

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON COMMUNITY SERVICES AND  
SOCIAL EQUITY**

**(Reference: rights, interests and wellbeing of children and young people)**

**Members:**

**MR J HARGREAVES (The Chair)  
MRS H CROSS  
MS R DUNDAS**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**THURSDAY, 10 OCTOBER 2002**

**Secretary to the committee:  
Ms J Henderson (Ph: 620 50129)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

**The committee met at 9.32 am.**

**ANNETTE KELLY-EGERTON,**

**SUSAN MICKLEBURGH,**

**CRAIG WEBBER and**

**WILF RATH**

were called.

**THE CHAIR:** Thank you very much for coming. As you know, we're inquiring into, and will report to the Assembly on, the rights, interests and wellbeing of children and young people in the ACT. Now you've seen, I hope, the terms of reference, so I won't read them out for you, but I am obliged to read this card.

You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal actions, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

That being out of the way, our process so far has been to invite people to make an opening statement and then to take questions and we see where it leads us. So I'll invite you to do that. Before you do that, though, could I ask you to identify yourselves and the organisations you represent for the purposes of the Hansard record of proceedings. You should also be aware that these proceedings are broadcast. By "broadcast", we mean that they are broadcast throughout this building on the communications system, in each of the members' offices and also to certain senior public service officers around town. Apart from that, the broadcast isn't being done anywhere else.

**THE CHAIR:** If the media turn up, by the way, we have approved that they can take footage. If you're uncomfortable with that, just let us know and we can ask them to leave.

**MRS CROSS:** We'd be happy to kick them out.

**THE CHAIR:** Sure, just happy to ask them to leave.

**Ms Kelly-Egerton:** My name is Annette Kelly-Egerton. I'm the Senior Manager of Barnardos Australia in Canberra.

**Ms Mickleburgh:** I'm Sue Mickleburgh, the Executive Director of Marymead Child and Family Centre.

**Mr Webber:** I am Craig Webber, the Director of Galilee.

**Mr Rath:** Wilf Rath, Director of Richmond Fellowship.

**THE CHAIR:** I'll ask you to make an opening statement—any one or all of you at the one time.

**Ms Mickleburgh:** As we outlined in our submission, we are member organisations of CYFACT—which stands for the Child, Youth and Family Agencies of the ACT—along with Open Family, who are unable to be here with us today. We're the bodies funded by ACT Family Services to deliver substitute care services. Those services also include family support programs to prevent the necessity for children to enter care. We welcome the opportunity to come along to this meeting because obviously it's the area of our passion and commitment to make a difference in the Canberra community.

We outlined 10 recommendations in our submission, and they're at the end of that submission. Broadly, they cover a desire for there to be increased resourcing for the sector, particularly for those children most at risk of entering care. There are a lot of generic early intervention services, but we work particularly with the most vulnerable families in the community and do seek more resources for them. We have outlined concerns about the court processes, and that we see that there needs to be more equality of involvement of young people, their parents, the agencies and carers who act on our behalf, as well as the judiciary and Family Services.

We're particularly concerned about services for high-risk young people, those with pervasive issues around aggression. There is a current review, and I guess our experience has been that we've been subjected to many reviews, but the process of acting upon those reviews is often a rather drawn-out one and we would certainly like to see there be an urgent response to how we can better meet the needs of young people with intensive support needs. And I think that's pretty much it, unless anyone else would like to—

**THE CHAIR:** Would somebody else like to add something?

**Mr Rath:** Just regarding court processes, they seem to be very, very slow. We have kids who enter into this particular part of the sector—we operate Marlow Cottage, which is a shelter under the act—and we find that some of the placements at Marlow Cottage basically inhibit any other kids coming in. We would have—

**THE CHAIR:** In what way, Wilf?

**Mr Rath:** All right. Currently we have two young sexual abusers—young sexual offenders. That essentially limits the ability for us to take any young females, for instance. At one stage the court was taking a bit of a gatekeeping role in who could go into Marlow Cottage and who couldn't—for this very reason. But the sector badly needs another facility. Now we talked—how long has the new Children Services Act been out? Two years? There was mention in—

**THE CHAIR:** Closer to three, isn't it?

**Mr Rath:** Closer to three, probably. With therapeutic protection orders, for instance, there are always about three or four, possibly five, kids in the ACT. Whilst it has not been enacted on them, those kids are within the system; we are coping with them. They

will float between most of the agencies and yet not have the therapeutic protection order placed upon them.

**THE CHAIR:** Could you explain a therapeutic protection order, for the benefit of my colleagues?

**Mr Rath:** Very broadly speaking, it is for children who are committing some fairly serious offences, possibly mental illness related problems, even though that's very difficult to diagnose at the age of 13, 14 or 15. It manifests itself by a child burning a facility down or burning a car or setting light to a facility, causing extreme danger to staff, bashing staff, things like that. We have had self-harm problems with some of those young people, and they will often end up at Quamby because there isn't another facility available. There desperately needs to be a facility for these sorts of kids—with highly trained staff caring for them.

**THE CHAIR:** What sort of size would you be looking at?

**Mr Rath:** The size of the facility?

**THE CHAIR:** Yes. I am trying to get a feel for the sort of numbers that you're talking about.

**Mr Rath:** No more than three or four bedrooms—five bedrooms at best—so it doesn't need to be a large facility, and it need not necessarily be a facility; it could be in one of our managed homes—in other words, a good foster care home for argument's sake.

**MRS CROSS:** Wilf, I understand that there's a vacant house next door.

**Mr Rath:** That's correct. Yes, there's a vacant house next door to Marlow Cottage, Helen, that could easily be activated into such a facility. So let me give you a scenario. We would have, at present—or as of last night—five kids in Marlow Cottage. We can take up to eight. Two of them are young sexual offenders. And we will then get a phone call on Friday afternoon—I'm not saying this has happened this week, but it has happened—to take a 12-year-old pregnant girl. Now where's the logic in that?

**MRS CROSS:** So separating the genders is the first thing that would be helpful.

**Mr Rath:** Well, particularly when you have a particular type of client in the facility, yes.

**Ms Mickleburgh:** There are many mix-matches, and I guess that's an issue around the size of the ACT—that the cohorts are not generally compatible.

**MRS CROSS:** Right. Irrespective of gender?

**Ms Mickleburgh:** Well, gender, age issues—

**Mr Rath:** Behavioural.

**Ms Kelly-Egerton:** But the needs of the young people are so huge and so immense that putting one young child, who might be self-injuring severely, you know, cutting their wrists on a regular basis, swallowing razor blades—I suppose that’s the degree that we’re talking about when we’re talking about children or young people with really high needs. They may actually be injuring other people, but a lot of the time they are actually injuring themselves and ending up in places which are not care environments that are going to nurture them to try and actually get them through to the next stage.

So you could have someone like that, and then you might have someone who may have actually committed numerous sexual offences against a young child and so forth. The needs of those two young people are just so diverse. To put them in one setting, you—

**Ms Mickleburgh:** It’s very hard to maintain a positive environment and a sense that, “Well, we’re not just the most difficult kids, and really, you know, off the scrapheap”. Yes.

**Ms Kelly-Egerton:** So to meet their needs you need to actually have individual settings for those children. Otherwise, you’re trying to meet numerous children’s needs, which are so high and so intense that you need to have one-to-one or two-to-one staffing for. And that for a child, when they’re trying to develop, is not good to be watched over 24 hours a day.

**MRS CROSS:** Is your restriction in addressing the diversity of problems and the accommodation issue resources? Is it money—or is it just the composition of the solution?

**Mr Rath:** Well, inevitably it comes back to resources. If, for instance, the facility next door to Marlow Cottage—for a few thousand dollars—could be activated, it could be operated as a facility available, instead of having knee-jerk reactions on a Friday afternoon. That’s the problem. We then all have to run around and try and cope with these very, very difficult kids.

**Ms Kelly-Egerton:** And I think sometimes it’s about putting the resources in before it gets to this point. We know that there’s a cohort of these young people who are moving through and there is a responsibility to children. A lot of the time you know which ones, if we don’t put the resources in and actually work it through now, are actually going to cost the government huge amounts of dollars. And sometimes there’s a reluctance to put the money in before they’ve actually got to that point, whereas it would be much more cost-efficient to actually put the money in early on to those young kids rather than actually getting to the point where it’s going to cost half a million dollars or \$250,000 to actually meet one child’s needs.

**Mr Rath:** Could I just briefly mention another concern we have in relation to official visitors. We have an Official Visitor who visits Quamby and Marlow Cottage and yet doesn’t visit the other facilities in Canberra. It’s an amazing situation. Essentially, you’re saying that abuse in care situations can’t happen at other facilities in Canberra but can only occur at Quamby and Marlow Cottage. So there’s a bit of an anomaly that’s crept in with the act there.

**THE CHAIR:** Do you think that was a case of a bit of resource-driven risk assessment?

**Mr Rath:** Yes, I guess it is. They can only go so far. We see the visitor once a week. Now, if that were to happen to every facility in Canberra, you'd need more than two visitors, I would think. We've currently appointed two official visitors, who are doing a wonderful job, I might add. But to say that an abuse in care can't happen with the same child in a different facility, but it could happen at Marlow or indeed at Quamby, just doesn't make sense.

So it needs to be revisited in some way. The role of official visitor needs to be broadened across the five or six different facilities in Canberra for adolescent care in residential facilities—some within substitute care and some outside substitute care, if I can use that term. Do you understand what I'm saying? To think that it can only happen within substitute care and yet the same child can drift in and out of different facilities, and in and out of substitute care, beggars a lot of belief.

**Ms Kelly-Egerton:** What you're talking about is when a child might go from Marlow or Outreach and might actually go into LASA or Lowana—

**Mr Rath:** Or Belleden, Tumladden.

**Ms Kelly-Egerton:** Yes, or Belleden, which are the safe refuges, which are not subject to the same standards that we, as substitute care providers, must maintain, or actually subject to the same scrutiny as having the Official Visitor.

