions.

Section 10 of the Act lists three governing principles:

- (i) the safety, welfare and well-being of children are the paramount considerations
- (ii) the views of children are to be given serious consideration and taken into account
- (iii) a cooperative relationship between children and their families and community is important to the safety, welfare and well-being of children:

Section 12 of the Act requires the Commission to give priority to the interests and needs of vulnerable children.

1.2 The Commission's Response to the Inquiry

The Commission is pleased to provide a submission to the Senate's Community Affairs References Committee's (the Committee) Inquiry into Children in Institutional Care. The Commission takes this opportunity to provide information to the Committee to improve circumstances for children, young people and their families who currently require institutional care and child protection services and to encourage appropriate responses to the victims of past abuse.

The Commission's submission will address only those terms of reference most relevant to the Commission's principal functions. In addition, a concluding comments section is included to assist the Committee.

The Commission argues:

- A system focussed on the wellbeing of the individual child is fundamental to a responsive and effective out of home care and child protection system, rather than one focussed on adults, bureaucratic or judicial processes;
- National engagement is needed to facilitate agreed national outcomes focussed on the long term interests and safety of children and young people by changing their circumstances, where necessary, and

enhancing their development, supported by useful and comparable outcome data and open to a program of evidence based research; and,

- A Federal Government response is required to enable Australia to react to and monitor identified and emerging threats that are outside the province of a single state or territory response, such as 'on-line' child pornography, cyber stalking of children and young people, and child sex tourism by Australian citizens.

2.0 THE CONTEXT OF INSTITUTIONAL CARE

In 2002 Associate Professor Dorothy Scott compared progress made in responding to child abuse today with responses thirty years earlier. In part she said "thirty years on we have advantages not enjoyed by our predecessors: reduced family size; better income security; and a much greater array of family support services. Yet we also face enormous challenges:

- A massive increase in the drug problem with many children seriously affected by parental drug dependence, now becoming an intergenerational problem.
- Deinstitutionalisation and reproductive rights for people with serious mental illness and intellectual disability which poses threats to the well-being of many children, an issue we prefer not to address.
- The almost total disappearance of residential care in the child welfare field.
- The diminution in the number of foster families." (2002)

2.1 Foster Care

Availability of appropriate foster care placements for children and young people requiring state intervention is diminishing. Various causes are proposed, including:

- fewer women 'at home' as more women enter or return to the workforce; and,
- an increasingly residual and difficult group of children who require fostering.

Foster Care Associations around the country report carers are 'over extended' and 'under supported' by state agencies. As the number of suitable placements diminishes experienced carers are asked by the state to care for more children. As the states' resources are 'downsized' or deployed elsewhere, carers are pressured to take on more financial and practical responsibilities for the children in their care.

With placements becoming scarce, sibling groups who come into state care may not be placed together. The separation of a child from his/her parents and surroundings may be traumatic and the additional separation of the child from siblings, school and social networks compounds the negative experience of care.

Faced with a shortage of carers, authorities tend to favour the placement of children with extended family as an alternative to placing them in foster care. When grandparents and relatives come forward they may be accepted as carers on the basis of minimal assessment as the state can reasonably claim the family has provided its own solution to its own problem. On occasion it is more convenient for the authorities to facilitate the family to determine the least damaging placement for the child, rather than consider the option that best meets the needs of the child.

The decline in specialist residential facilities for emotionally disturbed and behaviourally difficult children and youth has resulted in children with extreme behavioural excesses and severe emotional problems being increasingly placed in foster care. When fostering breaks down, as is often the case, children, if they are old enough may fend for themselves or have increasingly expensive individual care packages designed for them. "In some cases, this involves accommodating children and young people in motels with several full-time workers at costs of up to \$100,000 to \$300,000 per year per child." (Cashmore 2001)

Arguably, most foster care today is still partially founded in propositions inherited from a bygone era. At its most fundamental, foster care is considered by the state as an act of charity. Carers are paid a token subsidy to assist them meet the costs of caring for the children in their care – carers in Australia are generally not paid for their skill or labour.

2.2 Institutional Care

The abuse experienced by individuals at the hands of those entrusted to care for them in some of Australia's institutions is shameful. There are many testimonies in various inquiries and commissions that highlight the severity of this abuse.

In *Carter v Corporation of the Sisters of Mercy of the Dioceses of Rockhampton & Ors*(2001) QCA 35, Judge Atkinson of the Queensland Court of Appeal described the allegations of abuse by an employee of an institution in a case he ruled upon thus:

"At the time of first sexual assault, Ms C says she was playing with another girl around the area of the men's living quarters. They were

playing with matches and were trying to light a cigarette. Mr B saw them and walked over. The girl with whom Ms C was playing ran away and Ms C was left alone with Mr B. He asked her to go with him, which she did thinking he was taking her to the Mother Superior. Instead he took her down under the steps of the working quarters. He sat her on the dirt and told her he was going to teach her a lesson. He moved her legs apart and pulled her underpants to one side and fondled her genitals. The applicant was frightened and cried throughout.

Other instances of abuse are alleged to have followed. Mr B also used to make Ms C meet him in his room. She complied as she was afraid to disobey him and felt that there was nothing she could do to stop him. During these visits, the level of abuse is alleged to have escalated, with instances of ejaculation and forced oral sex and occasions when he sexually assaulted her with an empty soft drink bottle.

Ms C was, she alleges, only seven years old the first time she had sexual intercourse with B. It caused pain and bleeding. From this time on, B continued to have sexual intercourse with Ms C at least once a week, with the frequency increasing to a daily occurrence by the time Ms C left the orphanage." (2001)

2.3 Detention

The administrative power of the state to have children declared wards was largely unquestioned and rarely scrutinised until relatively recently.

Children could be declared 'state wards' on application to the Courts or by the Courts as a consequence of criminal behaviour or through the use of administrative and Ministerial powers where Court processes were effectively bypassed. Additionally, until the late 1980's or early 1990's it was possible in Australian jurisdictions for children who had not offended against the law to be placed in detention centres or prisons.

The detention or imprisonment of non-offending youth was often utilised by Australian 'child welfare' departments as an option if a child was 'uncontrollable' or 'difficult' and as a consequential punishment for behaviour such as absconding. The provision to place children and young people in detention was also used as a response to the 'immoral' behaviour of young women.

The sentencing patterns of the juvenile or criminal courts or the use of administratively sanctioned detention as a form of care for many children, reflected a time where authorities frequently argued the rehabilitative capacity of their detention and punishment systems. Research is generally pessimistic about the rehabilitative power of detention, institutionalisation or imprisonment.

A greater awareness of the limited rehabilitative power of detention for children and youth and greater legal protections for them are reflected in the declining numbers detained from 1981 to 2001. The following figures over a 20-year period show the decline in the numbers of children held in detention or prison in New South Wales on June 30 in that year.

In 1981 the number was 611 representing a rate of 87.6 per 100,000 of the relevant population		
1991	326	48.2
2001	232	32.7

(ABS 2002)

Additionally, incarceration is more likely to be imposed on children who are under wardship orders. In 1993-94, males were 13 times more likely and females 35 times more likely to be admitted to a detention centre if they were wards than if they were not (Community Services Commission 1996). It is probable that children in the care of the state were incarcerated in detention and prison at an even greater rate than that found in 1993-94 in the era prior to juvenile justice reforms.

The Commission suggests the Committee will need to include an examination of the detention of children and their treatment if it wishes to form a comprehensive view about abusive past practices. Similar sentiments are also expressed about children who were previously institutionalised in mental health facilities and immigration detention centres.

3.0 TERMS OF REFERENCE

3.1

(a) in relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children:

- (i) whether any unsafe, improper or unlawful care or treatment of children occurred in these institutions or places,**
- (ii) whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection, and**
- (iii) an estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions or places;**

The Commission supports the Committee's endeavour to determine the extent of 'unsafe, improper or unlawful care or treatment' in institutions and foster care. The Commission takes the view that incontrovertible evidence exists to

demonstrate there were such practices and it is the extent and corrective action which requires determination.

Various inquiries affirm many children were badly abused and mistreated in institutions and disadvantaged by the policies and prevailing attitudes of the day. Notable inquiries include:

- The Royal Commission into Aboriginal Deaths in Custody (1987)
- Bringing Them Home
Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families (1997).
- Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions ('the Forde Report') (1999).
- Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (Western Australia 'the Gordon Inquiry') (2001).
- Community Affairs References Committee Report: Lost Innocents: Righting the Record (2001).