**THE CHAIR:** That is an interesting point that you make, and I'd like you to go into that a little bit more deeply for me. You just said that these other areas are not subject to the same standards. Could you expand a bit on that? Who sets them?

**Ms Kelly-Egerton:** In relation to substitute care, we have standards which are set which—

**THE CHAIR:** Who sets them?

**Ms Kelly-Egerton:** Family Services has actually set them, or ACT government. We have a set of standards, which are actually referred to in the legislation—the Children and Young People Act. We have a set of standards which we actually work towards, and I suppose in many ways they are actually the minimum standards which are acceptable for us to really be providing care for children. Those standards actually only apply to our four agencies and Open Family, who are the substitute care providers.

So we have these standards which we must ensure that we comply with, but with the SAAP, because it's actually a different funding arrangement, they're actually not subjected to the same standards. They have their own case management standards under the SAAP guidelines.

**THE CHAIR:** And these standards, apart from being in the legislation, are actually set by Family Services and supposedly checked by Family Services?

**Ms Mickleburgh:** Yes, they are monitored. We have quarterly meetings.

**THE CHAIR:** How does this change in the Family Services arrangements to kids' services—the bureaucratic changes whereby now you've got half in the department of education and half in that—impact on your organisations?

**Mr Webber:** It makes life more difficult in a number of respects, and it has particularly impacted on our work because we provide education and training programs for these young people that we've been talking about. We've actually been moving towards providing a more integrated range of education and training services for the group over the last few years, and with them all in education it was actually possible to do that. With the SAAP services, and youth SAAP in particular, being removed and placed in this new department, it now means that we're trying to run an integrated service with funding from at least two major different departments, but really three subsections—with SAAP being over there, with the youth services program remaining in the department which funds one of our other programs, plus Family Services funded programs. In the one place we're trying to run an integrated program with three funding sources. I think it speaks for itself about the difficulty that places on us, and in most respects—

**THE CHAIR:** So what I'm hearing is that you're getting judged on a holistic approach to the problem and your role in that by people who are not having a holistic approach to providing their own guardianship over what you do. Is that it?

**Mr Webber:** It looks a bit that way, yes.

**MRS CROSS:** Is that your way of saying that the communication between departments is inadequate?

**THE CHAIR:** No, it's not. No, it's not actually. What I was getting at was the bureaucratic structure. I'm not talking about the people within it or how they talk to each other. In fact, I'm sure the people within it actually talk to each other quite well. But having a bureaucratic structure which is fragmented doesn't lend itself to a holistic approach, and yet I'm seeing an inconsistency there. Take your services for example, Craig—you talk about the educational aspects and the social aspects of the kids. You're actually being judged by two parts of the system on the oneness of your program.

**Mr Webber:** Yes.

**MRS CROSS:** Has the skill base and corporate knowledge gone as well? I am assuming that over time that would deplete and you'd be struggling because you've got to revisit everything again with new people. Is that a problem?

**Mr Webber:** It is from time to time. But with that change it hasn't been so much because one of the people—well, the Director of Youth and Community Services—has moved to the new department and taken that skill base and knowledge, as have a couple of other people. So in that sense that's been fine.

We tend to find that we lose that skill base at a more middle management level in our dealings with particularly Family Services where there is a great change in staff over a very short amount of time. And occasionally we feel like we're, from our end, re-educating people at that middle management level.

**Ms Mickleburgh:** And also the primary caseworkers; the attrition rate is very high.

**THE CHAIR:** I've got a couple of questions about the Official Visitor, so you go and I'll follow you.

**MS DUNDAS:** You say the attrition rate is very high in terms of your individual case managers. What kind of level are we talking about?

**Ms Mickleburgh:** I honestly don't know.

**Ms Kelly-Egerton:** I wouldn't know the actual levels. I think what we're talking about is the caseworkers within Family Services who case-manage a child. It appears that we may have a number of caseworkers working with the one child or the one family over the period of time that we're actually involved.

**MS DUNDAS:** So over a two-year period, say, a kid could have up to five caseworkers. Is that—

**Ms Mickleburgh:** That would be very common, yes—could be more. It would be most unusual over a two-year period that they would have the same caseworker.

**Ms Kelly-Egerton:** And I suppose it's about what the impact then is on the child and the family, which is why we're here. For the child, if you have a caseworker who's actually managing the day-to-day things and the court processes, of you going home or working with the family, when that person continually changes you lose the knowledge. Even though it may be written in the file, there's a lot of information in relation to the best way of working with the family or, "Have we actually really visited whether there are other options for the child rather than being in care?". You lose a lot of that, so a lot of work is redone over and over because you actually lose the knowledge about the individual child that the caseworker held.

**Ms Mickleburgh:** But also the relationship is a critical issue.

**MS DUNDAS:** Does this have an impact on how cases are progressed through the courts? I mean, we're hearing about the time it takes to go through courts; you've mentioned it this morning. Is the continual changing of caseworkers, and the children needing to get themselves re-briefed on what's going on, impacting there?

**Ms Mickleburgh:** Certainly I don't think Family Services are as assertive as they might be about what a particular child's needs are, and I think that is probably predicated on a lack of knowledge and relationship with the child.

**Ms Kelly-Egerton:** And I think also because, with the roles of how the non-government sector works, we actually look after the children and they're in our care all the time with foster carers, there's a lot of information which Family Services—I suppose sometimes where they hear the information that's being said, or they don't have first-hand experience of the information, so whether that actually goes into the court, it can be very difficult if it's not, because we actually don't sit on the court processes with Family Services; it's only Family Services who are there.



**Mr Webber:** I think there's a key sentence on page 5 of our submission that relates to that—that the quality of legal representation for children and young people seems variable—and in our experience it can really come down to a battle between who's got the best legal representation, which is a totally separate issue to what's in the best interests of the child or young person, so it becomes a battle about the wrong issues really.

**THE CHAIR:** Well, that's actually where I wanted to head in terms of asking a couple of questions. A part of it has to do with the Official Visitor, but part of it goes to that issue that you were just talking about. Firstly, I understand we didn't have an Official Visitor for six months?

**Mr Rath:** I think that's probably true, John, yes. I'm just trying to think back. There was a gap there for some months after the last Official Visitor, which was in the early part of this year—probably from about December in fact of last year through to about June of this year, so about six months.

**THE CHAIR:** What happens in the meantime—nothing, it just sits in the air?

**Mr Rath:** It did. I mean, now they've rectified that by having the two.

**Ms Mickleburgh:** Young people have no recourse to an outside advocate.

**THE CHAIR:** You see, one of the things that we're looking into is the awareness and involvement of kids—being aware of their rights before the court, before the police and before the judicial system, and in fact their rights in terms of people who are giving them care. And it seems to me that one of the roles an official visitor could take for these kids is being an honest broker in terms of letting them know exactly what they can and what they can't do. I would hope that that's part of the role. Is that happening?

**Mr Rath:** It is now, yes.

**THE CHAIR:** It is now. Good.

**Mr Rath:** We've got two very good official visitors, a male and a female. They pop in once a week, and do a terrific job. As I said before, it beggars belief that an abuse in care couldn't happen to the same child who might tomorrow night go to LASA, but that isn't picked up.

**THE CHAIR:** Presumably that goes to the charter that the Official Visitor has been given by government—

**Mr Rath:** That's correct; that's quite correct.

**THE CHAIR:** And what I'm hearing from you is that we should be recommending that that charter be widened.

**Mr Rath:** That's correct—to all facilities caring for children.

**THE CHAIR:** I think that point's well made and well taken. I wanted to explore something else with you. In terms of kids before the courts and before the law, I'm getting a sense that those people—the adults, if you like—representing them, in terms of the lawyers or Family Services or even the courts themselves, are only paying lip service to the welfare of the child having primacy over what should occur in terms of custody, placement, programs. There seems to be more accent on other things, like the importance of custody with the natural parent, regardless of what issues may in fact be underlying the dysfunction. Have you guys got experience to share with us or opinions on that?

**Ms Kelly-Egerton:** I think, John, one of the things in the recommendations that we've put up before is the real need to ensure that any solicitor who is representing children has the appropriate knowledge to actually do it and actually understands the theories behind things like attachment and the developmental needs of the child, and also is able to talk to children appropriately in a language and at a level that they can clearly understand.

Children need to have their voice heard and to have an explanation of why someone may be recommending this or that when it impacts directly back on them. And we need to ensure that those solicitors do get adequate training before they even start working with children. We have family law experts and many other experts where they have to do courses beforehand. But with the children, it sometimes appears to us that it's the junior people, or it's kind of the last end that they actually want to touch, but it's critical that they have the skills to do that work.

**THE CHAIR:** Are we finding that people in the system are actually treating the kids as objects, as property in the settlements, rather than actual human beings in themselves who have a right to be heard about how they feel about what is happening to them?

**Mr Webber:** It's quite variable, again. We don't want to use any names here, but there are some people in the system who really do genuinely work for the young people and have a great interest in progressing their needs, and that's really fantastic. But then there are others who, yes, just treat it as a legal process and a battle to be won to get a feather in the cap, dare I say.

**THE CHAIR:** There's your chance, Wilf, go for it.

**Mr Rath:** Well, it is very difficult. If you look at page 7 you'll find the statistics that I've outlined of the number of kids—or the number of days, if you like, that children have been at Marlow Cottage. Now, Marlow Cottage was set up—whilst the act doesn't say it's 21 days, it's generally accepted that a child should be there for 21 days and no more. We now have a child well over one year, because those figures are a little bit out of date, and another kid who's coming up to a year, so they desperately—

**Ms Mickleburgh:** And Marlow isn't home and every child has a right to a home, don't they?

**Mr Rath:** That's correct.

**Ms Mickleburgh:** So we're failing those children.

**THE CHAIR:** And that's a point that we should be underscoring, isn't it—that every child has a right to a home and not a place to sleep?

**Mr Rath:** And also bear in mind that Marlow Cottage is not a rehabilitation program; it is simply a shelter under the Act, so it is simply a bed that is provided for them. We will care for them as best we can and we organise things, but we don't have the dollars to run a rehabilitation program at Marlow Cottage. It was never intended to be so. So the child, if anything, now has a facility where he can put his head down, but he will still also steal cars, do break and enters and so on.

**THE CHAIR:** Then come home to sleep.

**Mr Rath:** That's it, yes. And that's exactly what they do.

**MS DUNDAS:** With regard to the examples of the children who have been at Marlow for close to a year or over a year, I don't want you necessarily to go into specific details, but what is the scenario for these young people that have been living in a shelter for what would be a significant proportion of a young life?

**Ms Rath:** Well, once they turn 18 their offences are considered fairly serious, and they end up in Goulburn jail. And so when I walk through Goulburn jail, which I do fairly regularly, it's, "G'day, Wilf", "G'day, Wilf" as I walk through. The kids have simply ended up in Goulburn jail a few months later.

**MS DUNDAS:** Is this because there aren't enough exit points or enough transition points from Marlow into other scenarios?

**Mr Rath:** I think we'd all agree that that is the case.

**Ms Mickleburgh:** Yes, that's your point about treatment options and rehabilitation hope, because most of these young people are there because of serious sexual offending—that is my understanding—and there not being another appropriate option.

**Mr Rath:** And, just to come back to Craig's point, they'll go to court and they'll have lawyers who, again, are trying to score a few points and will try and get these kids off. They should be fighting to get them on the offences, not off the offences. We've got a child there who came in at 7; he's now committed 18 rape offences—what I would call rape offences; he's sexually abused young females. That's totally unacceptable in any community.

**THE CHAIR:** Is part of that, Wilf, because we haven't got a clue, as a society, not only to have an attitude or cultural behavioural change for that young person, but also we haven't got a clue how to address it holistically in terms of the dysfunctional environment from which this person comes? And we would rather put him in Marlow Cottage and stick him back in that environment.

**Ms Mickleburgh:** There's no excuse for us not having a clue because there's lots of research about programs that work.

**THE CHAIR:** Yes, but is it the case that we don't have a clue?

**Ms Mickleburgh:** Well, it is the case that we're not acting upon the knowledge that we have.

**MRS CROSS:** Why?

**Ms Mickleburgh:** Well, I think one of the recommendations that has come out of the review of young people with intensive needs is that there be a whole-of-government approach. And we are talking about these young people having complex needs that do need a range of interventions and the holistic view. Now, I really hope that that is going to be something that can be achieved.

**Ms Kelly-Egerton:** And it's also ensuring that the resources are actually there. As Wilf said, he has a number of young people there who have sexual offences. In fact, what's happening is that they're tying up that facility—where other young people can't go. Those young people need a treatment solution and to be taken out of Marlow so that Marlow can operate the way it's meant to operate for young people. And those other young people who do have sexual offences need to actually receive a treatment so that they don't go on to continue to re-offend after re-offence after re-offence. We need to put the treatment in there to try and turn it around for these young people. We know that's extremely difficult, but we still have to try because the impact on society if we don't do it is huge.

**MRS CROSS:** So while they're in Marlow Cottage they're not getting treatment; they're just there to sleep and eat?

**Mr Rath:** They simply get court ordered treatment, if you like—when that is available, which is pretty rare. And by that I mean the Richard Parker program for young sexual offenders. But even that is suffering financially; it doesn't have the resources. And I think it's about to fall apart, from my understanding.

**MS DUNDAS:** So, in terms of treatment solutions, do we need to provide more resources and support to the programs that are already running such as the Richard Parker one?

**Mr Rath:** Yes.

**MS DUNDAS:** Or do we need new ideas? Do we need—

**Ms Mickleburgh:** Well, we need to shift the focus, because all we're looking at is providing care.

**Mr Rath:** That's right.

**Ms Mickleburgh:** Yes, so we do need to shift that focus. And I think it's ironic that an ACT worker, Howard Bath, who's with the Thomas Wright Institute which is associated with Marymead, he's actually running programs in New South Wales. He's going out to other jurisdictions to provide services that could be provided here.

**MS DUNDAS:** Such as? Can you provide some examples so that we can—

**Ms Mickleburgh:** YOTS, Youth Off The Streets. Thomas Wright is managing their program for sexual offenders now.

**Ms Kelly-Egerton:** And they have a residential program for sexual offenders which is funded through New South Wales DOCS.

**Ms Mickleburgh:** Yes. I'm not sure of the funding.

**THE CHAIR:** I'd also like to ask you a couple of questions on this one too, but I've just had this passed to me by our lovely secretary. One of the things that came up in evidence given to us yesterday was that people are being placed in Quamby because there's nowhere else for them to go. For example, they can't go to Marlow because you've got young sex offenders in it.

**Mr Rath:** That's right.

**THE CHAIR:** There's a bed sitting there ready for them at Marlow but there's nowhere else. So in they go to Quamby.

**Mr Rath:** We've five beds available, John, as of tonight, but we can't take the kids because of this problem of the kids that are there.

**THE CHAIR:** Yes, so—

**Mr Rath:** So you could have homeless kids, for argument's sake. I mean surely a shelter under the act is so that, if a police officer sees a child who's homeless on the street and he's nine—nine is a bit of an exaggeration, but 11, 12 or 13—that officer can pick that child up and put him in Marlow Cottage. But they can't do that. They haven't been able to do that for over 12 months. And yet there's a review going on right now, as we're talking, of homeless children in the ACT—done by the Commonwealth. They phoned me up and said, "Well, how many beds have you got?". I said, "Well, we've got five or six beds but we can't take the kids".

**THE CHAIR:** This is what we heard yesterday. Those kids then, that could have gone to Marlow but for that, can end up in Quamby because there's nowhere else for them to sleep at night?

**Mr Webber:** It's a real blockage thing.

**Ms Mickleburgh:** I would have thought that that wasn't possible though, because there would have to have been an offence, and a significant offence. That would be my belief.

**THE CHAIR:** Well, my understanding was that you had to be remanded in there by the courts, either on conviction or on a charge which required you being taken off the streets for your and other people's protection. That's what I understood. So we were quite disturbed to hear yesterday that there are young people, in fact, who have not committed or are not suspected of committing an offence, other than being homeless, ending up in there. But it's something we'd like to explore as we go down the track.

**Ms Mickleburgh:** I'm certainly aware of debate about the severity of offences and whether it's appropriate for young people to go to Quamby for what Quamby might consider minor offences that could be managed otherwise. But I'm not aware of young people going there solely by virtue of being homeless.

**THE CHAIR:** All right. Thank you for that.

**Mr Webber:** The point that you raise though—I'm not referring to Quamby at all. But the way that Marlow is being used does have flowback effects, I think, to the whole system. Because it's unavailable for other young people that should be able to go there, that impacts back on the other services we provide, including teenage foster care. We'll get inappropriate referrals for young people who really should be placed in a shelter facility straight up, or possibly should be in a medium-term residential establishment rather than foster care at all. But because of the way the system is sort of stuffed up at that point, there's a flowback of a lot of inappropriate referrals being made and sort of trying to make the best fit, because that end of the system's not working.

**MS DUNDAS:** In the course of this inquiry we've been looking at the roles that the commissioners of children and young people play in other jurisdictions. And in Queensland they have the responsibility of the official visitor role and they look after kids who are in care and protection. Would you see a commissioner having any role in the ACT to pick up the monitoring and having that one focus for kids in care and protection, or do you think, as other people have suggested, that actually what we need is a children's legal service so that there is more of that focus on helping kids know their rights as they go through the court process and providing them with best-care solicitors? Where do you see the priority?

**Ms Kelly-Egerton:** I think it's hard to say that one is more a priority than others in many respects, because it's so critical for children to have their voice heard about their own personal circumstances. So having solicitors who actually specialise within children's legal issues is certainly a priority. But the children's commissioner also provides a lot of—I suppose for them it's the monitoring to ensure that what's happening to the children when they're in care is actually at a reasonable standard and also ensuring that we do have the checks and balances, by an independent agency, to ensure that the best quality care is being provided and that the needs of those children are being met—and even monitoring, whether the legal service is actually meeting the needs of the child. So you kind of need both. You need someone who actually checks absolutely everything to make sure that the standards are being met and that the children's needs are really being met.

**MS DUNDAS:** And at the moment that's not being done by anybody.

**Ms Mickleburgh:** Well, the Community Advocate performs a limited role, really on a case-by-case basis.

**MS DUNDAS:** So there isn't an overarching holistic approach. There are individual cases that are being monitored through the system by the Community Advocate, but there's nobody doing the overarching—

**MRS CROSS:** And an outsider would expect the department to be doing that.

**Ms Mickleburgh:** Yes, and they are, but in the relationship where you've got the purchaser and provider, when there are constraints the purchaser and provider come up with the best they can.

**THE CHAIR:** Yes—who guards the guards while the guards are guarding the room?

**Ms Mickleburgh:** Yes, that's right, yes.

**Mr Rath:** Back in the late eighties, the Office of the Community Advocate was actually the Office of the Youth Advocate. That flowed out of the Children's Services Act 1986. And when that was being set up, this new youth advocate position read very similarly to the children's commissioner. And in fact there was a lot of hype about that office being set up and how that would achieve those same sorts of things. And the reason why I'm saying that is that I think we need to be aware of that and not expect a new office such as that to actually be the be-all and end-all and achieve all of the sorts of things we'd like it to.

**THE CHAIR:** Did it achieve anything when it was there?

**Mr Webber:** It achieved some things, but it was never the panacea that it was hyped to be at the time. So I think that's worth considering.

**THE CHAIR:** So perhaps in fact what we needed was systemic remedy, rather than another guard, yet another guard.

**Mr Webber:** Yes, rather than the monitoring, that's right. I think the other idea that Roslyn mentioned would certainly be a practical assistance—a legal service that was user-friendly for young people and children. But the whole system needs to be looked at more broadly. One of the things we've raised here is about the way in which there seems to be conflict between the substitute care system and the legal system. The two parts are just banging their heads together, and young people are suffering as a result.