Additionally, works of scholarship, child death reviews, sworn testimony and individual's published recollections of their lives in foster care and institutional care provide accounts of abusive attitude and behaviour of carers and others toward children in care. Some of these values and attitudes gave adults a belief that they had the right to:

- have children beaten;

"In 1933, an inquiry into the Boys' Industrial School at Yanco (NSW) established one boy had been punished for absconding by being forced to run nine miles around the oval. He had also been made to engage in bare-knuckle boxing with five inmates who were permitted to punish him." (Kociumbas 1997:171)
- allow them to enter the forces and participate in combat;

The youngest Australian soldier killed at Gallipoli was 14-year-old James Martin. Alex Campbell, the longest-lived veteran of Gallipoli enlisted at 16 years of age. It is evident authorities, families and community knew boys were lying about their ages to enlist and fight.
- sterilise them;

The Eugenics Society of Victoria was pressing for greater legal power to sterilise defectives and an unknown number of sterilisation procedures was being practiced in some state mental hospitals in 1936. (Kociumbas 1997)

Today these attitudes seem anachronistic and abusive, as ours today may seem with future analysis and hindsight.

3.2

(b) the extent and impact of the long-term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing remedies and support mechanisms;

The Australian community, like similar communities, has been made increasingly aware of the extent and impact of child abuse. In the recent review of child protection in South Australia the conclusion reached is that while the extent of abuse cannot be accurately known, its significance is.

“Whilst the extent of child abuse cannot be pinpointed, there can be no doubt that from an epidemiological perspective, child maltreatment is one of the most significant issues facing the community. That is because of its immediate and long-term impact on the health and wellbeing of the children and young people concerned, their families and the cost this represents to the community.” (Layton 2003)

Today we understand abuse is not confined to particular child welfare institutions, churches or families. For example, Trisha Leahy - a Senior Psychologist at the Australian Institute of Sport, conducted research and presented her findings in an article entitled ‘Preventing The Sexual Abuse of Young People in Australian Sport’ that found:

“From a group of 370 elite and club, male and female athletes, 31% of female athletes and 21.3% of male athletes reported that they had experienced sexual abuse at some point in their lives. It was also found that almost half, 46.4%, of the elite group reporting sexual abuse, had been sexually abused by sports personnel. For the club group, this figure was 25.6%.

These data indicate that for athletes who report being sexually abused, and who are involved in competitive sport at the elite level, the odds are almost even that someone associated with that environment will have abused them. And there is a one in four chance that a club level athlete

reporting sexual abuse will have been abused by someone associated with that environment.

The sport-related abuse was primarily perpetrated by those in positions of authority or trust with the athletes.”

Leahy provides an account in her research of an interview with a victim who agreed to be interviewed partly to encourage those who were aware of abuse to act to prevent it.

“A young athlete sexually abused for many years by a coach, poignantly illustrates this, and indicates that one of the main reasons for agreeing to be interviewed was to prevent both the abuse and the bystander effect happening to others:

It's (pause) it's just awful to think that happened, and the people who could have stopped it, and not just for me ... uhm, I can't believe that they couldn't, you know what I mean? They, they just (long pause) they saw things that were wrong, and they didn't do anything about it so (long pause), yeah (long pause). But one of the things, you know, I want to talk to you 'cause this is very bad, is not only the fact that I fell out of a sport that should have protected me, in, uhm ... I lost so much (long pause) ...I could have saved a few years of my life...” (2001)

Marianne James (1997) from the Australian Institute of Criminology concludes as many others have, that collected data is the tip of the iceberg when it comes to accurately estimating the amount of abuse in our community:

“Prevalence statistics indicate, therefore, that the number of child sexual abuse cases reported to authorities is only a small fraction of the number disclosed in adulthood surveys of childhood experiences, and that in terms of extent and potential harm, child sexual abuse of both boys and girls constitutes a serious problem in Australia.”

Of course, the extent of child abuse is not confined to sexual abuse. The Shaken Baby Syndrome (SBS) and other non-accidental injury potentially inflict severe lifelong damage to a child. Professor Fiona Stanley (2000) writes:

“... the incidence of child abuse – physical, emotional and sexual – is thought to have risen over the last three decades. ... The tragedy of this is illustrated by the proportions of post-neonatally acquired cerebral palsy due to non-accidental injury in WA children, which rose from 3.4% to 14.9% between 1956-75 and 1980-92.”

Kevin Wallis in an Australian book ‘From Victim to Offender’ writes of the prevalence of sexual abuse:

“Various estimates of the incidence of sexual assault postulate that one in three females and slightly fewer males will be sexually molested before they reach eighteen years of age. The estimates of abuse incidence and the dramatic increase in the reporting of sexual assault suggest that child abuse is widespread throughout the community and it is illogical to place the blame on a small subgroup of fixated offenders.” (Briggs 1995)

Clearly any costs for an individual victim and their family represent an ‘opportunity lost’ cost for the community. People who may have been more productive in their lives and in their contribution to the community may not contribute as they would have, because their life’s energy is devoted to wrestling with the legacy of their abuse. Victims of abuse may experience throughout the remainder of their lives significant mental health, physical health and relationship problems resulting in suicide, self harming behaviour, suicide ideation, homelessness, marital problems, substance abuse problems, criminality, child-rearing problems and feelings of worthlessness.

Of course not all victims of abuse fail to function and thrive in their lives and in the community. The resilience of those who have experienced abuse and ‘survived’ provides potentially valuable lessons to those who are struggling and for service deliverers. (Please see Appendix 1.)

In an Australian Institute of Criminology trends and issues paper Marianne James provided data about the economic cost of abuse and compared costs of preventive programs.

“It was estimated that the cost in future lost productivity of severely abused children was between US\$658 million and US\$1.3 billion annually, based on the assumption that the children’s impairments caused by the abuse would limit their potential earnings by just 5 to 10 percent (United States General Accounting Office. 1992). ...

Another study by the Michigan Children’s Trust Fund compared the costs of an early intervention program which started prenatally and worked intensively with parents for the first year of a child’s life, with the costs incurred when a child is abused. The study showed that, offering early intervention to every family in the state was approximately one-twentieth of the costs associated with abuse. ...

For instance in Australia, even in 1991-92 the total expenditure on services relating to the notification and substantiation of child abuse and neglect provided by departments of Community Services was estimated to be approximately A\$90 million (Calvert 1993). This figure did not include the cost of the additional services provided by health workers, police and community organizations. ...

The United Kingdom National Commission of Inquiry into the Prevention of Child Abuse (1996) estimated that the cost of child protection services and additional mental health and correctional services associated with child abuse and neglect was over 1 billion pounds per year in England and Wales.” (Briggs 1995)

Layton cites an American study conducted in 2001 where a conservative estimate concluded US\$94 billion was spent annually in response to child abuse. Of particular interest was the report that:

“Approximately 75% was spent annually on treating all the long term, indirect effects of child abuse, including special education, mental and physical health care, juvenile justice, lost productivity and adult criminality. The most costly long-term effects, according to this analysis, were those associated with responding to adults who, because of earlier abuse, were involved in criminal activity.” (2003)

Why people are afflicted differently by abuse appears to depend on a constellation of social factors and personality characteristics. Briggs’ work with victims of sexual abuse and offenders provides some insights into this aspect of recovery from abuse. She indicates that those who were victims and who self assessed themselves as recovering well from abuse did so because:

- they recognised and escaped from the abuse;
- they did not think they were targeted for any special reason;
- they blamed the offender entirely for what happened; and,
- they carried no guilt or self recrimination into adulthood. (1995)

Based on Briggs’ assessment, community education for children and parents; teaching children and youth how to protect themselves and seek help if they are victims of abuse; and ensuring children and youth can access on-going support and counselling are critical elements of the support and remediation fabric.

Briggs’ book also traces, in some cases, the evolution of a victim becoming a child sex offender. While it is important to destroy the myth that victims *always* become offenders, the state needs to accept that many victims have in their histories their own abuse experiences. In Canada and the United Kingdom circles of support are being established to assist offenders reintegrate into the community by offering them 24-hour support in an attempt to help them overcome, or at least control, their predilection towards molesting children.

Many of the services necessary to prevent abuse and reduce its severity are family support services, directed toward parents, especially those who have ‘risk’ characteristics within their family make up. For example young mothers and fathers, those in dire financial circumstances, those with drug and alcohol

dependencies and those where domestic violence is a feature of the relationship. Other services which target children with learning and social difficulties or aggressive tendencies are ideally suitable for delivery through childcare and schools.

Various authors and studies have set out frameworks applicable to constructing services to alleviate the likelihood of abuse and to respond to it if it occurs. A comprehensive outline was provided to the federal government by a team of noted researchers and academics in 1999 in the 'Pathways to prevention – developmental and early intervention approaches to crime in Australia'. The work amplified evidence that a successful crime reduction strategy depended on improving the welfare of children and reducing child abuse. Table 2.3 of the report, 'Responsibilities for the prevention of child maltreatment and juvenile crime and the creation of a more child friendly environment' is provided at Appendix 2.

Other frameworks, complementary to the one described above, assisting planners and administrators to conceptualise the array of intervention and prevention services are available in the literature. These frameworks are built on distinguishing three levels of services:

- Universal or primary services targeted at the entire population and aim to elevate all of our understandings in non-stigmatising ways.

“Many prevention initiatives have taken a problem-focussed approach, where the objective is the prevention of a social ill and a reduction in risk rather than the promotion of positive, life enhancing relationships, appropriate parenting and pro-child policies. ... Thus any models framed around prevention without promotion may be considered to offer a somewhat restrictive means to address social ills.” (Tomison et al 2000)

- Secondary services are targeted at selected population groups or individuals.

Various home visiting programs are based on providing a greater concentration of visits and services to single parents, young parents and/or those with additional problems such as drug dependency or without extended family support.

- Tertiary services are individually tailored to 'high risk' children, often provided following statutory intervention such as an investigation of abuse or neglect allegations.

Given the knowledge and the frameworks available to politicians and administrators it is salutary to note that Associate Professor Dorothy Scott posed this question in 2002:

“Is there a child protection crisis and if so, what should we do about it?”

Her response commenced: “The answer is yes, there is a crisis.” Later she added: “Nothing less than radical reform will work”.

It is evident from the ‘Pathways to Prevention’ framework that ‘lining up’ or ‘joining together’ diverse elements within government, societal institutions, the not for profit welfare sector and the community to deliver an integrated and effective child abuse prevention and response strategy is beyond any one particular authority or department.

The Commission takes the view that there are obstacles to the provision of adequate preventive, support and remedial services in Australia and it details two of them.

1. Resources

Currently whether any jurisdiction can effectively respond to the level of abuse and child exploitation in its community is doubtful. There are serious concerns held for children who are the victims of criminal and unintentional abuse, who are subject to female genital mutilation, who witness domestic violence or who are in the care of a person with a mental illness or are the carers of their own ill or disabled parents.

Many abuse investigations are complex. The most difficult cases are often those where there is low-level chronic neglect or doubt about whether the degree of abuse will result in successful statutory action. A family that is determined to block access to services, if abuse is not substantiated, can do so fairly effectively. Even when families are willing to accept services, it is possible that a suitable service is not available or not available in a timely manner.

“A system in overload has only 2 choices – to have a waiting list such that the small proportion of endangered children will be harmed by the time you get to them, or do “quick and dirty” risk assessments, resulting in a high rate of both false positives and false negatives. It is important to recognize that child abuse does not lend itself easily to triage. All the risk assessment instruments have very high false positive rates, and of course, statutory intervention is dependent on actual evidence of significant harm, not on a statistical measure of risk.” (Scott 2002)

2. Coordination and the effective use of resources.

The system currently does not appear to provide value for its investment. Some of this problem is caused by our federal system of government and administration. Effective coordination is a difficult outcome to achieve within the various tiers of government (welfare, health, police, justice, education at the state level and Centrelink, Family and Community Services, Attorney Generals, DETYA at the federal level) without considering effective coordination between the tiers of government (federal, state and local) and with the non-government service delivery providers.

An example of this is 'child care'. Child care is not consistently managed across Australia or even within our states and territories. Research shows that child care plays a significant role in the prevention of child abuse and provides opportunities for early identification, intervention and support for children and families who may, without this support, require more intensive, reactive and expensive intervention. In Australia there are a range of child care options for families. Service providers may be funded by different levels of government or privately. Funders have different service standards and accreditation processes and many do not coordinate with other providers.

The Commission supports the view that the states are constitutionally responsible for the provision of statutory child protection services. However the provision of effective statutory child protection services is only possible when they are contextualised within a range of primary and secondary programs and where there is a vision about the outcomes the national system is to deliver.

The Commission's view is that the Commonwealth has a valid role in providing some services and shared leadership to achieve the outcome of an effective child protection system. A closer consideration of the commonwealth's role apropos the states will yield better outcomes.

At times there have been effective state/Commonwealth administered funding programs where jointly desired outcomes are jointly funded and delivered by the state as a single package. The Supported Accommodation Assistance Program is an example of a joint program that commenced in the mid 1980's in an attempt to address homelessness.

In the provision of early intervention and prevention services the Commonwealth has its own funding to welfare sector agencies under the *Stronger Families Stronger Communities* strategy. Many of the strategies and policy propositions within *Stronger Families Stronger Communities* are identical with state initiatives and aspirations. For example, a comparison of the New South Wales *Families*

First cross government initiative with the *Stronger Families Stronger Communities* strategy shows:

	<i>Stronger Families Stronger Communities (Commonwealth)</i>	<i>Families First (NSW)</i>
Description and Target Group	The projects to be funded will provide services to “families with very young children and/or families living in remote areas.”	Families First is connecting parents to each other for support and building communities and services that support families with children 0–8 years.
Strategy	This initiative aims to encourage better coordination and integration of local services to help communities find new ways to strengthen families, with a focus on early childhood development and effective parenting.	Families First is delivered jointly by five government agencies – Area Health Services, Community Services, Education and Training, Housing and Disability, and Ageing and Home Care in partnership with parents, community organisations and local government.

The jockeying between levels of government to be the funder for programs is counter-productive. Service providers duplicate administrative effort in responding to funding bodies. There is often inadequate communication between the government funding bodies at the local level even though the state and federal departments deliver essentially similar services and may fund the same provider.

The Commission contends the Commonwealth has a valid role in contributing to a vision of national leadership in regard to the effective use of resources, ensuring Australia responds to emerging threats to children that are beyond individual states and territories, and ensuring its mainstream services, such as Centrelink, act in a way to achieve agreed child welfare outcomes.

3.3

(f) whether statutory or administrative limitations or barriers adversely affect those who wish to pursue claims against perpetrators of abuse previously involved in the care of children;

The legal system is currently dealing with a number of civil and criminal cases which have arisen out of the alleged mistreatment and abuse of children who were brought up in institutions and who are now adults. Many of these adults have been left with significant emotional and social difficulties as a result of their childhood experiences. It is not surprising that some seek compensation through civil proceedings nor is it surprising that there are often many years between the incidences of abuse and the readiness of the injured party to commence proceedings.

However, when judicial action is contemplated after a lapse of time both the prospective plaintiffs and the defendants face difficulties caused by the lapse of time since the events occurred and the limitation periods to which such delays are subject.

In *Carter v Corporation of the Sisters of Mercy of the Dioceses of Rockhampton & Ors* (2201) QCA 35, the tensions in limiting some forms of judicial redress victims can seek if they do not act within legally defined time frames are highlighted. Such laws appear to compound the abuse a victim may have suffered many years before and deny an individual an opportunity to resolve lingering issues. The judgement is too long to quote and the Commission recommends the judgement be read by the Committee as it not only deals with the issue of limiting actions but also the horrific treatment of children in institutions in 1960's Australia.

Of note though, Atkinson J commences his judgement:

“There is usually no conflict inherent in the goal of modern litigation which is to produce a just result expeditiously, indeed, delay in litigation may often lead to injustice to one or both parties. However, from time to time justice and expedition may appear to be in conflict with one another.”

Similar problems have been faced in other jurisdictions with regard to civil actions for sexual offences against children. La Forest J commenced his landmark judgement for the majority in the Supreme Court of Canada in *M(K) v M(H)* by saying:

“This case concerns the procedural obstacles facing victims of childhood incestuous abuse who attempt to vindicate their rights in a civil action for damages against the perpetrator of the incest. While the problem of incest is not new, it has only recently gained recognition as one of the more

serious depredations plaguing Canadian families. Its incidence is alarming and profoundly disturbing. The damages wrought by incest are peculiarly complex and devastating, often manifesting themselves slowly and imperceptibly, so that the victim may only come to realise the harms she (and at times he) has suffered, and their cause, long after the statute of limitations has ostensibly proscribed a civil remedy. It has been said that the statute of limitations remains the major stumbling block for adult survivors of incest ...”