**THE CHAIR:** Why is that, Craig?

**Mr Webber:** Why is it? Well, what did we say here?

**THE CHAIR:** From your perspective as one end of the brick.

**Mr Webber:** Well, I suppose it seems to us that the court system sees itself as an end in itself really. And there isn't enough collaboration and consultation between that system and the substitute care system. So that, once things get beyond our substitute care system where people are working for the young people, it's another arena.

**THE CHAIR:** Is that because the priorities are in the wrong spot—should be looking after the kids instead of looking after their own turf?

**Mr Webber:** Well, that's probably a statement that is made well there.

**THE CHAIR:** It seems to be emerging that—and we don't know whether it's true, false or brindle—there are perceptions, anyway, that there are turf wars, if you like, going on and the kids, who are the actual reason for this happening, are the ones not getting the outcomes that they really need, because of people saying—and I think one of you gentlemen mentioned earlier on—that it's more important to have a win in court than it is worrying about whether this kid has been placed in the right environment or not.

**MRS CROSS:** Which means that the legal representation is usually inadequate.

**THE CHAIR:** Yes.

**MRS CROSS:** Because we have heard that a lot of lawyers won't really listen to the needs of the child and just do what they want to do.

**THE CHAIR:** Yes, they know better.

**MRS CROSS:** Or be guided by other parties, adult parties, rather than the client, which is the child.

**THE CHAIR:** I want to focus on something Roslyn alluded to earlier on: how much should courts, police, ourselves, anyone for that matter, be listening to the young people and saying to them, "What do you think"? We find that in places like Marlow—and you talked about the attachment—people will free up and talk about what they feel they need and all that. But it seems to me that, when they come up against the system, either nobody's listening to them or there is no opportunity for them to speak. And how significant an issue is that, do you think?

**Mr Rath:** I'd say it is significant. The kids don't always get the opportunity. If you talk to kids—if someone just comes out and talks to the kids at Marlow, they'll soon get an idea of where they're coming from. And certainly when I talk to the kids there, it's one of the solicitors, the legal system is trying to score a few points, as Craig was saying. They're not really listening to their problem—because their problem isn't the offence they've committed really. It's far deeper than that and it happened much earlier than that. It's about parenting skills. It's about dysfunctional families. It's about training at an earlier age. It's about police officers getting out there and talking to kids at an early age—when they go down the road and do a break and enter and only steal a couple of hundred dollars worth of gear, the police are not interested in charging them. They'll commit a number of those—they'll commit 10 or 15. I've got a kid who has committed 38 of those offences before the police even charged. And then they've got about 10 or 15 that are banked up with the courts because there's such a huge waiting list at the courts.

**MRS CROSS:** And what's the police's excuse?

**Mr Rath:** It's not worth charging for 200 bucks.

**MRS CROSS:** Too much trouble.

**Mr Rath:** Yes. So the days when we were kids and you were charged for stealing a Mars bar—or not charged, but certainly spoken to—



**THE CHAIR:** Mind you, you got belted by the local copper when I was a kid, mate. There was none of this charge you before the court business—the discipline and the sentence came pretty quickly.

**Mr Rath:** But there isn't anyone even talking to them, John; that's the point.

**THE CHAIR:** No.

**Ms Kelly-Egerton:** We would say that listening to the children is absolutely critical. Their voice needs to be heard and not just to be taken as tokenism. The children have a great deal of insight about what's happening to them. A lot of the time we only get a little bit of it. But you can actually ask them what they want, what are the things that are scaring them or "Where do you want to be?". When we have referrals, especially for adolescents, coming in saying, "We want a foster care placement", we say, "But where does the child want to be; what does the child want?", because it's so critical. If a child doesn't want to be in a place—like a foster care place—they'll tell you. They'll say, "I don't want to be in there". And the young people vote with their feet; they'll just walk out, which actually makes them really unsafe.

**Ms Mickleburgh:** Yes, "My family sucks and I don't need a replacement one" is basically where many are coming from, yes.

**Ms Kelly-Egerton:** And we need to listen to them because they tell us a lot of the time where they truly want to be. And if we actually then put them where they want to be, they're likely to stay there and not get involved in other things, rather than ending up back on the streets because we've put them somewhere where they've said, "I don't want to be", and then they take off.

**Ms Mickleburgh:** And if we're looking at an outcome of functional young people, they have suffered breaches of trust, we're needing to rebuild that trust and part of that is the listening process and acting upon it and showing that they've got some control over their lives.

**Ms Kelly-Egerton:** And the Children and Young People Act clearly says participation of children and listening to the children. The convention on the rights of the child is also about listening to the children. It shouldn't be so difficult.

**MS DUNDAS:** So what is it that the young people you deal with actually want?

**THE CHAIR:** Was that asking an adult?

**Ms Mickleburgh:** How good are our listening skills?

**Ms Kelly-Egerton:** We should have the children here to ask. You would have huge variations, because some of the young people that we look after or that we have care of are widely varying. Some of them actually want to be at home.

**MS DUNDAS:** Are there any underlying themes?

**Ms Kelly-Egerton:** I think most would want to be at home.

**Ms Mickleburgh:** A lot of them actually want to be at home.

**Mr Webber:** Yes.

**Ms Mickleburgh:** Some of them want to be in a flat kind of thing by themselves. Some of them do want to be in foster care, living with foster carers in another home.

**MS DUNDAS:** Are there any systemic themes coming through in your contact with these young people going through traumatic times—any common themes in what they're saying?

**Mr Webber:** Well, my brief response to that is that we should look at their aspirations as being very much the same as those of the next young person, and keep that in mind at all times. Basically, they want to be normal. If at all possible, they want to be at home. And in every other respect they want to be doing stuff the other kids are doing. And anything that we can do that assists that to happen will help—

**MRS CROSS:** Routine.

**Mr Webber:** Yes. And things that militate against it don't.

**Ms Kelly-Egerton:** Even down to schooling—ensuring that they're actually going to school. And for some of these young kids it might be putting a tutor in to actually help them to get their literacy up to their age peers.

**THE CHAIR:** That's to stop that feeling of not being normal.

**Mr Webber:** Yes.

**Ms Kelly-Egerton:** Yes, what's separating them from their peers. What their peers are doing, generally, is what they want to be doing too.

**THE CHAIR:** In recent years there has seemed to be a recognition, in terms of restoring adults coming out of the judicial system after a number of years away, that interventions or doing things to them—putting them through programs, all that sort of stuff—isn't really working. And now the philosophy is working with them to achieve a restoration in the community that they want and that the families want. There seems to be a big change in culture in the corrections system.

Now when it comes to kids, are we suffering from that same sort of thing—only the potential is worse—in that we are actually having things for the kids and we're going to impose these things on them, instead of saying, "Let's work with you to achieve that"? Is that what I'm hearing from you, Annette? It seems to be that we're not asking them enough and not saying to them, "Well, look, you design it; you tell us and we'll facilitate it for you".

**Ms Kelly-Egerton:** I think the thing is that a lot of our resources are built up into bricks and mortar here in Canberra, so it's very difficult then to say, "This is the program that's going to meet this child's needs; this is what we really need to do". It's extremely

difficult to get the resources or to actually be able to do that when a lot of our resources are in the bricks and mortar type facilities. So I think sometimes the kids end up having to kind of fit in somewhere, rather than actually building a system around the kids. Does that make sense?

**THE CHAIR:** Yes, it does. And when you were talking earlier on, I got a sense that the resources that we have been applying across government over the years have been at the crisis end, where it's really impacting badly on the community, instead of applying it from the preventive end and saying, "Well, if we in fact give this kid an alternative to the road that's been passed to them, then we will have attacked recidivism later on in an adult; we will attack dysfunctional families when these kids become adults", because we know that the percentage of repeat offenders is phenomenal, and sex offences are probably the best example.

**Ms Kelly-Egerton:** If you look on page 2, we actually talk about the importance of early intervention. I suppose from where all of us sit early intervention is absolutely essential. It's getting in early with those families where there are issues, and in the first few years of a child's life as well. There are a number of studies around that are saying, "If you put one dollar in there, it's going to save you four dollars or seven dollars later on". It's cost-efficient, but I think sometimes it's difficult for people to actually put that money in at that end because there are all these other problems happening as well. But if we can stop those problems happening later, it's a much better way of working.

**MS DUNDAS:** In terms of early intervention with families, how do you see that working? What do you think are the early intervention strategies that we actually need? We had a discussion yesterday about the services that are being offered, and it's almost on a take it or leave it basis, and people are walking away from it because, as with the systems for our young people, they're not actually suiting the individual family. So what do you see as being needed? What are the actual practical early intervention solutions that we need? What's your wish list?

**Ms Mickleburgh:** Well, for many of the high-risk families that we're working with, it's a real problem in reaching them, in that they don't have any reason to trust the system and that the system does have any real concern for them. So I think there needs to be a lot of very active sort of affirmation and nurturing of those families. With parenting groups, we provide transport to parents, we actually provide them with food and we follow up through the weeks. Now that's all very intensive, but to reach these difficult families you really do need to show, "Well, we believe it's worthwhile; we're going to put our money where the program's at".

So a family support program where somebody has to come in and identify an issue and be able to work on that through an office relationship isn't going to work for most of our families. We need to be going out into their homes and doing a lot of sitting and listening again, as to what the issues are that they're struggling with. And I guess we find out that they're actually really the same ones that Family Services identify. So Family Services will see our problem but they don't—

**MRS CROSS:** Is there a common theme? Is it economic?

**Ms Kelly-Egerton:** It's poverty, it's neglect, it's social isolation in their own community. Sometimes they have mental health issues—the family may have mental health issues. They may be intellectually disabled, or not quite intellectually disabled but have some real difficulties just coping with everyday living. Those are probably some of the common themes that we see.

**THE CHAIR:** And dual diagnosis, I imagine, would be done on it.

**Ms Kelly-Egerton:** Yes, drug and alcohol.

**MS DUNDAS:** Is it part of rebuilding the family cycle?

**Ms Mickleburgh:** Yes. And certainly we're talking—well, I've been around long enough now that I'm sort of seeing third generation sometimes, and it's—

**Ms Kelly-Egerton:** And I think with family support, I suppose at the end that we deal with are probably the most dysfunctional and probably some of the hardest and neediest of parents in our community. It is really important to maintain the family support, though, for your parents who are not at that end as well, to actually keep those families together, because, at different times in their life, lots of people need family support just to get them through a hurdle.