3.4

(g) the need for public, social and legal policy to be reviewed to ensure an effective and responsive framework to deal with child abuse matters in relation to:

- (i) any systemic factors contributing to the occurrences of abuse and/or neglect,**
- (ii) any failure to detect or prevent these occurrences in government and non-government institutions and fostering practices, and,**
- (iii) any necessary changes required in current policies, practices and reporting mechanisms.**

Although there are various systemic issues in Australia contributing to the likelihood of abuse or compounding its effect, it is important to recognise the strengths in our current system of child protection and out of home and alternative care. In the Commission’s Submission to the Parliamentary Standing Committee on Social Issues, Inquiry into Child Protection Services, the following was noted as being of “much value in the [current] system”:

- the legislative framework provided by the Child and Young Persons (Care and Protection) Act 1998 is based upon principles of good practice and key research messages;
- the recent decision by the Department of Community Services (DoCS) to move the organisation away from a forensic approach to child protection service delivery to a more holistic assessments and strengths based approach is to be applauded;
- the development of specialist out of home care teams and of specialist workers/cross office teams for recruitment and support of foster carers has occurred in some areas;
- the Joint Investigation Response Teams, comprising police and DoCS, on the evidence available so far, have been of benefit; and,
- recent improvements to the foster care payment system are positive and should be retained and keep pace with the actual costs of care. (2002)

In addition, New South Wales has recently instigated significant legislative changes and initiatives such as: the *Child Protection (Prohibited Employment) Act 1998*; the sex offenders' register; and capacity building projects for organisations working with children. These changes target staff selection, recruitment and other human resource practices and will contribute to making organizations safer for the children they work with. Changes in other Australian jurisdictions, for example the introduction of legislation in Western Australia that will require all adults, including volunteers, to have a national police clearance if they work or volunteer with children, are motivated by a desire to achieve the same outcome and highlights the need for national extension.

However, the challenges to our system remain and include:

3.4.1 Outcome based funding.

Services funded by government may not be funded adequately to comply with duty of care requirements.

Many state and federal services for 'at risk', abused and neglected children are provided with public funds by private or not for profit service providers. Government funding is generally linked to tender and contract processes where the government department purchases service 'outcomes'.

Purchasing service outcomes can pose challenges for funders. It is difficult to implement in geographic or cultural communities where there is only one agency available to provide the service. If that agency is unable to achieve the outcomes purchased, the funder has no option but to continue funding the agency.

An unintended by-product of the tender process can be disruption and distress to children and young people as a result of changing service providers, and particularly service staff, after an initial 'pilot' period or if the funder is dissatisfied with the service provision and services are re-tendered.

In addition, while there may be a set of high level 'service standards' funded agencies are required to comply with, funding may not enable agencies to adequately meet their 'duty of care' to the children, young people and families receiving services.

The issue is topical in Australia in 2003. In the ABC's Four Corners program screened on May 19, 2003, it was argued the provider of immigration detention at Woomera, Australasian Corrective Management (ACM), had inadequate resources to effectively manage detainees and child abuse issues within the centre. The Minister of Immigration Multicultural and Indigenous Affairs made it clear in subsequent interviews that ACM was contracted to deliver outcomes and

that effective staffing levels were not the business of government, provided the outcomes were delivered to an agreed standard. Employees of ACM point out that the company was focussed on profits and that by reducing staff numbers a greater profit was returned to the company. Whether an Australian government could similarly relinquish its liability for its non-delegable duty of care it has toward Australian citizen children in detention, simply by contracting the service to a provider, is a matter of conjecture.

In a full bench decision of the Australian High Court (*New South Wales v Lepore* [2003] HCA 4 6 February 2003) the Judges' comments about duty of care in a case concerning schools highlight a gap between current practice in various services and probable judicial expectations. In commenting on liability as a result of negligence and vicarious liability, Gaudron J states:

“A residential institution or authority that does not take reasonable steps to institute a system such that its employees do not come into personal contact with a child or other vulnerable person unless supervised or accompanied by another adult should be held directly liable in negligence if abuse occurs in a situation in which there is neither supervision nor an accompanying adult. ... So, too, on that basis, it would be a breach of a personal or non-delegable duty of care resulting in direct liability to allow an employee to share a bedroom with a child entrusted to his care, as was the case in *Trotman*.”

In the same decision, McHugh J discusses the non-delegable nature of the duty of care a school has for its students and lists the steps that may be reasonable to prevent abuse:

“The doctrine of non-delegable duty no doubt makes the position of education authorities difficult. But they are not totally helpless to prevent teachers from assaulting or sexually assaulting pupils. Education authorities can:

- institute systems that will weed out or give early warning signs of potential offenders;
- deter misconduct by having classes inspected without warning;
- prohibit teachers from seeing a pupil without the presence of another teacher, particularly during recess;
- encourage teachers and pupils to complain to the school authorities and parents about any signs of aberrant or unusual behaviour on the part of a teacher.”

Some of these sentiments may be applicable to detention centres, residential agencies – including treatment facilities, youth refuges and other forms of care – including foster care. In youth accommodation services, for example, current levels of funding may allow for only one worker on shift on a ‘sleep over’ basis.

If the High Court decision is studied by providers it may be that there is a contraction of services in Australia to ensure those services provided meet the standards implied in the judgement and act responsibly to avoid damages that may arise due to liability found as a consequence of negligence or vicariously.

3.4.2 A shortage of ‘high quality’ foster carers in Australia.

Foster carers undertake a difficult task on behalf of the state. The children they care for frequently have special needs and challenging behaviours. Individual carers have replaced a system of care that was over reliant on government and non-government institutional residential care or detention that was expensive and outmoded.

At present, the predominant foster care model is “charitable” foster care: the carers receive a payment designed only to reimburse them for the expense of providing care.

However, as a consequence of the shortage of quality “charitable” carers, should a child come into care there is greater likelihood that:

- a suitable placement will not be available in the child’s own community;
- a series of short term placements will often be necessary until a suitable placement is found; and
- a placement will be sought from the child’s extended family network.

Placing children in need of alternative care and accommodation with extended family has a ‘common sense’ feel about it, and provided the child’s wishes are properly discerned and the safety of the placement assessed it may be an appropriate course of action. However, under what circumstances such placements need to be sanctioned by the Court, either the states’ Children’s Courts or the federal Family Court is a grey area within child welfare in Australia.

Caution must also be exercised lest children are ‘placed’ with relatives in circumstances where there are already dysfunctional dynamics or where relatives reluctantly assume responsibility for the child without an appropriate commitment to the child’s wellbeing. A recent inquiry in the United Kingdom into the death of a child, Victoria Climbié, illustrates that extended family placements are not always in a child’s best interests. Victoria was an 8-year-old girl placed with her great aunt and partner and subsequently murdered by them.

There is considerable scope for augmenting the current options of “charitable” foster care and almost unsupported kinship care. Kinship care should be based

on adequate assessment, support and monitoring. “Professional” foster care, or caring as a form of employment, should be available as an option in all jurisdictions.

3.4.3 The adversarial nature of judicial processes in Australia’s Family Court and states’ Children’s Court.

Australian judicial processes are essentially adversarial in nature. In care and protection matters and the Family Court the processes of judicial decision-making seems to result in the parties adopting a polarised and adversarial approach toward each other. In such a contest, the child or young person may become the ‘trophy’ of a victorious outcome.

Recommendation 108 of South Australia’s Review of Child Protection deals with the need for Family and Youth Services (FAYS) to review its responses to Family Court referrals. The reason for the recommendation is:

“FAYS appear to inappropriately abrogate responsibility to the Family Court to protect children who are the subject of mandatory notification or alleged abuse. The recommendation seeks to enure that FAYS intervene and remain involved in cases where it is appropriate.” (Layton 2003)

In a marital separation where both parties are desirous of having custody of a child or children, one party may lodge an allegation of abuse by the other. On these grounds a number of state and territory officers have come to regard allegations made in the context of a Family Court dispute with caution, believing that the general purpose of the allegation, not dissuaded by legal representatives, is so one party can argue that the other has been under investigation by the state for maltreatment of the child. In the already overloaded state system this can lead to a downplaying of the significance of referrals made in the context of Family Court disputes.

Attempts have been made to improve liaison and communication between the federal and state jurisdictions (the Magellen project in Victoria and the Columbus project in Western Australia) to ensure allegations are investigated and assessed and to demonstrate that the system functions effectively to protect children. In September 2002 the Family Law Council provided recommendations to the federal government in its ‘*Family Law and Child Protection*’ report. The report’s seventeen recommendations are relevant to the Committee’s inquiry and it recommends among other things the federal government establish a child protection service

At the base of the problem are issues of resources, jurisdiction, coordination, professional recognition and communication and it is likely that unless these fundamental issues are redressed there will continue to be professional

dissatisfaction expressed by those concerned with an outcome of child protection.

In the states' care and protection jurisdictions the parties are often the parent(s) of the child/ren for whom the application is sought and the state department. The court does not have an inquisitorial tradition and it essentially weighs up the arguments of the various representatives. The judicial process, at least from the lawyers' viewpoint, appears to require the state to portray the parent in the most negative light possible, to ensure an outcome where the department 'wins' the care of the child/ren.

“Intervention is not based on an individualised professional assessment of each child and their family driven by the question ‘How is the child and what we need to do to assist?’ but is increasingly based on processing cases along an assembly line of legalistic procedures that asks ‘Do we have a case that meets the threshold of evidence that justifies court action?’ This is its fundamental weakness.” (Scott 2002)

In the states' Juvenile Justice jurisdictions from time to time judicial officers come under enormous pressure to ‘make examples’ of juvenile offenders. The sort of legislation that has come to pass in some jurisdictions resulting in the mandatory sentencing of juveniles without due regard for other factors appears to be at odds with acting in their best interests.

3.4.4 The lawful corporal punishment of children.

A significant consideration in relation to child abuse in Australia is a national reluctance to ban smacking and other forms of corporal punishment. There is significant literature and professional opinion indicating that smacking and corporal punishment are not in the ‘best interests’ of children or in the interests of child protection generally. Australian jurisdictions are aware of this literature yet resist legislating to outlaw smacking or other forms of corporal punishment. The NSW *Crimes Amendment (Child Protection--Physical Mistreatment) Act 2001*, while a comparatively minor legal restriction on smacking, is the sole example in recent years.

While there are alternative views about smacking and corporal punishment, it is hard to make a case for its legal continuance. Provisions allowing parents and guardians to physically chastise a child perpetuate a ‘double’ message with respect to an inappropriate form of discipline. While it is evident many parents need guidance in learning how to effectively discipline their children it may be timely for lawmakers to assist those involved in front line child protection work by making it clear that acceptable discipline in Australia excludes corporal punishment.

John Reddington's article 'Banning Corporal Punishment: Should Psychologists Lead the Way?' provides an analysis of trends in corporal punishment in several European countries, as well as a review of research into the effects of smacking and corporal punishment.

"Durrant (1999) carried out a detailed analysis of the degree of success Sweden has achieved since legally banning corporal punishment in 1979.

In changing the law, Sweden aimed to: "Explicitly prohibit all forms of corporal punishment of children by caretakers in an effort to (1) alter public attitudes towards this practice, (2) increase early identification of children at risk for abuse, and (3), promote earlier and more supportive intervention to families (p. 435)"

She concluded: "The Swedish ban has been highly successful in accomplishing its goals (p.435)." Furthermore, the following countries have now followed Sweden's lead: Norway 1981; Finland 1983; Austria 1989; Cyprus 1994; Denmark 1997; Latvia 1998; Croatia 1999; Germany 2001; Israel 2001; and Scotland 2002 (children under 3 years)." (2002)

3.4.5 The inappropriate and unnecessary use of detention of children in some circumstances;

With the wealth of literature and research information available to decision makers about the negative consequences of incarcerating children, it is difficult to believe that non-criminal children are detained in Australia in any circumstance other than as a 'last' resort, when other less restrictive options have been identified, assessed and rejected.

The detention of non-citizen children as a consequence of their illegal entry into Australia will have a deleterious effect on them. The Commission argues the paramount principle underpinning planning for all children in Australia ought be their 'best interests'.

The Department of Immigration Multicultural and Indigenous Affairs (DIMIA) submission to the HREOC National Inquiry into Children in Immigration Detention (2002) is an effort to defend a practice that is indefensible. The reflections of DIMIA are at odds with the testimonies of individual detainees and the impressions of those who work with detainees including those employed by DIMIA's service providers.

As at April 12, 2002, of the 1,239 people in detention there were 184 minors. The following comments are taken from DIMIA's submission and are followed by the Commission's observation.

DIMIA.

“It is a fundamental premise of the Department’s detention planning and management that families, women, children and individuals with special needs are placed in appropriate accommodation. Where possible, women, children and families are accommodated separately from single men. Separate recreational facilities may also be provided for the use of women and children. The provision of accommodation sensitive to the needs of women and children is being taken into account in the development of new detention facilities and in the refurbishment of existing facilities.”

Commission’s observation.

It is apparent from this comment that ‘appropriate’ accommodation is not currently possible. Additionally the notion that children are always ‘safe’ with women is flawed. Men and women react to stressful environments similarly and in many ways that may be injurious to children.

DIMIA

“State law applies in a Commonwealth place, so the care and protection of children is subject to the particular requirements of that State’s legislation, except to the extent of any inconsistency with Commonwealth laws. This means that the particular State’s legislative definition of being ‘at risk’ or ‘in need of protection’ and that State’s approach to investigation and reporting requirements will apply. Other rights and responsibilities under the State Act (such as those of parents) may also be relevant factors in investigating notifications or providing advice and assistance within a detention facility.

Departmental and Services Provider staff are in regular contact with local welfare authorities. Arrangements are in place (and are in the process of being formalized through the MOUs) for ensuring exchange of relevant information between the Department and the child welfare authority. Arrangements between the State child welfare authority, the Department and the Services Provider vary between facilities and depend on the number of children in a facility at any one time, and the capacity of the child welfare authority to respond.”

Commission’s observation.

DIMIA’s submission implies the state welfare authorities are able to effectively protect children in a situation that is dangerous and unsuitable. In the case of immigration detention, the Federal government allows its agents to refer any instances of abuse to the state authorities; the state authorities then investigate a particular instance or allegation of abuse.

This restricted view of child welfare allows the systemic abuse of unnecessary detention to continue. Placing children in an environment where there is a high degree of emotional tension, periodic rioting, inmates self harming and starving and accommodation being subject to 'spot searches' means that the centre itself is an unsuitable environment for children.

DIMIA

"The Department and Services Provider have in place a comprehensive range of policies and practices which aim to ensure the safety and protection of all children in detention. These policies and practices operate within a legislative framework that includes both the Migration Act and State child welfare legislation. This meets the obligation to ensure the protection of children under Article 19 of CROC [United Nations Charter on the Rights of Children]. The Department and Services Provider make every effort to prevent undesirable or harmful actions occurring in immigration detention facilities, and to ensure that children are not exposed to them. Parents of detainee children also have a responsibility to keep their children from witnessing distressing behaviour by detainees."

Commission's observation.

Well-resourced parents and intellectually stimulated children are an important basis for the future of our community and society. Families and individuals in detention experience additional trauma and have a lowered capacity to cope.

On the face of it Australia has established an immigration detention system that deprives a number of children of their 'best' possible childhood. As these children grow up and a number are released from detention and become Australian residents and citizens their stories cast shame on our current practices in a way akin to that of the child migrants and stolen generation.

The circumstances of each child's best interests need to be teased out and the continuation of detention of a child on the basis of the on-going detention of their parent(s) needs to be weighed up against the deprivation inflicted on that child.

It is important to note that states and territories have no authority to act outside their agreements with the Commonwealth regarding the removal of children from detention centres or to influence the Commonwealth's current care practices. Effectively, state and territory intervention or investigation into the circumstances of children being held in immigration detention centres as a result of their parents' status, achieves little change for those children and young people if they cannot be removed.