For this group, though—the really dysfunctional group—a lot of the work that we do, with Barnardos, is outreach work where we actually go and work in the homes with the families and kids. And it can be things like—you know, you go in there and you actually help them clean up the kitchen; you actually teach them about making the formula for the child or actually cooking dinner. It's those real practical skills.

**Ms Mickleburgh:** Taking the extra pets to the RSPCA.

**Ms Kelly-Egerton:** So it's the real practical skills, and also ensuring that there is a conduit sometimes between the parents and the school, because a lot of the time there are issues with these kids at school, and also ensuring that the developmental needs of the child are met as well. It's not just the parents' needs; we need to ensure that the children's needs are met—that they actually get to go and have the medical assessments they need or they get the chance to ensure that their speech therapy is okay or their gait is okay. A lot of those things, for some of the families that we're working with, are just too hard for them. And it's not because they don't want to. It's transport, because they might have six other little children running around, or they just may not be able to actually get it together enough to do it.

So that's the type of work that we actually do on a regular basis. We have, in our own agency—the parenting program is very small—a huge turn-away rate. And if we put them on the waiting list, they're still there months later, waiting for someone to actually come and pick them up.

**Mr Webber:** I think one of the questions that we, as a community, need to ask ourselves is: how come we're in a state now where there is chronic youth homelessness? It's an ongoing problem and it's been chronic now for about 20 years, whereas, if we go back 30, 40, 50 years, it wasn't a problem in the same way at all. Homelessness was

something which was more associated with destitute people, and mainly destitute adults or destitute families. So what we're looking at is a more recent phenomenon. We need to ask ourselves why. What has happened to families or for families which has then resulted in this great increase in youth homelessness, probably in the 1970s and 1980s. Certainly by the 1980s it had emerged but, really, 20 years before it wasn't there. So a bit of research into that would be useful.

**THE CHAIR:** Just on that, some of the ethnic and cultural groups that I associate with—and they're just fabulous—place a lot of store on the extended family, and if some kid's going slightly off the rails they are in fact picked up by the extended family, because quite often the reason why they're off the rails is that they're having a cultural problem with, usually, the father. And then there's the difference between what happens in the home and what happens in the school, that kind of thing. Nonetheless, they're picked up by the extended family. I was just wondering whether the sort of demographic of those kids who are finding themselves in strife or homeless is changing—whether or not we're seeing more of those people or whether it's still, I guess, a little Anglo-Saxon one. Are we seeing anything spreading—is there a problem we need to look at in that sense?

**Mr Webber:** I'll just make a comment on the extended family issue in general, and I think that is particularly prevalent in Canberra. I think the reasons why there are young people out of home in Canberra actually are different to those in the other major cities in Australia, and the lack of extended family is a major issue, just because of the nature of the demographic of Canberra. It's not a comment on the cultural thing, but just on that issue.

**Mr Rath:** Just to reinforce that point, it isn't so much that there are homeless kids—there are certainly homeless kids that don't have homes to go to, but this is how the system has changed. Years ago they didn't have a home to go to; now they've got a home to go to but they're not welcome because of behavioural or attitudinal problems. So the majority of the kids that we would see at Marlow Cottage would all have homes to go to, but they're not welcome at home.

**MRS CROSS:** Is that because parents are less tolerant than they used to be or because the behaviour has worsened?

**Mr Rath:** Less tolerant—possibly dysfunctional, the behaviours have worsened, drugs have impacted on it, and alcohol, and siblings. The parents are very conscious of what this is going to do to the siblings of that child.

**Ms Mickleburgh:** But young people had other options, too, 20 years ago. I mean, they could go out and get a job at 15 and survive, and they can't now.

**Mr Rath:** That's right.

**MS DUNDAS:** In terms of the employment structures that we have, do you think that we need to reassess the age at which children come into the work force? I ask because you can't earn a living if you're 14 and yet we have kids who are obviously looking for independence and their own self-control because that's the situation that they're in. Should we be looking at that?

**THE CHAIR:** Is that the penalty we're paying for the lack of apprentices around town?

**Mr Rath:** It could well be.

**Mr Webber:** It's certainly a factor, yes. I mean, 25 years ago young people could go into employment more easily, so employment itself is a factor which is impinging on families, which is then causing stresses, which is causing young people to be leaving home. And it's no coincidence that the emergence of higher unemployment in the 1970s was around about the same time that youth homelessness started to increase.

**THE CHAIR:** I think we're pushed for time, but I'd like to just ask you two last questions, if I may, to see whether there's a thread going through. Firstly, in Queensland they're looking at the sort of police checks that people do on people involved in the support services for young kids. I know that it is an issue of resourcing because they don't come cheap, but do you think that we should be having some sort of a stricter approach to having people check that?

**Ms Kelly-Egerton:** John, we actually have a very strict approach already, through the standards. We're actually required already to do police checks of all adult members in the household. We also do referee checks as well.

**THE CHAIR:** That's for—

**Ms Mickleburgh:** Workers and volunteers.

**THE CHAIR:** You've mentioned to us that there are two groups of people out there with two sets of standards out there. Are there two sets of police check standards out there?

**Mr Webber:** There have been up until recently, but I believe that's changing. The requirements for staff in other funded areas are increasing, changing, and also in the community there's greater expectation that police checks will be undertaken.

**Ms Kelly-Egerton:** So we actually already police check all the volunteers that work with us, and carers as well as employees—and that's a standard right across all of the substitute care services.

**Ms Mickleburgh:** It's important, but I don't think we should feel safe—that that's going to protect us.

**THE CHAIR:** No, it's just part of risk management.

**Mr Rath:** In reality, the police check—it gives us very little. I've been in this business for 18 years. I have very rarely seen a police check come back on a staff member or a prospective staff member that says, "No, don't employ them," because if you take paedophilia, for instance—and we're all very, very conscious of that—there's no central register; a paedophile doesn't turn up on a police record, or it is very, very rare, because they've committed offences all round Australia.

**THE CHAIR:** That was one issue that hasn't come up, but there's also the issue of spent convictions that came up as well, to me privately—that this is one area where we should say spent convictions don't apply, because in fact the nature of spent convictions can show a pattern of behaviour which is not such that the person should be involved with the nurturing of kids. And even if those offences are not life-threatening, they just show that pattern.

**Ms Kelly-Egerton:** Which is really important when you're looking at what a pattern of someone's behaviour is. In New South Wales, the Office of the Children's Guardian now also has the working with children check in New South Wales, but the Office of the Children's Guardian also has a register of people who are not to be employed with children any more as well. They don't necessarily—

**THE CHAIR:** New South Wales is pretty heavy on it.

**Ms Kelly-Egerton:** Yes, they are. It's not that they have necessarily been charged with an offence, but it may be because something has happened and the department has decided that they shouldn't be employed in an area that works with children any more. So in New South Wales—and we access it because Barnardos is New South Wales as well as ACT—the people have to sign a permission form, that we check with them as well, to ensure that there is actually nothing on them in New South Wales as well, so that there's not something lurking in the background that we're not aware of.

**Ms Mickleburgh:** Can I just make a quick comment on the Indigenous community. It's a real issue that many people from the Indigenous community do have some sort of criminal record, and that's just part of their life, and I think we do need to look at different ways of dealing with police records. It's certainly feedback that we've had that people won't apply to become Indigenous foster carers because—

**THE CHAIR:** Because they can't, basically.

**Ms Mickleburgh:** Yes, yes.

**THE CHAIR:** And I think in other inquiries we have seen evidence that successfully restored people, particularly in Indigenous things, make brilliant role models, and actually you get more positivity out of it than negativity. So yes, that's the challenge; I think we need to make that point too. I just wanted to ask you, Ros: did you want to explore the possibility of talking with kids? That was the other question I had.

**MS DUNDAS:** Yes, we've had a number of groups come in that represent children. We'd really like to actually hear the experiences from the kids themselves, but in a situation that's appropriate for them and if they're ready to discuss their feelings on their experiences.

**MRS CROSS:** Then we'd do it in camera.

**MS DUNDAS:** So if you know of any kids who'd be willing to participate, if we were able to explore that—

**THE CHAIR:** We would be talking about a setting which is conducive to them saying, “Well, this is how we feel about it”. We’re not talking about this setting here at all. We’re not talking about taking evidence. We’re not talking about having it recorded. We will obviously take notes so that we know what on earth we’ve just heard when we get back. But, if I can boldly speak on behalf of my committee members, I think we would actually be prepared to go out to the kids themselves rather than have them come into a formidable place like this.

**MS DUNDAS:** And that way we actually get to hear straight what’s going on.

**THE CHAIR:** Could we ask you to take that invitation away with you and, if you feel that something constructive could come out of that, for either the kids themselves or the committee, could you contact Judith and we can process something? We have a deadline for reporting of November, I think—no, we did have one and we open-ended it. I would like, however—

**MRS CROSS:** You can’t have it in November, John.

**THE CHAIR:** No, I know, but I wouldn’t want to open-end it too much. Nonetheless, we have another inquiry going on next year, which you will probably be interested in, to do with services for families of people who were incarcerated—or lack of such services—and the kids and all that. I think there’s a sort of progression from one inquiry to the other as far as the young people are concerned, so I just highlight that with you.

**Mr Webber:** In terms of consulting with the young people, you may be aware that there have been two exercises this year where young people have been consulted with, and there may be quite a deal of information that has come through that that you could look at.

**THE CHAIR:** Yes, I guess that there are two benefits, Craig, that we had in mind. The first one was that we don’t want to have kids telling us the same old things they’ve told a whole stack of other old fogies. Rather, we’re actually looking into this thing and it’s environmental for us—we’ve heard many people say X about it. We wouldn’t mind testing some of those theories on the young people, so actually they’re doing us a favour, not the other way around.



**DENNISE SIMPSON** was called.

**THE CHAIR:** Dennise, thanks very much for sparing us the time. As you know, we're looking into the rights, interests and wellbeing of children and young people. You've seen the terms of reference?