4.0 CONCLUDING COMMENTS

Best outcomes for abused children and young people and those in care depend on more than the effectiveness of specialist individual agencies. Such outcomes depend upon:

- a unifying vision bringing about supportive and non-stigmatising mainstream societal attitudes toward parenting, disadvantaged children and young people, families in poverty, the Indigenous population and other special groups; and,
- agency focus and collaboration resulting in;
 - ♦ mainstream agencies responsible for health services, social security – particularly as it relates to income maintenance and family support, the Judiciary – particularly in the states' Children's Courts and the federal Family Court, law enforcement and education services being responsive to the needs of children and young people who are in care and/or who have been abused and their families; and,
 - ♦ their collaboration with each other and specialist abuse and care service providers to achieve an impact to improve the circumstances for these children and youth without fiscal boundaries and service specific performance indicators preventing resources being shared.

Acting in the long-term best interests of children and young people corresponds with acting in the longer-term best interests of the state. These long-term best interests are discerned by:

- generating, refining and promoting a national vision about the sort of community best suited for all our children;
- investing substantially to bring about a range of preventive and early intervention services, not only for young children but for all children, young people and families at points of transition and crisis;
- listening to the concerns of children and young people, their representative groups and their advocates about the way current services are provided and may be improved; and,
- collecting evidence about programs and encouraging research into their impact to ensure resource investment is accountable and consistent with the desired outcomes.

A body of informed professional opinion supports the provision of a range of child and family support and early intervention services to provide an optimal environment for children. Services needed when children and young people

cannot be effectively supported within their family, such as out of home and alternative care and child protection intervention should be a specialist part of this broad range of child and family services and utilised only when supportive and early intervention services cannot meet the immediate need of the child, young person or family.

Child care services should be recognised for their contribution to child abuse prevention. It is critical to ensure all child care services are of a high standard and accessible to all families. A national vision and coordination would assist in achieving this.

Substantiated child abuse frequently results from familial stress rather than criminal intent. It is important that families are not negatively stereotyped as a result of their abuse of a child, when it is in the child's best interest for authorities to facilitate the family's capacity to care for their child.

A child or youth who is abused or removed from home has a greater probability of poor life outcomes than other children. When a family is in crisis the range of intervention and prevention services offered to the child should:

- prevent wherever possible family breakdown and their removal - including providing intensive support to parents and financial support to impecunious families;
- if removed, providing high quality alternative care and complementary therapeutic services with adequate training and support for carers and ongoing contact with the family of origin, unless it contravenes the child's wishes and best interests;
- reunify them and their families, when it is safe to do so; and,
- support them when they leave care – including emotional and financial support beyond their legally defined childhood.

Effective state out of home and alternative care, child protection and complementary services rely on trained and professional staff, informed and educated consumers and a clear statement of outcomes and standards. Ensuring service delivery staff and their managers are appropriately trained and supported throughout their careers is essential to the quality of the care and protection systems.

Additionally, training and development activity needs to occur for workers from different sectors in collaborative teams, for example where players from the federal, state and non-government sectors work together to develop professional relationships and to develop a better understanding of each other's practice domain.

While it is important to look back to redress earlier wrongs, it is more important to address current problems and to provide better services for those children and

young people currently in the system. Apart from the problem of identifying and devoting resources to achieving an effective system of family support, early intervention, child protection and out of home and alternative care, there are immediate problems of:

- achieving effective coordination within and between the tiers of government and their agencies, including between Family and Community Services, Centrelink, the Family Court, the state agencies and the non-government welfare sector;
- having governments commit substantial resources for the long haul to early intervention and prevention when the economic benefit and political kudos falls outside of state and federal political cycles;
- on a change of government ceasing or 're-badging' programs causing discontinuity and confusion for the consumer and staff; and,
- the probability of having sound long-term approaches to care and protection caught up in a political polemic and 'pendulum swings'. For example, the introduction of harsh laws for juveniles in some jurisdictions bringing about higher rates of incarceration and institutionalisation.

"The key issue," Nigel Parton notes, "which the current debates are in danger of missing, is that if we are serious about improving the life chances and safety of children and young people this is a much wider issue than simply re-balancing child protection and family support and the decision making and priorities of social workers and other front-line professionals. It is a major social issue that has wide implications for the way society is organised, the way resources are allocated and the way policies are developed and put into operation." (1996)

5.0 APPENDIX 1.

**TABLE 3.3
RISK FACTORS ASSOCIATED WITH ANTISOCIAL AND
CRIMINAL BEHAVIOUR**

RISK FACTORS

CHILD FACTORS	FAMILY FACTORS	SCHOOL CONTEXT	LIFE EVENTS	COMMUNITY AND CULTURAL FACTORS
prematurity	Parental characteristics:	school failure		
low birth weight	teenage mothers	normative beliefs about aggression	divorce and family break up	socioeconomic disadvantage
disability	single parents	deviant peer group	war or natural disasters	population density and housing conditions
prenatal brain damage	psychiatric disorder, especially depression	bullying	death of a family member	urban area
birth injury	substance abuse	peer rejection		neighbourhood violence and crime
low intelligence	criminality	poor attachment to school		cultural norms
difficult temperament	antisocial models	inadequate behaviour management		concerning violence as acceptable response to frustration
chronic illness	Family environment:			media portrayal of violence
insecure attachment	family violence and disharmony			lack of support services
poor problem solving	marital discord			social or cultural discrimination

beliefs about aggression	disorganised		
attributions	negative interaction/social isolation		
poor social skills	large family size		
low self esteem	father absence		
lack of empathy	long term parental unemployment		
alienation	Parenting style:		
hyperactivity/disruptive behaviour	poor supervision and monitoring of child		
impulsivity	discipline style (harsh or inconsistent)		
	rejection of child		
	abuse		
	lack of warmth and affection		
	low involvement in child's activities		
	neglect		

Despite the suggestion that prediction of maladaptive behaviour is enhanced when protective factors are considered in addition to risk factors (O'Donnell, Hawkins and Abbott, 1995), few studies have been concerned with identifying the protective factors that act to inhibit criminal potential. Overall, the emphasis has been on risks and hazards.

The significance of protective factors, however, is underlined by the fact that predictions from risk factors are statements of probability. Although factors such as early troublesome behaviour are highly predictive of later offending, more than 50% of vulnerable individuals may not progress to such outcomes (Bor *et al*, in preparation; Loeber and Dishion, 1983). It is especially important then to identify protective factors and mechanisms that are likely to inhibit the development of antisocial behaviour and divert children to the pathways that lead towards positive outcomes. Preventive action cannot be solely directed toward the reduction of risk, especially when risk factors are difficult to modify.

APPENDIX 2.

Pathways to Prevention - Developmental and early intervention approaches to crime in Australia - Full Report

TABLE 2.3

RESPONSIBILITIES FOR THE PREVENTION OF CHILD MALTREATMENT AND JUVENILE CRIME, AND THE CREATION OF A MORE CHILD FRIENDLY ENVIRONMENT

(Adapted from UK Children's Commission Inquiry, 1996 and NSW Child Protection Council, in press)

	Roles and responsibilities	Needs	Action plan	Note/comment
Children and young people	To take responsibility for decisions when they have sufficient understanding	Adequate living conditions	Research into children's thinking and their worlds	Needs of individual children vary
	To tell a friend and/or trusted and reliable adult when they are unhappy or have concerns about themselves or friends	Basic physical care	Promotion of a greater understanding of children's needs by all adults	All adults need to learn how to listen to children and be aware of signs of abuse or neglect
		Affection and love	Change culture surrounding children	
		Security	Personal and social education provision in schools from an early age	
		Stimulation and learning	Implement UN Convention on Children's Rights	

Guidance Responsibility

Independence

Active promotion of self esteem

Promotion of general emotional health

	Roles and responsibilities	Needs	Action plan	Note/comment
Parents/carers	To have primary responsibility for the care of their children and meeting their needs	Adequate living conditions	The development of a State wide network of non stigmatising, accessible support services	Family units take different forms with different needs
	To provide protection	Advice and information	Parenting education to be available to all parents	Children's and parents' needs will differ and may conflict
	To seek help when things go wrong	Support in times of stress	Education on alternatives to physical punishment	Parenting is a challenging job and at times difficult
		Respite and relief from their caring role	Measures to tackle childhood poverty and discrimination	It is a lifetime commitment
		Learning and skills development		It affects future generations
		Time for themselves		It is the 'only job for which no training is provided'
		Time for their children		
	Roles and responsibilities	Needs	Action plan	Note/comment
Other members	family To provide support to parents/carers and their	Understanding of children and parents and their	Intergenerational support to be encouraged	Children value grandparents

children	needs		
To contribute as members of the family to the development of children	Grandparents' rights in relation to children eg access	Support for parents of young children who are also caring for other dependants	Parents often turn to their parents and other relatives for advice
	Understanding who is important in the child's family network		Other family members may not be in a position to offer support
			Parenting styles change between generations
			Other family members may be potential abusers