**Ms Simpson:** Yes.

**THE CHAIR:** I won't go through those. I have to read this card out. It says you should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means you're protected from certain legal actions such as being sued for defamation for what you say at this public hearing. It also means you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

This hearing is being broadcast. You know the way that works. A member of the media is present. Other members of the media are listening in their offices downstairs.

I invite you to make an opening statement, then questions will follow. For the purposes of Hansard, could you state your name and your organisation, for the record please.

**Ms Simpson:** I am Dennise Simpson. I'm the manager of the Domestic Violence Crisis Service in the ACT. I put in a written submission. I wanted to make the focus of my written submission the revocation of domestic violence orders when children are included on the orders. I'm hoping that you have all read my submission.

**THE CHAIR:** Yes.

**Ms Simpson:** I see that as a lack in the legislation, and I feel quite strongly about it. I've been making a few moves around it since I wrote the submission. I've had a meeting with the Community Advocate. The Community Advocate will be writing to the Magistrates Court asking for names of all applications for domestic violence orders when children have been included on the orders and for applications for revoking the orders. This means that at least there will be someone in the short term who will be looking at this issue. If there has been assault on children, then the Community Advocate will be able to intervene.

The other thing that's happening, which is quite timely, is that an inquiry into the current legislation is under way once again, given that we went through one last year or maybe the year before. I don't know how your inquiry is going to fit in with the timing of that inquiry. But I think it's very timely if during this update of the legislation we get a change in the legislation to include this issue.

**THE CHAIR:** In terms of the timing, the two are coincidental.

**Ms Simpson:** Yes, I realised that.

**THE CHAIR:** But we are hoping that the results of our inquiry and report to the Assembly will add a certain amount of weight to changing legislation where it seems absolutely necessary to do it. We don't want another review and another review and another review.

**Ms Simpson:** No. I wondered whether on that issue I've made my concerns clear in my written submission. Would you like me to talk to that a little?

**THE CHAIR:** I thought the submission was fine. It was quite to the point. It might be helpful if you gave us a couple of no-name case studies on how you saw the—

**Ms Simpson:** That would be difficult for me to do. I can give you a generalised idea. If an applicant to an order is a client of DVCS and if the children are included on the order and there have been allegations of abuse, then if that applicant decides to return home to their partner it's often the time they'll cut off contact with our service.

We might think they're getting on with their lives, because that's where we might have left them. They might have been in safe accommodation, they might have even sought other housing or they might have returned to their home with an order that the respondent not come to the house. There could be a variety of situations. But at that point we don't know whether the applicant has gone to court to have the order revoked.

I can give you a case scenario. A recent client had a 12-year-old son who had been assaulted by the stepfather. He told us quite clearly that he was in fear of his stepfather. His mother made a decision to return to the relationship. We realised that she was probably going to return to the relationship. I don't know how that was.

We rang up and spoke to her and asked if we could speak to him, because we wanted to see how he was going, what his thoughts were and if he was okay. His mother told us that he wasn't there. But we could hear him talking in the background. So the worker said, "Is there some other time? When can we talk to him?. We realise that he is there." The mother, even though she didn't let us speak to him then, made a time when we could speak to him. When we spoke to him, he said that he was okay but he was really fearful for his mother.

I think you can read a lot into that. He had been assaulted. He had told us clearly that he was fearful. Here he was, this little kid, telling us that he was really scared for his mother and wanted to know what was going to happen. There's a pretty big level of fear sitting there.

If a court says to someone they can't return to a violent relationship because of fears for the children, I'm not saying that is a good outcome, because it's not necessarily going to work. People don't like to be told what to do with their lives. I think the legal system has to be responsible for saying, "No. Enough's enough." In some cases women will hear that the legal system is saying, "We're concerned about the safety of your children. We don't think it is okay that you return to this relationship. We're not going to revoke your order. The order stands."

**THE CHAIR:** In the request for a revocation, you seem to be saying to us that the wellbeing, the protection and safety of the kid have to have primacy over what two adults want to do with their lives.

**Ms Simpson:** That's exactly what I'm saying.

**THE CHAIR:** And it's not happening.

**Ms Simpson:** I think too many times children are returned to unsafe situations.

**THE CHAIR:** Is that because they're not regarded as integral to the issue?

**Ms Simpson:** Absolutely. It would be interesting to know what the court would say, but let me assure you that you'd only have to look at records to see how this goes. I knew this was the issue. I spoke to some lawyers while I was drafting my submission, just to confirm what I knew. One lawyer who does DV stuff all the time told me that it was a rare occasion when a magistrate inquired after the safety or the wellbeing of the children when they were included on an order and there was an application for revocation of the order. Even when they did make that inquiry, it did not stop the revocation going through. It's not even a standard practice to inquire, let alone to do anything further.

If the court has said, "We have heard of enough concerns about the children for us to include the children on the order," then I don't think that one adult should be able to make a decision that overturns the order on their needs.

**THE CHAIR:** Last time we met, we talked about homelessness and the number of return visits that you get to your service from people.

**Ms Simpson:** Absolutely.

**THE CHAIR:** Is that where this started from, as far as you're concerned? It's not just an isolated case that kids are not considered in the issue? Is it because of the nature of the people coming to you and the numbers of them that it has now become a much more serious issue than it could have been? In other words, where did you start from when you said, "This is an issue that somebody has to do something about"?

**Ms Simpson:** Our service over the years, as a lot of services have, has become more and more child focused. We've been doing a lot more individual work with young children. We have been doing work particularly with adolescent boys who use violence in the family, generally against their mother and sometimes their siblings. We've been doing one-to-one work with those kids. We're not able to do a lot. We don't have the resources, which I've raised before. But we have been doing that work. We see it as incredibly worthwhile work, and we see it as incredibly preventative work. Lots of those kids have also been abused in their lives, and they go on to abuse. You're looking at not only someone who's using violence but someone who has been subjected to violence and abuse in their lives.

Just becoming so much more of a child-focused service recognises how children aren't heard in so many situations. I think that that was how I became more aware of it and thought that this was not okay. I don't think it's an answer. Some people will even go against the order. They will do a whole range of things. But I just think that as a society we need to stand up and say, "Sorry, these children are not safe. The court made an order, and this is why it made it. We're not going to revoke it just because you want to continue living with this person." We've seen some that are so bad that you feel that if they want to go back and live with this party then the children should be taken into care. If they make that choice in their life, so be it.

It is not as if I see care as a great option. Most children would choose to be in a relationship, but some relationships are so appalling and the children are treated so badly that it just appals me that no-one is there to speak for them.

**MS DUNDAS:** How do you see that we fix that?

**Ms Simpson:** I think the Community Advocate's office is the ideal office to do it.

**MS DUNDAS:** So that role should be expanded to include children generally—not just children in substitute care or under care and protection orders but children who are at risk?

**Ms Simpson:** Exactly, these very ones I'm talking about, the ones that have been included on domestic violence orders. They would be there. They would be able to investigate it. They would be able to look at the application. They would be able to make inquiries of relevant services—for example, our service or Family Services—and they would be able to speak to the court in relation to the application.

**THE CHAIR:** When you talk about speaking to the court, presumably they've the best interests of the child at heart. This is where the Community Advocate comes in. No-one would dispute that. We wanted to get some views on children speaking for themselves. When you're talking about an application or a revocation, the views of both adults are taken into account by the court. The views of the child are not taken into account by the court. That is what I'm hearing here. In a desire to have those views on the record and part of the process, should we be looking for someone like the Community Advocate to advocate on their behalf, or should we be saying to the young person, "What you think and what you say we will take seriously"?

**Ms Simpson:** What comes up for me when you say that is fear for the responsibility that's placed on children at that point. I'm not saying there's not a place for the Community Advocate to have discussion with the children. You have to realise that some of these children are far too young to have discussions with. That would be part of what the Community Advocate was able to do when appropriate.

But in terms of the safety of the child I would feel really concerned if a respondent who was really violent knew that he didn't return to the home because of the wishes of the child rather than another party. It's similar in difference to telling a woman that she is responsible for having her partner charged with a DV offence as opposed to the police saying, "We are charging your partner," so that responsibility is taken away from her.

That is something that we struggled with in the ACT for a long time, and finally the ACT has moved enormously under the FVIP. The onus of where the arrest comes from has clearly shifted from the women to the police, where it belongs. I would see that concern.

**THE CHAIR:** It is an assault. We've shifted from someone who has been belted having to lay a charge. It's all about the fear of retribution and the fear of escalation. We need a process where kids' views are integral to the decision-making process but they have the protection of the community around them in doing that, even to the point of anonymity.

**Ms Simpson:** I'm not saying their view should be integral. I think there could be too many factors. Their view would be taken into account.

**THE CHAIR:** Sure.

**Ms Simpson:** But I'm not saying their view would be integral. If you're saying that, then that is a factor that's taken into account by the violent partner who knows that.

**THE CHAIR:** It's part of the process. It's not pivotal, though.

**Ms Simpson:** What sort of pressure is on the children not only from the violent partner but from the mother? The mother may be feeling that she wants to return to this person, not because of fear but because she's in a mindset that says, "I need this person in my life. I love him. Every now and then he beats me or he beats the children, but maybe we can get over that hurdle." What sort of pressure is she putting the children under? The children have got the pressure coming from two places.

I guess what I'm moving away from is children as possessions. I don't see children as possessions. I think as a society we should be responsible for the safety of children. I think they've been incredibly harmed by this idea that they're belongings.

**THE CHAIR:** So the magistrate should be making two decisions when they're talking about a revocation order where kids are involved. The first one is whether or not the adults can get it together. The second is a quite deliberate decision about the safety and welfare of the children.

**Ms Simpson:** Yes.

**THE CHAIR:** Two distinct and separate decisions.

**Ms Simpson:** If you say it like that, they are. But they would become one and the same, because you could have those situations, which is perhaps what you're saying, where the court decides that the children are too unsafe.

**THE CHAIR:** There could be a choice. The magistrate could say to the people, "You're asking me to give an order. I'll give you a choice. Go away and come back, and I'll make an order accordingly. I can decide not to allow the union to go ahead—bad luck—because I'm concerned about the safety of the woman and the safety of the children as a family unit. Alternatively, I'll drop the order provided the child goes into care. You go away and come back and tell me which one you want."

**MS DUNDAS:** You mentioned in your submission the phenomenal increase in the number of children using violence against their parents, specifically sons and stepsons using violence against their mothers. You've raised this as an issue before. You're running a program, I understand, to try to help these young offenders.

**Ms Simpson:** We're not running a program. In the families where there is a young person who has been using violence, we have workers who will work with them one to one. Sometimes that's in the form of letter writing backwards and forwards. The worker will talk to them about things that the young person has spoken about, their hopes for the future, when they were able to do something other than use violence and when that worked for them, and I suppose centre them on more positive aspects of their lives. Some of these young people don't stay with their families, because it just isn't going to work. In some of the families where the young person is, there's so much violence from all over the place.

**MS DUNDAS:** What's happening to these young people?

**Ms Simpson:** I guess lots of these young people are moving on to use violence in their adult lives with their partners. There are a few programs around—Men's Link, and Men Mentoring Men, which has very limited resources for what it's doing.

**MRS CROSS:** There are programs targeting, say, young men from 12 to 18?

**Ms Simpson:** Yes.

**MRS CROSS:** And what are they?

**Ms Simpson:** There is Men Mentoring Men. A young person is linked up with another man who becomes his mentor and can do things with him and whatever. But in this huge area it's a pretty inadequate response. I'm not saying it's not a good response. I'm saying it's inadequate for the depth of the problem.

There are a couple of other things I wanted to talk on. I know that another issue that has been raised here has to do with the Official Visitor. I want to make a comment on that. I think it would be a very good thing to have an official visitor for children, something similar to the Official Visitor for Marlow and Quamby. Extend that.

It's important that this person not be attached to a department, because I think that would hamper them too much. They should be a statutory appointment. They should be linked up with the office of the Community Advocate so they have the power to act.

Some changes made need to be made to legislation. I'm not absolutely sure about that. There would have to be legislation around the role of the official visitor anyway. I think it important that the official visitor have direct linkage to their minister so that action can happen when it needs to. If it's not set up in that statutory way, then I'm concerned about what would happen when they did find major flaws in an accommodation service or anything else. What would that mean—a letter to the funding body, which might make inquiries? I don't think that's good enough. If we're looking at safety, then we need to have something that's stronger and we need to be clear about it.

I heard the discussion on police checks. Yes, I think there should be police checks. I think they're incredibly important, but I think there has to be a national database. Even the database that they were talking about in relation to the Sydney place where you register isn't good enough. Paedophiles are known to move around. There must be a place where you can go nationally. Until you can go somewhere nationally, it's a waste of time. I see it as a federal issue that could be pushed by the ACT.

One last thing, I think, is your area, John—a commissioner of children.

**THE CHAIR:** It's something that Ros was pushing big time, and the committee got infected by Ros very early on in the piece. We are now the holy trinity.

**Ms Simpson:** My concern is that I wonder what the commissioner of children would be doing that the Community Advocate's office can't do. I get concerned at government setting up new things, thinking that this is the one that's going to make the difference. Personally, I think we could do more with the money that it would take to set up a new commissioner of children office in service provision. We could definitely do with more workers, for example, in Family Services and a whole range of things in Family Services. I haven't even got on to that, and I won't.

There is a lack of service provision. I've named a huge one today. If you have an office set up, why don't you extend it where you need to extend it, make the changes you need to make to the relevant legislation and allow it to happen through that.

**THE CHAIR:** You talked about being child focused. It's emerging very clearly that there needs to be a real-time attitudinal and cultural change in the focus on kids and the wellbeing of kids. The question is whether having yet another bureaucratic watchdog is going to achieve that or whether there need to be systemic changes in focus within the existing system.

**Ms Simpson:** Absolutely.

**THE CHAIR:** That's the challenge we have.

**Ms Simpson:** In the ACT, we haven't seen Family Services come under fire in the same way as some of the things that we've been witnessing in New South Wales over the last few years. Of course heads rolled over it. There are so many cases of children under the care of DOCS being killed. There have been similar cases in the ACT. There will be more.

Systemic change is needed. That is a priority. The watchdog part of it can come under the Community Advocate, with a change in their role. But how you go about the rest of it I'm not sure.

**THE CHAIR:** We seem to be running out of time. If I got the impression correctly, you would like to go down that track a fair bit. Could I ask you to consider doing a supplementary submission just on that issue?

**Ms Simpson:** Okay.

**THE CHAIR:** I'm only asking you to consider it, if you feel so inclined. You don't need to, but it may give us some pointers to address. If this committee can advise government on certain places, it had better look. If it doesn't look, it does so at its peril. That's an achievement as far as I'm concerned.

**Ms Simpson:** If you're looking at systemic issues, you must look at child protection services. They are fraught with systemic issues. I'm not damning child protection services. I am very pleased I'm not in that area. It's an incredibly difficult area. It's an area where you're so much damned if you do and dammed if you don't. I feel for them on that. But I also think that changes need to be made.

**THE CHAIR:** We might invite you to suggest a few. That concludes this portion of the public hearing. Thank you very much, Dennise.



**JASON KENG HENG LEE** was called.

**THE CHAIR:** Thank you very much for your submission, Mr Lee, and for sparing us the time to come here today. Have you seen the terms of reference for the inquiry?

**Mr Lee:** Yes, I have.

**THE CHAIR:** I need to advise you of what is on this card. I don't know why they can't give you the card and you read it for yourself. It says that you should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal actions such as being sued for defamation for what you say at this public hearing. It also means you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. That is a substitute for asking people to swear on the Bible.

I should also advise you that the proceedings are being broadcast throughout this building. We have a television and radio system in each member's office, in the cabinet room and in the office of senior public servants. If the media turn up, we would normally allow them to stay, unless you advised us that you were uncomfortable with that, in which case we would ask them to leave.

The process normally is for us to invite you to make a statement, then we'll ask questions. Before we do that, could I ask you to state for the record your name and the capacity in which you appear before the committee.

**Mr Lee:** My name is Jason Keng Heng Lee. I am a solicitor, and I make this submission in my own personal capacity. I made it very clear in my written submission that the views I put forward here do not reflect those of my office. Being a solicitor, I am a member of the Law Society. My views do not reflect the views of the Law Society either. They are all my personal views.

**THE CHAIR:** Thank you very much for that. It may very well be that your views coincide with those of the Law Society. We'll just wait and see, won't we?

**Mr Lee:** Yes.

**THE CHAIR:** Mr Lee, I invite you to make an opening statement. We have received your submission. We have read it. You might like to expand on it.

**Mr Lee:** I'm employed by the Legal Aid Commission. I used to practise in the Children's Court. My practice in the past 10 years has been more than 50 per cent in acting for children solely in the Children's Court. I do not practise in the Family Court for children. That is why in my submission I have a different view from those practitioners who practise in the Family Court.

As I've put it in my submission, some of the solicitors who practise in the Family Court have said to me that they do not see primary age schoolchildren when they represent children in the Children's Court. I feel that that is not the right thing to do. Sometimes they also say that you shouldn't take the views of a primary age child too seriously. I do not agree with that view.

As I have put it in my submission, there are a number checks in regard to representation of children. I feel that children should have their voice stated clearly and be represented by somebody in court on their behalf for the court to make the determination. There is no point in having a solicitor for the child and filtering the views of the child or the wishes of the child and saying, "Although these are the wishes of the child, in the best interests of the child it's going to be this." Those "best interests" are actually putting the views of the solicitor on behalf of the child rather than the child's view. I feel that that is not the right thing to do and that is not representing the real interests of the child. Although the child may be young and there is the argument that they may not be mature enough to know what they want, who are we to say that is not the right thing to do? I feel that if the child has a wish, then the child's wish should be put very strongly to the court.

What are the checks in the Children's Court? First there is the Family Services, which represent the community in looking into the best interests of the child. That is why those proceedings are taken to the Children's Court in the first place. There is some protection issue or child abuse issue involved. They are taking the child to protect the child, and they are doing so in the best interests of the child. Family Services are the ones putting forward the best interests of the child.

Next is the Community Advocate's office. Prior to the 1999 act, the Community Advocate's office was very active in the Children's Court. In fact, it was the main applicant in Children's Court proceedings. This was changed by the 1999 act, when it reverted to Family Services or the chief executive.

**THE CHAIR:** Did that weaken the advocacy authority of the Community Advocate?

**Mr Lee:** It appears so but it doesn't. When this act came into being and became operational, the Community Advocate's office was in every one of those proceedings. They attended as parties to proceedings, but they subsequently took a back seat when they felt comfortable with the way that the case was going. If a case is going against what they think is in the best interests of the child, they come in again.

I haven't been practising in that area now for the past year, but of late I understand the Community Advocate's office does not intervene much in such cases. I understand too that the Community Advocate's office has not even been in court for these proceedings. They are performing more of an administrative role rather than being an active participant in the courts.

As I said, there is Family Services and there is the Community Advocate's office. Among the very authoritative people the courts rely upon are the experts who give assessment reports. These are mainly psychologists or sociologists who are supposed to be experts in child welfare. As I said in my paper, about 99 per cent of the cases I have been in are settled, in the sense that the parties agree to the orders being made, based on

these reports of the experts. It is very hard to challenge the experts in court either in cross-examination or otherwise.

**THE CHAIR:** Are the courts treating young about whom recommendations are made by experts in the same way as people who are judged to be mentally incapable of looking after themselves and relying totally on so-called expert evidence?

**Mr Lee:** Not to that extent. From what I can see, the court is relying on the experts in the sense of the experts being inquisitorial. We have the problem of having the adversarial system where Family Services are on one side, the parents on one side and the child on another side. When the experts come in, they have carte blanche to investigate. They will talk to the child, they will talk to the parents and they will talk to any other interested parties or people who are of concern in the life of the child.