	Roles and responsibilities	Needs	Action plan	Note/comment
Neighbours and friends	To provide support and practical help to parents	Understanding of children's needs	Change culture so that the care of children becomes everyone's responsibility	The 'professionalisation' of responses to child abuse may mean that neighbours are less willing to intervene
	To be vigilant about the well being of all children	Knowledge of when to intervene	Public education on the needs of children and what steps to take when there are concerns about a child	Neighbours fear being accused of interfering and of 'getting it wrong'
	If they have persistent concerns which are unresolved, to report them	Knowledge of to whom concerns should be reported	Greater awareness of children's networks in the community	Unsympathetic responses from professionals have been reported by neighbours
		Understanding who is important to the child		

	Roles and responsibilities	Needs	Action plan	Note/comment
Schools	To provide safe and supportive environments and model positive interactions and relationships	All teachers need to be able to recognise early signs of school failure		
	To encourage children's participation	All teachers need an understanding of child abuse and protection procedures	Provide programs for return of excluded children to education	
	To identify learning and behavioural difficulties and children at risk of school failure	Teachers need a curriculum which focuses on relationship development	Programs to address bullying and conflict resolution	
	To identify children at risk of abuse or neglect and respond in accordance with child protection procedures	Training and development for school staff especially in relation to managing behavioural problems	Peer support programs and buddy systems	
	To prevent and respond to bullying		Develop appropriate forums for children and young people to participate in decision making about school policies and practice	
	To provide young people with skills which empower them		Teacher training to cover child abuse	
	To provide a focal point for local community activities involving children		Drug and alcohol education	

	Roles and responsibilities	Needs	Action plan	Note/comment
Housing	To ensure the provision of adequate family housing	Understanding of how housing provision is related to wider social provision	Increased provision of family housing	Homelessness has increased in recent years
	To provide emergency accommodation to homeless families and young people		Increased provision of accommodation for young people, especially those leaving care	
	To provide refuges for victims of violence		Provision of refuges/safe houses for runaways, many of whom have been abused	
	Roles and responsibilities	Needs	Action plan	Note/comment
Leisure recreation	and To provide recreational services, eg sport, swimming	Out of school activities to be effectively regulated	Private and voluntary initiatives as well as those in the statutory sector need to be regulated	
	To provide safe play areas and spaces for children and young people			
	To provide out of school and holiday schemes			
	Understanding of child development and protection			

procedures

Guidance on physical contact with children and young people

	Roles and responsibilities	Needs	Action plan	Note/comment
Health services, general practitioners	To provide primary health care in the community	Education on child development, children's needs and rights, child abuse and procedures	GPs to receive in-service training on child protection and mental health needs of children and young people	GP services are among the least stigmatising of all forms of provision and should be built on
	To provide advice on children's needs			
	To make referrals to specialist services			
	To participate in local prevention planning activities			
	Roles and responsibilities	Needs	Action plan	Note/comment
Community health and early childhood health services	To provide preventive health care, including the prevention of child abuse	Health visiting services to be improved	Develop and fund health visiting as a universal service	Early childhood health services are valued by the public and have the potential to form a central part of the prevention strategy
	To promote positive parenting	Effective resourcing of universal services to be addressed	Home visiting schemes for vulnerable families to be developed	
	To run services for parents eg drop in centres; parent and toddler groups etc		Vulnerability of babies to abuse to be addressed	

To undertake health checks and population profiling

To provide treatment for victims of child abuse and neglect in accordance with local procedures, and make appropriate referrals

To promote public health, including campaigning for improved services to meet identified needs

	Roles and responsibilities	Needs	Action plan	Note/comment
Prenatal and perinatal services	To provide antenatal care	Understanding of child abuse and child protection procedures	Home visits prior to birth to identify vulnerability to abuse	
	To provide education on parenting		Closer liaison between health and other professionals to be developed	
	To undertake health checks		Relevant health workers to identify and refer/treat cases of postnatal depression	
	To make child protection referrals			
	To participate in local child protection procedures			
	Roles and responsibilities	Needs	Action plan	Note/comment

Paediatricians	To provide a specialist child health service	Training in diagnosis of abuse	Only experienced paediatricians to access and diagnose child abuse
	To advise and support non specialists on child health needs		
	To access and diagnose child abuse		

Roles and responsibilities	Needs	Action plan	Note/comment
-----------------------------------	--------------	--------------------	---------------------

Child and adolescent mental health services	To identify possible cases of child abuse	Recognition of long term possible effects of abuse and harm	Treatment to be provided to all victims of abuse, at times when it is needed	Many children fail to receive the treatment they need
	To provide assessment of children's condition and needs		Training and appointment of child psychotherapists to be increased	
	To provide treatments to abused children and their families			
	To provide assessment and treatment to abusers			

Roles and responsibilities	Needs	Action plan	Note/comment
-----------------------------------	--------------	--------------------	---------------------

Adult and specialist services (eg drug and alcohol services, mental health)	To provide specialist services	Understanding of children's needs	Adult services to address the needs of children of adult patients and to make appropriate referrals	Adult services may fail to recognise the needs of their patients' children
	To make referral when there are child protection	Understanding of child protection procedures		Adult services should recognise the particular needs of adolescent

concerns relating to the parent

patients

To recognise the needs of children related to an adult being treated

	Roles and responsibilities	Needs	Action plan	Note/comment
State departments of community services	To lead, in conjunction with health, on children's services planning and child abuse prevention	Understanding of child development and children's needs	Children's services planning to become an effective mechanism for developing preventive services	
	To fund/provide family support	Understanding of families and how to work with them	Priority to be given to prevention	
	To provide out-of-home care for children in need of care	Resources to be allocated for family support	Deployment of staff and resources to prevention	
	To ensure the maintenance of standards in services for vulnerable children	Strategic planning and joint agency and professional working	Training and support needs of staff to be met	
		Staff development support and training	Residential care to be developed as a positive option and to be rigorously regulated	
	Feedback from young people and families on their experience	Staff training in promoting participative decision making by families and young people		
	Roles and responsibilities	Needs	Action plan	Note/comment

Non government organisations	To provide support to children and families through a range of services	In relation to all parts of the non government sector:	In relation to all parts of the non government sector:
		Improve coordination both within the sector and with statutory agencies	
1. Children and families organisations eg Barnardos, Burnside, Family Support Services; Centacare; Homestart	To refer to other agencies, as appropriate, including child protection concerns	NGOs to participate in children's service planning	Organisations may be working independently or in partnership with other agencies
	To campaign for improved provision of services	NGOs to ensure staff and volunteers have an understanding of child development, child abuse, child protection, and other risk and protective factors for juvenile crime	The sector is very varied, ranging from large organisations to small local groups
	To involve parents/children	Children's charities to consider the images of children which they use for fundraising purposes	Funding arrangements vary from own fundraising efforts to dependence on government funding procedures
		In contract and marketplace culture, funding needs of smaller groups to be considered	The voluntary sector may have the capacity to develop innovative services
2. Meeting specialist needs: disability, health, housing, etc	To provide specialist services in response to special needs		NGOs may be more accessible than government services
	To refer to other agencies		

as appropriate, including
child protection concerns

To campaign for improved
provision

3. Peak and umbrella
groups To support service-providing
organisations

To provide advice and
information

To develop services

May provide direct services

To campaign for improved
provision

Understanding of children's
needs and rights

Understanding of child
abuse and child protection
procedures

Effective staff and volunteer
recruitment and selection

Liaison with statutory and
other agencies

Ongoing training and
development

Knowledge of risk and
protective factors for

juvenile crime

Ability to differentiate between children's and adults' needs

Effective staff and volunteer recruitment and vetting provision

	Roles and responsibilities	Needs	Action plan	Note/comment
Police	To protect the community	Understanding of children's needs and rights	Police policy and practice to be consistent with those of other agencies	
	To apprehend offenders	Close liaison between police and other agencies is essential	Needs of children to underpin police response to child abuse and juvenile crime	
	To promote more positive relationships with young people	Police need to become more accessible to children and families	Increased use of formal and informal cautioning and other diversionary mechanisms	
	To investigate allegations of child abuse and offences against children	Better use of data for prevention (eg data on repeat victims)		
	To carry out crime prevention programs through a problem-oriented approach			
	Roles and responsibilities	Needs	Action plan	Note/comment
Departments of	To deal with offenders	Understanding of	To develop, trial, and	Specific attention to needs of