I feel that that's inquisitorial, in the sense that they have seen the whole picture and then they come up with the recommendation. The court system is different. The court isn't inquisitorial. It's just adversarial and seeing how the parties present the case, and the best dressed wins.

**MRS CROSS:** So how do you suggest the right balance be struck between the child and what the child needs and what the legal representative thinks he or she is doing in the interests of the child?

**Mr Lee:** When a solicitor or a representative is representing a child in proceedings, the representative should talk to the child, get the views and wishes of the child first, test those views whilst talking to the child to see that they are consistent and not a case where one minute they're here and next minute they're there.

**MRS CROSS:** So you're saying that's not happening now?

**Mr Lee:** In my opinion, yes. The Family Court has started a protocol for solicitors acting for children. The solicitors are supposed to talk to the child at the first instance available to them, and they are to go through the wishes of the child and then they are also supposed to tell the child what they intend to tell the court. If what they intend to tell the court is opposed to the child's wishes, they should make that very clear to the child as well and give the reasons why they are going to do that.

**MRS CROSS:** Age neutral or age specific? Irrespective of how old the child is?

**Mr Lee:** No.

**MRS CROSS:** What's the minimum age?

**Mr Lee:** There is no age limit. It's very difficult to have that. It is left to the lawyer to determine the maturity of the child. I think that's a bit vague. At the same time it's difficult too. How do you see a five-year-old child? Do you say a five-year-old child has the maturity to make decisions or not?

**THE CHAIR:** Could it be left to the magistrate's discretion to say, "I want to hear from the child"? Could the magistrate say, "When you present me with your position, I want you to include that"? In your experience, do you find that some seven-years-old have the maturity of a 12-year-old and vice versa?

**Mr Lee:** That's true. There was one case a few years ago when I was appointed as a child's solicitor. That child was five years old. The child was staying with the maternal grandparents. The proceedings turned on whether the child should be with the maternal grandparents or with the paternal grandparents. They asked the maternal grandparent to summon me over to his house to talk to him so that he could put his views to me to be put to court. His views were against staying with the maternal grandparents, and they respected his view. I put that to the court. I don't know whether it was the magistrate who told me, but I was told words to the effect, "What do you think this five-year-old can tell you? What instructions are you getting from this five-year-old?" The solicitor for the mother said the same thing: "Don't waste the court's time telling the court what this five-year-old wants. This five-year-old does not know what he wants." I feel that that's arrogance. If the child wants a certain thing to be said or to be done, then I should be putting that forward.

In preparing the case, once I determine what the views of the child are, then I should be looking for evidence based on the views of the child, rather than looking at it more objectively and looking at evidence on the whole. I believe that as the child's solicitor I should be working on that basis, not saying, "Yes, I've considered this but I'm looking at it more widely."

**THE CHAIR:** Is that because the approaches made so far have not been child/client focused but parentally focused, even in the context of the Children's Court.

**Mr Lee:** Either that or adult focused. Most of the time what we feel is in the best interests of a child is actually from an adult's point of view. There have been cases where the child has been physically abused by the parents, in the sense of being hit very badly by the parents, and the child tells me, "I want to go home" and Family Services has said no and everybody else has said no.

In a recent court case a child was "discriminated against by the parents". That was the allegation. The child had been taken away from the parent about two years ago and had been on care orders. At the review every year, the child has been saying to the solicitor, "I want to go home." But Family Services have reports from experts saying the child should not go home and it would be psychologically detrimental to the child if the child went home.

The solicitor was sitting on the fence and not putting forward very strongly what the child wanted. It came back to the court recently. I said to the child's representative, "What are you going to do about it? For the past two years the child has been telling you, 'I want to go home. I don't want to stay in foster care. I want to spend time with my parents.'" The child's solicitor said, "There is this report, and I just can't make a decision."

**THE CHAIR:** What you're saying, Mr Lee, is that he has no decision. He has to put the views of the child forward. If he wishes to put his own spin on that, fine, but he should be obliged to put the views of the child.

**Mr Lee:** Not just put the views of the child forward to the court but put them very strongly and try to pick up the evidence that is available to support the wish of the child. That's what I'm saying.

**THE CHAIR:** The solicitor has the child as the client and not the parent paying the bill.

**Mr Lee:** That's right. All solicitors representing the child are paid by the Legal Aid Office.

**THE CHAIR:** Do they have a misconception of who the client is?

**Mr Lee:** No, they don't.

**THE CHAIR:** I don't mean a strict one; I mean a moral one. Do they have a focus problem?

**Mr Lee:** All the solicitors have been practising in the Family Court. I was, and I still am, the only solicitor who practised in the Children's Court without practising in the Family Court. I haven't stepped into the Family Court representing a client there. All of them take the view that they should be putting a case based on the best interests of the child. In the Family Court, Family Services is not there as the objective body. They have that extra role to be objective in representing the child in the Family Court. Children's Court is different.

**MS DUNDAS:** Do we need a re-education program for solicitors and the courts about what the Children and Young People Act says about children's wishes and the best interests of the children? You said the Family Court was establishing protocols for children. Does the Children's Court need to establish similar protocols for solicitors' interaction?

**Mr Lee:** I think that needs to be done, but I don't think it is something to be done by the Children's Court, because I don't think it's for the court to do that. It is mainly for the profession to be educated in that sense. But I think that I'm the sole voice here.

**THE CHAIR:** You're saying to us, Mr Lee, that this is a position that you wish to articulate, and this committee, through the Assembly, will be an opportunity for the community to say to the legal profession, "This is the attitude we want you to adopt when you are representing children"?

**Mr Lee:** That's right. Alternatively, if it can be done, legislation can put it more clearly rather than in the broad sense. Those sections I've picked up in my submission could put it more specifically and clearly that they are to put forward or represent the wishes of the child rather than just the best interests. The only time you go into the best interests of the child is when the child is a baby or when the child has a mental illness or is not able to articulate.

**THE CHAIR:** If the child can't communicate at all, that's the time when option A applies, and if they can communicate, full stop, let us hear the communication?

**Mr Lee:** Yes.

**MS DUNDAS:** You said there needs to be education through the profession. Who should take responsibility for that? Is it something the Law Society needs to pick up and run through its systems, or is it something that needs to be enforced?

**Mr Lee:** It may have to be forced on the Law Society. It might be necessary to amend the legislation to that extent.

**MRS CROSS:** So it is a cultural problem? It's something that has continued and people assume that's the way they should behave, and unless they're directed to behave otherwise it will continue?

**Mr Lee:** Yes.

**THE CHAIR:** It seems to me that you're saying to us that there are two avenues to attitudinal change. One is by legislation and regulation saying, "This is what you've got to do. We're going to make you change your attitude." The other one is to inculcate in someone when they become a solicitor early in their life that when they advocate in the Children's Court they should walk in there with that in their mind. We're talking about two issues. One is society saying through legislation, "That is going to be your process." The other is the Assembly encouraging the law schools and the Law Society to have this attitude. It seems to me that you're telling us that they don't consider the voice of the child is worth very much at all in the courts.

**Mr Lee:** I'd like to qualify this. This is only in regard to the younger children, not the older ones, 12 and above.

**THE CHAIR:** The nought to threes can't communicate, so they're not a problem.

**Mr Lee:** Yes.

**THE CHAIR:** The 14s to 18s are not a problem, because they'll communicate pretty quickly.

**Mr Lee:** Yes.

**THE CHAIR:** But the nines and 10s—

**Mr Lee:** Five to about 12, yes. I was very surprised when I attended an information sessions for social workers. A very senior solicitor said, "I do not want to go and see a child who is in primary school. It's a waste of my time, because the child doesn't know anything." That was a statement made to social workers. I said, "No, I don't agree with that view."

**MS DUNDAS:** How are solicitors representing these children coming to their opinions on what they put forth to the court? If the experts are coming in separately and putting their view and you have Family Services, maternal grandparents or other families, how are the lawyers determining what they say to the court if they're not listening to the children? Do you have any idea?

**Mr Lee:** They are listening to the children. I'm not for one moment saying they're not listening. They are listening to the children. They have considered that. But at the same time they're putting it on their best interests, and their best interests are based on all those reports and affidavits that have been presented to court.

**MS DUNDAS:** So the solicitor is making a decision based on external information provided by experts, Family Services and those kinds of things?

**Mr Lee:** That's right.

**MS DUNDAS:** And putting that to the court and reinforcing other pieces of information the court is receiving?

**Mr Lee:** Yes. I believe that when the lawyer is representing a client, the lawyer will only pick up those pieces that are advantageous to their client's case and leave out the rest. That's what the adversarial system is all about. You only pick up the goods points for your client, put them forward to the court and leave it there for the court, and let the other side shoot you down in a different way.

**MS DUNDAS:** But that's not happening in this situation?

**Mr Lee:** I believe that that's not happening where the child's views or wishes are concerned.

**MS DUNDAS:** There has been talk about the need for a specific legal service to be set up to help young people as they go through the courts and in their dealings with the law. In the situation you've talked about, do you think having access to an independent body to help children with information about their rights would help?

**Mr Lee:** I think the Legal Aid Office is doing a lot of work in that area. The legal aid officers have produced a book called *When Can I?*, telling young people what their rights are. A new edition has just come out. I think the Legal Aid Office has taken a lot of steps to try to expand these services to young people.

**THE CHAIR:** There has been a push to have an Aboriginal legal service. We've got a women's legal service and the legal aid service. Largely, they cover issues which are significant enough that the community requires unique expertise.

**Mr Lee:** I would support that.

**THE CHAIR:** That's what we're talking about. It need not necessarily be 1,000 solicitors, but we're talking about having a focus on the expertise in the legal service.

**Mr Lee:** Yes, I would support that—the expertise of solicitors dealing mainly with children and young people, not just in care proceedings but also in criminal proceedings, as well as other civil rights: contract, personal injuries and so on.

**THE CHAIR:** Thank you very much for that. I like what I heard then. Thank you very much indeed. It has been nice to meet you. Thank you for being so patient with us. Thank you for coming.

**The committee adjourned at 11.40 am.**