Juvenile Justice

children's needs

evaluate intensive Indigenous and non-English programs for 'at risk' speaking youth offenders

Jobs skill training for detainees

Mentoring programs for young offenders

To implement proven programs

Roles and responsibilities

Needs

Action plan

Note/comment

Legal system

To implement the law

Understanding children's needs

of Legal practices to become child friendly and supportive of families

The legal system is a prime example of how our culture can act against children's interests

To bring offenders to justice

Family/Youth Conferencing

To protect the innocent defendant

In longer term, fundamental review of legal system to address how it can truly reflect children's needs and the UN Convention

Roles and responsibilities

Needs

Action plan

Note/comment

Employers

To develop family-friendly employment practices

Understanding children's needs

of National policy for the promotion and implementation of family-friendly policies

Employment practices and unemployment have a major impact on family life

To provide flexible working arrangements

Understanding of the benefits to employers of

Introduction of policies by individual employers

family-friendly policies

To make appropriate childcare provision Understanding the composition of their workforce and their family responsibilities Create training and employment opportunities for young people

To provide staff counselling

Roles and responsibilities Needs Action plan Note/comment

Trade unions

To promote family-friendly employment policies and practices Understanding of children's needs and those of their parents Promotion of family-friendly practices as part of overall pay and conditions

To oppose use of exploitative child labour

To promote employment for young people

Media

Roles and responsibilities Needs Action plan Note/comment

National, State and local; press; TV; radio; advertising To inform and educate Accurate information on children and juvenile crime Journalists' training to cover child abuse and crime Different parts of the media have different responses to children's issues, child abuse, and juvenile crime. While some respond positively and supportively there are many concerns about irresponsible coverage.

To entertain responsibly Information on services which support children, parents and families Establishment of a proactive national organisation to provide informed

			comment/context on children's issues
	To provide follow up advice and counselling	Staff covering child abuse may need support and counselling	Media to have responsibility to consider the impact which coverage will have on individual children
	To represent appropriately children and their interests		All professionals, especially social services, develop a proactive approach to media
	Roles and responsibilities	Needs	Action plan
Tertiary institutions	To provide education on child abuse and juvenile crime prevention to students undertaking relevant tertiary courses	Curricula which equip students with information on children's needs and rights	The development of partnerships with tertiary institutions to ensure that students are equipped with the necessary pre-service training
	To ensure that research is undertaken in the prevention of child abuse and neglect and juvenile crime		Coordinated research plans in the prevention of child abuse and neglect, and crime
	Roles and responsibilities	Needs	Action plan
Childcare			
Public, private and independent sectors	To ensure that children's needs are identified and met within the service provided	Understanding of children's needs and child protection procedures	Private sector services for children to be closely regulated
			There are concerns that the deregulation of services may lead to children being put at risk

	To understand the needs of children		Services to follow local child protection procedures	The independent sector needs to be involved in the development of children's services plans
	To understand child protection procedures		Private sector needs to vet staff who work with children	
	To recruit effectively and vet all staff working with children			
Local government	To take seriously needs of children and young people in local planning decisions	Understand the needs of children and young people	Consult with and involve children and young people in the design of recreational and public spaces	
	To promote activities and develop facilities for children and young people in the local area		Training for those working with children and young people to consider their needs and involvement	
	To provide safe public spaces for children and young people			
Commonwealth and State governments	To provide, promote and ensure effective coordination mechanisms for children's services	A proper understanding of the overall needs of children and how they can be met	Develop mechanisms for children's participation in decision making processes	The needs of children are the responsibility of a number of different government departments. Coordinated planning is essential to ensure accessible services across all regions.

To consider the implications for children in the development of all policies and legislation	An understanding of the needs of parents	Enact laws that will implement and reflect the UN Convention on the Rights of the Child
To ensure that sufficient resources are available to meet children's needs	An understanding of the dynamics of the community	Develop national public education to prevent child abuse and change the cultural framework for the way children are treated
To implement mechanisms across all areas of administration requiring the interests of children to be identified and taken into account in policy and decision making processes		Appoint a Commissioner for Children in all States and at the Federal level
To take a lead in providing public education on the needs of children		

6.0 REFERENCES

- Australian Broadcasting Commission. 2003, *Four Corners*, [Online], Available: <http://www.abc.net.au/7.30/content/2003/s859558.htm> [2003, May 26]
- Australian Bureau of Statistics 2002, *Statistics on Juvenile Detention in Australia: 1981 – 2001*, Paper Series no. 1, ABS, Canberra.
- Australian High Court. 2003, *New South Wales v Lepore [2003] HCA 4 6*, [Online], Available: http://www.lexisnexis.com.au/aus/services/high_court/200300126.htm [2003, May 26]
- Briggs, F. 1995, *From Victim to Offender*, Allen & Unwin, Australia.
- Cashmore, J. 2001, 'Child Protection in the New Millennium', *Social Policy Research Centre Newsletter*, May, no. 79.
- Davis, A. 1988, 'Infant Mortality and Child-saving: the campaign of Women's Organisations in Western Australia, 1900 – 1922', in *Childhood and Society in Western Australia*, eds P. Hetherington, University of Western Australia Press.
- Families First* n.d. [Online], Available: <http://www.facs.gov.au/sfcs/about/sffund.htm> [2003, May 26]
- Family Law Council 'Family Law and Child Protection' Final Report, September 2002 Commonwealth of Australia 2002
- 'Health Centenary Article – Child Health Since Federation', *Year Book Australia 2002* [Online], Available: <http://www.abs.gov.au/ausstats/abs@.nsf/0/3CE0381F7CBAB608CA2569DE0024ED6D> [2003, May 26]
- Human Rights and Equal Opportunity Commission (HREOC). Not yet published, *National Inquiry into Children in Immigration Detention*. [Online], Available: http://www.hreoc.gov.au/human_rights/children_detention/
- James, M. (ed), 1997, 'Paedophilia: Policy and Prevention', in *Research and Public Policy Series*, Australian Institute of Criminology, Australia.
- Kociumbas, J. 1997, *Australian Childhood: A History*, Allen & Unwin, Australia.
- Laming, Lord. 2003. *The Victoria Climbié Inquiry*. [Online], Available:

<http://www.victoria-climbiel-inquiry.org.uk/finreport/finreport.htm>
[2003, May 26]

Layton QC, R. 2003, *Our best Investment: A State Plan to Protect and Advance the Interests of Children*, Government of South Australia.

Leahy, T. 2001., *Preventing the Sexual Abuse of Young People in Australian Sport* [Online], Available:
http://www.activeaustralia.org/hfs/research_sexualabuse.htm
[2003, May 26]

New South Wales Commission for Children and Young People 2002, *Submission to the Standing Committee on Social Issues – Inquiry into Child Protection Services*, Sydney.

Parton, N. 1997, *Child Protection and Family Support: Tensions, Contradictions, and Possibilities*. Routledge U.K.

Reddington, J. 2002, *Banning Corporal Punishment: Should Psychologists Lead the Way?*, [Online], Available:
http://www.psychsociety.com.au/publications/inpsych/12.2_11.asp
[2003, May 26]

Scott, D. (Associate Professor) 2002, 'Child Protection: A Public Health Model', Grand Rounds, Royal Children's Hospital, Melbourne, Victoria, June 12.

Stronger Families Stronger Communities n.d. [Online], Available:
http://www.parenting.nsw.gov.au/public/s26_homepage/ [2003, May 26]

Supreme Court of Queensland. 2001, *Carter v Corporation of the Sisters of Mercy of the Dioceses of Rockhampton and Ors (2201) QCA 35* [Online], Available: <http://www.courts.qld.gov.au/master.com> [2003, May 26]

Tomison, A & Poole, L.K. 2000, *Preventing Child Abuse and Neglect*, Australian Institute of Family Studies – Commonwealth of Australia, [Electronic], Available: <http://aifs.org.au/> [2003, May 26]

Wallis, K.M. 1995, 'Perspectives on Child Molesters', in *From Victim to Offender*, F. Briggs, Allen & Unwin, Australia, pp 1 – 18.